

ENTERTAINMENT PROPERTIES TRUST

Form 424B5

March 28, 2008

**Table of Contents**

Filed Pursuant to Rule 424(b)(5)  
Registration File No. 333-140978

**Prospectus Supplement  
(To prospectus dated February 27, 2007)**

***3,000,000 Shares***

**Entertainment Properties Trust**

**9.00% Series E cumulative convertible preferred shares  
liquidation preference \$25.00 per share**

We are offering 3,000,000 shares of our 9.00% Series E cumulative convertible preferred shares of beneficial interest, par value \$0.01 per share, or the Series E preferred shares, in this offering. We will pay cumulative distributions on the Series E preferred shares from and including the date of original issuance in the amount of \$2.25 per share each year, which is equivalent to 9.00% of the \$25.00 liquidation preference per share. Distributions on the Series E preferred shares will be payable quarterly in arrears, beginning on July 15, 2008. Our only other preferred shares outstanding as of the date of this prospectus supplement are 3,200,000 shares of our 7.75% Series B cumulative redeemable preferred shares with a liquidation preference of \$25.00 per share, or Series B preferred shares, 5,400,000 shares of our 5.75% Series C cumulative convertible preferred shares with a liquidation preference of \$25.00 per share, or Series C preferred shares, and 4,600,000 shares of our 7.375% Series D cumulative redeemable preferred shares with a liquidation preference of \$25.00 per share, or Series D preferred shares. The Series E preferred shares will rank on a parity with the Series B, Series C and Series D preferred shares.

You may convert the Series E preferred shares into our common shares subject to certain conditions. The conversion rate will initially be 0.4512 common shares per \$25.00 liquidation preference, which is equivalent to an initial conversion price of approximately \$55.41 per common share. The conversion rate will be subject to adjustment upon the occurrence of specified events. On or after April 20, 2013, we may, at our option, convert some or all of the Series E preferred shares into common shares in certain circumstances based on the market price of our common shares. Upon any conversion of Series E preferred shares, we will have the option to deliver either (1) a number of common shares based upon the applicable conversion rate, or (2) an amount of cash and common shares, as described in this prospectus supplement.

If you elect to convert your Series E preferred shares in connection with a fundamental change that occurs on or prior to April 20, 2018, we will increase the conversion rate for the Series E preferred shares surrendered for conversion to the extent disclosed in this prospectus supplement. In addition, upon a fundamental change, when the actual applicable price of our common shares is less than \$48.18 per share, you may require us to convert some or all of your Series E preferred shares at a conversion rate equal to the liquidation preference of the Series E preferred shares being converted plus accrued and unpaid distributions divided by 98% of the market price of our common shares. We will have the right to repurchase for cash some or all of the Series E preferred shares that would otherwise be required to be converted, as described in this prospectus supplement.

We have filed an application to list the Series E preferred shares on the New York Stock Exchange, or NYSE, under the symbol **EPR PrE**. If the application is approved, trading of the Series E preferred shares on the NYSE is expected to begin within 30 days after the date of initial delivery of the Series E preferred shares. Our common shares are listed on the NYSE under the symbol **EPR**. The last reported sale price of our common shares on March 27, 2008 was \$48.18 per share.

**Investing in our Series E preferred shares involves risks. Before buying any Series E preferred shares you should carefully read this entire prospectus supplement and the accompanying prospectus and the documents incorporated by reference herein and therein, including the section of this prospectus supplement entitled **Risk factors** beginning on page S-14, the section of the accompanying prospectus entitled **Risk Factors** on page 3 and the **Risk Factors** section of our annual report on Form 10-K for the year ended December 31, 2007 filed with the Securities and Exchange Commission, or SEC, on February 26, 2008, and, to the extent applicable, our quarterly reports on Form 10-Q.**

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

	<b>Per Share</b>	<b>Total</b>
Public offering price(1)	\$ 25.00	\$ 75,000,000
Underwriting discount	\$ 0.75	\$ 2,250,000
Proceeds, before expenses, to us	\$ 24.25	\$ 72,750,000

(1) Plus accrued distributions, if any, from (and including) the original date of issuance.

The underwriters have an option to purchase up to an additional 450,000 Series E preferred shares from us to cover over-allotments, if any.

The Series E preferred shares are subject to certain restrictions on ownership and transfer designed to preserve our qualification as a real estate investment trust for federal income tax purposes. See **Description of the Series E Preferred Shares** **Restrictions on Ownership and Transfer** on page S-52 of this prospectus supplement and **Description of Certain Provisions of Maryland Law and EPR's Declaration of Trust and Bylaws** **Restrictions on Ownership and Transfer of Shares** on page 29 of the accompanying prospectus for more information about these restrictions.

The underwriters expect that the Series E preferred shares will be ready for delivery in book-entry form through the facilities of The Depository Trust Company on or about April 2, 2008.

*Joint Book-Running Managers*

**JP Morgan**

**Morgan Stanley**

*Co-Manager*

**RBC Capital Markets**

The date of this prospectus supplement is March 27, 2008

*You should rely only on the information contained in or incorporated by reference into this prospectus supplement and the accompanying prospectus. Neither we nor the underwriters have authorized any person to provide you with different or additional information. If anyone provides you with different or additional information, you should not rely on it. We are not, and the underwriters are not, making an offer to sell these securities in any jurisdiction where the offer or sale is not permitted. The information contained in this prospectus supplement, the accompanying prospectus and the documents incorporated by reference herein and therein is accurate only as of their respective dates or as of other dates which are specified in those documents. Our business, financial condition, results of operations and prospects may have changed since those dates.*

## Table of contents

### Prospectus Supplement

<u>About this prospectus supplement</u>	S-ii
<u>Incorporation of certain information by reference</u>	S-ii
<u>Cautionary statement concerning forward-looking statements</u>	S-iii
<u>Prospectus supplement summary</u>	S-1
<u>The offering</u>	S-6
<u>Ratio of earnings to fixed charges and preferred share distributions</u>	S-13
<u>Risk factors</u>	S-14
<u>Use of proceeds</u>	S-20
<u>Capitalization</u>	S-22
<u>Selected financial data</u>	S-23
<u>Description of the Series E preferred shares</u>	S-25
<u>Additional U.S. federal income tax considerations</u>	S-53
<u>Underwriting</u>	S-64
<u>Legal matters</u>	S-67
<u>Experts</u>	S-67
<u>Available information</u>	S-68

### Prospectus

About This Prospectus	1
Incorporation of Certain Information by Reference	1
Cautionary Statement Concerning Forward-Looking Statements	2
Risk Factors	3
The Company	3
Ratio of Earnings to Fixed Charges and Ratio of Earnings to Combined Fixed Charges and Preferred Share Distributions	4
Description of Debt Securities	5
Description of Shares of Beneficial Interest	14
Description of Depositary Shares	21
Description of Warrants	25
Description of Certain Provisions of Maryland Law and EPR S Declaration of Trust and Bylaws	27
U.S. Federal Income Tax Considerations	32
Plan of Distribution	46
Legal Matters	47
Experts	48
Available Information	48



**Table of Contents**

**About this prospectus supplement**

We are providing information to you about this offering of our Series E preferred shares in two parts. The first part is this prospectus supplement, which provides the specific details regarding this offering. The second part is the accompanying prospectus, which provides general information, including information about our common shares. Generally, when we refer to this prospectus, we are referring to both documents combined. Some of the information in the accompanying prospectus may not apply to this offering. If information in this prospectus supplement is inconsistent with the accompanying prospectus, you should rely on the information contained in this prospectus supplement.

References to we, us, our, EPR or the Company refer to Entertainment Properties Trust. When we refer to our Declaration of Trust we mean Entertainment Properties Trust's Amended and Restated Declaration of Trust, including the articles supplementary for each series of preferred shares, as amended. When we refer to our Bylaws we mean Entertainment Properties Trust's Bylaws, as amended. The term you refers to a prospective investor.

**Incorporation of certain information by reference**

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

The documents listed below have been filed by us under the Securities Exchange Act of 1934, as amended (the Exchange Act ) (File No. 1-13561) and are incorporated by reference in this prospectus supplement:

1. Our annual report on Form 10-K for the year ended December 31, 2007, filed on February 26, 2008.
2. Our current report on Form 8-K filed on March 27, 2008 (only as to Item 8.01).
3. The description of our common shares included in our registration statement on Form 8-A filed on November 4, 1997.
4. The description of our Series B Preferred Shares included in our registration statement filed on Form 8-A/A filed on January 14, 2005.
5. The description of our Series C Preferred Shares included in our registration statement filed on Form 8-A filed on December 21, 2006.
6. The description of our Series D Preferred Shares included in our registration statement filed on Form 8-A filed on May 4, 2007.

In addition, all documents filed by us under Section 13(a), 13(c), 14 or 15(d) of the Exchange Act (excluding any information that is deemed to have been furnished and not filed with the SEC) after the date of this prospectus supplement and prior to the termination of the offering of the securities covered by this prospectus supplement, are incorporated by reference herein.



**Table of Contents**

To obtain a free copy of any of the documents incorporated by reference in this prospectus supplement (other than exhibits, unless they are specifically incorporated by reference in the documents) please contact us at:

**Investor Relations Department  
Entertainment Properties Trust  
30 W. Pershing Road, Suite 201  
Kansas City, Missouri 64108  
(816) 472-1700/FAX (816) 472-5794  
Email [info@eprkc.com](mailto:info@eprkc.com)**

Our SEC filings also are available on our Internet website at [www.eprkc.com](http://www.eprkc.com). The information on our website is not, and you must not consider the information to be, a part of this prospectus supplement or the accompanying prospectus.

As you read these documents, you may find some differences in information from one document to another. You should assume that the information appearing in the prospectus supplement or the accompanying prospectus is accurate only as of the date on their respective covers, and you should assume the information appearing in any document incorporated or deemed to be incorporated by reference in this prospectus supplement or the accompanying prospectus is accurate only as of the date that document was filed with the SEC. Our business, financial condition, results of operations and prospects may have changed since those dates.

**Cautionary statement concerning  
forward-looking statements**

With the exception of historical information, this prospectus supplement and the accompanying prospectus and our reports filed under the Exchange Act and incorporated by reference in this prospectus supplement and the accompanying prospectus and other offering materials and documents deemed to be incorporated by reference herein or therein may contain 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 Exchange Act, such as those pertaining to our acquisition or disposition of properties, our capital resources, future expenditures for development projects and our results of operations. Forward-looking statements involve numerous risks and uncertainties and you should not rely on them as predictions of actual events. There is no assurance the events or circumstances reflected in the forward-looking statements will occur. You can identify forward-looking statements by use of words such as will be, intend, continue, believe, may, expect, hope, anticipate, goal, forecast, or other comparable terms, or by discussions of strategy or intentions. Forward-looking statements necessarily are dependent on assumptions, data or methods that may be incorrect or imprecise.

Factors that could materially and adversely affect us include, but are not limited to, the factors listed below:

General international, national, regional and local business and economic conditions;

Our ability to compete effectively;

Defaults in the performance of lease terms by our tenants;

S-iii



**Table of Contents**

The financial condition of our tenants, including the extent of tenant bankruptcies or defaults;

Risk of our tenants not renewing their leases;

The concentration of leases with our single largest tenant;

Our continued qualification as a REIT;

Risks relating to real estate ownership and development, for example local conditions such as an oversupply of space or a reduction in demand for real estate in the area, competition from other available space, whether tenants and users such as customers of our tenants consider a property attractive, changes in real estate taxes and other expenses, changes in market rental rates, the timing and costs associated with property improvements and rentals, changes in taxation or zoning laws or other governmental regulation, whether we are able to pass some or all of any increased operating costs through to tenants, how well we manage our properties;

Risks associated with use of leverage to acquire properties;

Fluctuations in interest rates;

Acts of terrorism or armed conflicts;

Our ability to secure adequate insurance and risk of potential uninsured losses, including from natural disasters;

Risks involved in joint ventures;

Risks in leasing multi-tenant properties;

Risks of environmental liability;

Risks associated with owning or financing properties for which the tenants or mortgagors operations may be impacted by weather conditions;

Risks associated with the ownership of vineyards;

Our ability to raise capital;

Our ability to pay distributions to our shareholders;

Changes in laws and regulations, including tax laws and regulations;

Risks associated with changes in the Canadian exchange rate; and

Certain limits on change in control imposed under law and by our Declaration of Trust and Bylaws.

You should consider the risks described in the "Risk factors" section on page S-14 of this prospectus supplement, the "Risk Factors" section on page 3 of the accompanying prospectus and the "Risk Factors" section of our annual report on Form 10-K for the year ended December 31, 2007, filed with the SEC on February 26, 2008, and, to the extent applicable, our quarterly reports on Form 10-Q, in evaluating any forward-looking statements included or incorporated by reference in this prospectus supplement and the accompanying prospectus.



**Table of Contents**

Given these uncertainties, you should not place undue reliance on these forward-looking statements. We undertake no obligation to publicly update or revise any forward-looking statements included or incorporated by reference in this prospectus supplement or the accompanying prospectus, whether as a result of new information, future events or otherwise. In light of the factors referred to above, the future events discussed or incorporated by reference in this prospectus supplement or the accompanying prospectus may not occur and actual results, performance or achievements could differ materially from those anticipated or implied in the forward-looking statements.

S-v

---

**Table of Contents**

**Prospectus supplement summary**

*This summary may not contain all of the information that is important to you. Before making a decision to purchase our Series E preferred shares, you should carefully read this entire prospectus supplement and the accompanying prospectus, especially the Risk factors section on page S-14 of this prospectus supplement, the Risk Factors section on page 3 of the accompanying prospectus and the Risk Factors section of our annual report on Form 10-K for the year ended December 31, 2007, filed on February 26, 2008, and incorporated by reference herein, as well as the Risk Factors section in our quarterly reports on Form 10-Q, to the extent applicable, and the other documents incorporated by reference in this prospectus supplement and in the accompanying prospectus. Unless otherwise indicated, financial information included in this prospectus supplement is presented on a historical basis.*

**About EPR**

We are a self-administered real estate investment trust, or REIT, that develops, owns, acquires and finances properties for consumer preferred high-quality businesses, including megaplex movie theatres, entertainment retail centers and other destination recreational and specialty properties.

Our real estate portfolio is comprised of over \$1.9 billion in assets (before accumulated depreciation) and consists of:

79 megaplex movie theatre properties (including four joint venture properties) located in 26 states and Ontario, Canada

one theatre property under development in California

eight entertainment retail centers (including two joint venture properties) located in Westminster, Colorado, New Rochelle, New York, White Plains, New York, Burbank, California, and Ontario, Canada

other specialty properties, including six wineries and six vineyards located in California and a ski property located in Ohio

a 50% joint venture interest in JERIT CS Fund I ( CS Fund I ), which owns 12 public charter school properties located in seven states and the District of Columbia

land parcels leased to restaurant and retail operators adjacent to several of our theatre properties

As of March 25, 2008, we had invested approximately \$19.6 million in development land and construction in progress for real-estate development.

Also, as of March 25, 2008, we had the following mortgage notes receivable:

\$107.2 million (including accrued interest) in mortgage financing for the development of Toronto Life Square, an entertainment retail center in Canada

\$123.0 million (including accrued interest) in mortgage financing for ten ski properties and development land located in New Hampshire, Vermont, Missouri, Indiana, Ohio and Pennsylvania



**Table of Contents**

\$3.6 million (including accrued interest) in mortgage financing for the development of an amphitheatre located in Illinois.

\$107.3 million (including accrued interest) in mortgage financing for the development of a water park anchored entertainment village in the greater Kansas City area

The theatre project under development has been pre-leased to the prospective tenant under a long-term triple-net lease. The cost of development will be paid by us in periodic draws. The related timing and amount of rental payments to be received by us from the tenant under the lease correspond to the timing and amount of funding by us of the cost of development. This theatre will have 12 screens and we anticipate that the total development cost will be approximately \$13.2 million. Through March 25, 2008, we had not yet invested any funds in this project but have commitments to fund the \$13.2 million in improvements. We plan to fund development primarily with funds generated by debt financing and/or equity offerings. If we determine that construction is not being completed in accordance with the terms of the development agreement, we can discontinue funding construction draws.

We generally lease our single-tenant properties to tenants on a long-term triple-net basis that requires the tenant to assume the primary risks involved in operating the property and to pay substantially all expenses associated with the operation and maintenance of the property. We also provide secured mortgage financing and we own multi-tenant properties which are managed for us by third-party management companies.

Our theatre properties are leased to prominent theatre operators, including American Multi-Cinema, Inc. (referred to in this prospectus as AMC ), Muvico Entertainment LLC, Regal Cinemas, Consolidated Theatres, Loews Cineplex Entertainment (now part of AMC), Rave Motion Pictures, Wallace Theatres, Southern Theatres, Cobb Theatres and Kerasotes Showplace Theatres. As of March 25, 2008, approximately 51% of our megaplex theatre properties were leased to AMC as a result of a series of sale-leaseback transactions relating to a number of AMC megaplex theatres, and approximately 51% of our total annual lease revenues were derived from rental payments by AMC under these leases.

Approximately 15% of our total annual revenue is derived from our four entertainment retail centers in Ontario, Canada and a mortgage note receivable secured by an additional property under development in Ontario, Canada. The Canadian entertainment retail centers combined with the carrying value of our mortgage note receivable represent approximately 23% of the Company's net assets as of March 25, 2008.

Beginning with our taxable year ended December 31, 1997, we elected to be treated as a REIT for U.S. federal income tax purposes. In order to maintain our status as a REIT, we must comply with a number of requirements under federal income tax law that are discussed in Additional U.S. federal income tax considerations on page S-53 of this prospectus supplement and U.S. Federal Income Tax Considerations on page 32 of the accompanying prospectus.

Our executive offices are located at 30 W. Pershing Road, Suite 201, Kansas City, Missouri 64108. Our telephone number is (816) 472-1700.

**Growth Strategies**

As a part of our growth strategies, we will consider developing or acquiring additional megaplex theatre properties, and developing or acquiring single-tenant entertainment, entertainment-related, recreational or specialty properties. We will also consider developing or



## **Table of Contents**

acquiring additional entertainment retail centers. In lieu of acquisition or development, we may also pursue opportunities to provide mortgage financing for these same property types.

Our investing strategies center on certain guiding principles, which we refer to as our Five Star Principles :

### **Inflection Opportunity**

We look for a new generation of facilities emerging as a result of age, technology, or change in the lifestyle of consumers which create development, renewal or restructuring opportunities requiring significant capital.

### **Enduring Value**

We look for real estate that supports activities that are commercially successful and have a reasonable basis for continued and sustainable customer demand in the future. Further, we seek circumstances where the magnitude of change in the new generation of facilities adds substantially to the customer experience.

### **Excellent Execution**

We seek attractive locations and best-of-class executions that create market-dominant properties which we believe create a competitive advantage and enhance sustainable customer demand within the category despite a potential change in tenant. We minimize the potential for turnover by seeking quality tenants with a reliable track record of customer service and satisfaction.

### **Attractive Economics**

We seek investments that provide accretive returns initially and increasing returns over time with rent escalators and percentage rent features that allow participation in the financial performance of the property. Further, we are interested in investments that provide a depth of opportunity to invest sufficient capital to be meaningful to our total financial results and also provide a diversity by market, geography or tenant operator.

### **Advantageous Position**

In combination with the preceding principles, when investing we look for a competitive advantage such as unique knowledge of the category, access to industry information, a preferred tenant relationship, or other relationships that provide access to sites and development projects.

### **Recent Developments**

The following are principal recent developments since January 1, 2008:

### **Debt Financing**

On January 11, 2008, the Company obtained a \$17.5 million non-recourse mortgage loan maturing on February 1, 2018 and secured by a theatre property located in Garland, Texas,



## **Table of Contents**

which bears interest at 6.19% per year, and requires monthly principal and interest payments of \$127 thousand and a final principal payment at maturity of \$11.6 million.

On March 13, 2008, the Company's subsidiary VinREIT, LLC entered into a \$65.0 million term loan and revolving credit facility with Bank of the West and various lenders. The credit facility is evidenced by a Credit Agreement dated as of March 4, 2008 and includes pricing of LIBOR plus 1.5% on loans advanced against real property and LIBOR plus 1.75% on loans advanced against fixtures and equipment. The Credit Agreement provides for an aggregate advance rate of 65% based on the lesser of cost or appraised value. Term loans against real property may be drawn on through March 14, 2010. These loans are amortized over a 25-year period and mature on the earlier of ten years after disbursement or the maturity of the related real property lease. The equipment and fixture loans have a maturity date that is the earlier of ten years or the maturity of the related lease and require full principal amortization over the term of the loan. The Credit Agreement contains an accordion feature whereby, subject to lender approval, VinREIT, LLC may obtain additional revolving credit and term loan commitments in an aggregate principal amount not to exceed \$35.0 million. The Credit Agreement is secured by the existing and future personal property of VinREIT, LLC, and is jointly and severally guaranteed by two wholly-owned subsidiaries of VinREIT, LLC, Havens VinREIT, LLC and Duncan Peak VinREIT LLC. Each of these subsidiaries granted a lien on its existing real estate and its existing and future personal property to secure its guaranty. The initial disbursement under the Credit Agreement consisted of two term loans in the aggregate principal amount of approximately \$9.5 million with maturity dates of December 1, 2017 and March 13, 2018, respectively, and we simultaneously entered into interest rate swap agreements that fixed the interest rates at an average of 5.52%. On March 24, 2007, we obtained \$3.2 million of equipment loans that mature on December 1, 2017. Other wholly-owned subsidiaries of VinREIT, LLC may subsequently become eligible to join in the credit facility as secured guarantors, thus facilitating credit extensions under the Credit Agreement.

The net proceeds from the above-referenced loans were used to pay down outstanding indebtedness under our unsecured revolving credit facility.

## **Investments**

As previously announced, on October 30, 2007, we acquired, through our wholly-owned subsidiary, EPT Schoolhouse, LLC ( "EPT Schoolhouse" ), a 50% ownership interest in CS Fund I for \$39.3 million. CS Fund I currently owns 12 public charter school properties located in Nevada, Arizona, Ohio, Georgia, Missouri, Michigan, Florida and Washington D.C. and leases them under a long-term triple net master lease. Our partner in CS Fund I is JERIT CS Fund I Member ( "JERIT Fund Member" ). On March 25, 2008, EPT Schoolhouse entered into a membership purchase agreement with JERIT Fund Member, pursuant to which EPT Schoolhouse will purchase all of JERIT Fund Member's 50% ownership interest in CS Fund I for approximately \$39.5 million. Upon completion of this transaction, CS Fund I will become a wholly-owned subsidiary of the Company. The member purchase agreement provides that EPT Schoolhouse shall pay JERIT Fund Member a monthly asset management fee of 1.875% of the monthly rent for the public charter school properties, for the six month period following the closing. The membership purchase agreement also contains an option pursuant to which JERIT Fund Member may re-acquire its 50% interest in CS Fund I within six months after the acquisition of such interest by EPT Schoolhouse. We anticipate that the acquisition of JERIT Fund Member's 50% interest in CS Fund I by EPT Schoolhouse will be completed in early April; however, we cannot assure you that this transaction will be completed or completed for the amount or on the terms summarized above. Depending on the timing of this acquisition, we may finance the purchase price

**Table of Contents**

with a portion of the proceeds from this offering and the concurrent offering of our common shares, or we may finance the purchase price with borrowings under our unsecured revolving credit facility which would be repaid using a portion of the proceeds from this offering and the concurrent common shares offering.

CS Fund I currently has an option to purchase an additional \$120 million of public charter school properties, of which \$60 million of properties would be scheduled to close within the next 60 to 90 days if such option is exercised. We cannot offer any assurance that this option will be exercised or as to the timing or terms of the transaction or that the transaction will be completed.

**Concurrent Offering of Common Shares**

Concurrently with this offering, we are offering 2,100,000 common shares pursuant to a separate offering registered under the Securities Act. We have granted the underwriters for the common shares offering an over-allotment option to purchase up to 315,000 additional common shares. If we complete the offering of the common shares, we expect to use the proceeds from that offering and from this offering as described in Use of Proceeds. The completion of this offering of Series E preferred shares is not subject to the completion of the concurrent offering of common shares and the completion of the concurrent offering of common shares is not subject to the completion of this offering of Series E preferred shares.

For a description of the common shares, please see the prospectus supplement and other offering materials for the common shares, all of which have been or will be filed with the SEC.

**This prospectus supplement shall not be deemed to be an offer to sell or a solicitation of an offer to buy any common shares and we cannot assure you that the concurrent offering of our common shares will be completed or completed for the amount or on the terms contemplated.**

**Table of Contents**

**The offering**

*The following is a brief summary of certain terms of this offering and is not intended to be complete. It does not contain all of the information that will be important to a holder or the issuer of the Series E preferred shares. For a more complete description of the terms of the Series E preferred shares, see Description of the Series E Preferred Shares in this prospectus supplement and Description of Shares of Beneficial Interest and Description of Certain Provisions of Maryland Law and EPR's Declaration of Trust and Bylaws in the accompanying prospectus.*

Issuer	Entertainment Properties Trust.
Securities Offered	3,000,000 shares of 9.00% Series E cumulative convertible preferred shares plus up to an additional 450,000 shares of Series E preferred shares that we may issue and sell upon the exercise of the underwriters' overallotment option.
Ranking	<p>The Series E preferred shares will rank, with respect to distribution rights and rights upon our liquidation, dissolution or winding up:</p> <ul style="list-style-type: none"> <li>junior to all of our existing and future debt obligations, including convertible or exchangeable debt securities;</li> <li>senior to our common shares and to any other of our equity securities that by their terms rank junior to the Series E preferred shares with respect to distribution rights or payments upon our liquidation, dissolution or winding up;</li> <li>on a parity with our existing Series B, Series C, and Series D preferred shares and with other series of our preferred shares or other equity securities that we may later authorize and that by their terms are on a parity with the Series E preferred shares with respect to distribution rights or payments upon our liquidation, dissolution or winding up; and</li> <li>junior to any equity securities that we may later authorize or issue and that by their terms rank senior to the Series E preferred shares (which we may only authorize with the affirmative vote of the holders of at least two-thirds of the Series E preferred shares).</li> </ul>
Distributions	<p>Holders of Series E preferred shares will be entitled to receive cumulative cash distributions on the Series E preferred shares from the original date of issuance at a rate of 9.00% per year of the \$25.00 liquidation preference (equivalent to \$2.25 per year per share). Distributions on the Series E preferred shares are payable quarterly in arrears on January 15, April 15, July 15 and October 15 of each year, or if not a business day, the next succeeding business day. The first distribution will be paid on July 15, 2008, and will be a pro rata distribution from and including the original issue date to and including July 15, 2008 in the amount of \$0.65 per share. See Description of the Series E Preferred Shares Distributions.</p>

**Table of Contents**

Liquidation Preference	<p>If we liquidate, dissolve or wind up, you will have the right to receive \$25.00 per Series E preferred share, plus accrued and unpaid distributions (whether or not authorized or declared) to the date of payment, before any payments are made to our common shareholders or to holders of any other of our equity securities that we may issue ranking junior to the Series E preferred shares as to liquidation rights (but after any payments are made to holders of our debt, holders of our subsidiaries' debt and holders of any other of our equity securities that we may issue ranking senior to the Series E preferred shares as to liquidation rights (which equity securities we may authorize only with the affirmative vote of the holders of at least two-thirds of the Series E preferred shares)). Your rights to receive the liquidation preference will be subject to the proportionate rights of each other series or class of our equity securities ranking on a parity with the Series E preferred shares that we have issued or may issue in the future (including our Series B, Series C, and Series D preferred shares). See Description of the Series E Preferred Shares' Liquidation Preference.</p>
Conversion Rights	<p>You, at your option, may convert some or all of your outstanding Series E preferred shares initially at a conversion rate of common shares per \$25.00 liquidation preference, referred to as the Conversion Rate, which is equivalent to an initial conversion price of approximately \$55.41 per common share (subject to adjustment in certain events). Except as otherwise provided, our Series E preferred shares will only be convertible into our common shares. See Description of the Series E Preferred Shares' Conversion Rights.</p>
Company Conversion Option	<p>On or after April 20, 2013, we may, at our option, convert some or all of the Series E preferred shares into that number of common shares that are issuable at the then applicable Conversion Rate, which we refer to as the Company Conversion Option. We may exercise the Company Conversion Option only if (1) the Closing Sale Price (as defined below) of our common shares equals or exceeds 150% of then applicable conversion price of the Series E preferred shares for at least 20 Trading Days (as defined below) in a period of 30 consecutive Trading Days (including the last Trading Day of such period) ending on the Trading Day immediately prior to our issuance of a press release announcing our exercise of the Company Conversion Option and our form of payment as described below under Conversion Settlement' and (2) on or prior to the effective date of the Company Conversion Option, we have either declared and paid, or declared and set apart for payment, any unpaid distributions that are in arrears on the Series E preferred shares. See Description of the Series E Preferred Shares' Company Conversion Option.</p>

**Table of Contents**

Conversion Settlement	<p>Upon conversion, we will deliver, at our option, either (1) a number of common shares based upon the applicable Conversion Rate, or (2) an amount of cash and common shares as follows:</p> <p>cash in an amount equal to the lesser of (a) the Conversion Value and (b) the \$25.00 liquidation preference, and</p> <p>if the Conversion Value (as defined below) is greater than the \$25.00 liquidation preference, a number of common shares equal to the difference between the Conversion Value and the \$25.00 liquidation preference, divided by the average of the Closing Sale Price of our common shares during the Cash Settlement Averaging Period.</p> <p>See Description of Series E Preferred Shares Conversion Rights Conversion Settlement.</p> <p>The Conversion Value for each Series E preferred share to be converted is an amount equal to the applicable Conversion Rate multiplied by the average of the Closing Sale Price of our common shares during the Cash Settlement Averaging Period. The Cash Settlement Averaging Period for each Series E preferred share is equal to the average of the Closing Sale Price over the 20 consecutive Trading Days (including the last Trading Day of such period) starting on, and including the third Trading Day following the conversion date for such shares.</p> <p>At any time, we may irrevocably waive in our sole discretion our right to satisfy our conversion obligation solely in our common shares as described above.</p>
Payment of Distributions Upon Conversion	<p>If you exercise your conversion rights, upon delivery of the Series E preferred shares for conversion, those Series E preferred shares will cease to cumulate distributions as of the conversion date and you will not receive any cash payment representing accrued and unpaid distributions on the Series E preferred shares, except in those limited circumstances discussed below. Except as provided below, we will make no payment for accrued and unpaid distributions, whether or not in arrears, on Series E preferred shares converted at your election, or for distributions on the common shares issued upon such conversion. If we convert your Series E preferred shares pursuant to the Company Conversion Option, whether prior to, on, or after the record date for the current period, all unpaid distributions that are in arrears as of the Company Conversion Option Date will be payable to you. See Description of the Series E Preferred Shares Payment of Distributions Upon Conversion.</p>

**Table of Contents**

Conversion Rate Adjustments	The Conversion Rate is subject to adjustment upon the occurrence of certain events, including if we distribute in any fiscal quarter to our common shareholders any cash, including quarterly cash distributions, in excess of \$0.84 per common share (subject to adjustment). See Description of the Series E Preferred Shares Conversion Rate Adjustments.
Adjustment to Conversion Rate Upon Certain Fundamental Changes	If you elect to convert your Series E preferred shares in connection with a Fundamental Change (as defined below) that occurs on or prior to April 20, 2018, we will increase the Conversion Rate for the Series E preferred shares surrendered for conversion by a number of additional shares determined based on our share price at the time of such Fundamental Change. See Description of the Series E Preferred Shares The Increase in the Conversion Rate.
Rights Upon Fundamental Change	On or prior to April 20, 2018, in the event of a Fundamental Change, when the actual applicable price of our common shares described in Description of the Series E preferred shares The Increase in the Conversion Rate is less than \$48.18 per share, then you will have a special right to convert some or all of your Series E preferred shares on the Fundamental Change Conversion Date (as defined below) into a number of our common shares per \$25.00 liquidation preference equal to such liquidation preference, plus accrued and unpaid distributions to, but not including, the Fundamental Change Conversion Date, divided by 98% of the Market Price (as defined below) of our common shares. In the event that you exercise that special conversion right, we have the right to repurchase for cash all or any part of your Series E preferred shares as to which the conversion right was exercised at a repurchase price equal to 100% of the liquidation preference of the Series E preferred shares to be repurchased plus accrued and unpaid distributions to, but not including, the Fundamental Change Conversion Date. If we elect to exercise our repurchase right, you will not have the special conversion right described in this paragraph. See Description of the Series E Preferred Shares Special Conversion Right of Series E Preferred Shares upon a Fundamental Change; Company Repurchase Right.
No Maturity; Redemption	Our Series E preferred shares have no maturity date and will not be subject to any sinking fund. We are not required to redeem or repurchase the Series E preferred shares, and, except as described under Description of the Series E Preferred Shares Special Conversion Right of Series E preferred shares upon a Fundamental Change; Company Repurchase Right or Restrictions on Ownership and Transfer , we may not elect to redeem or repurchase, the Series E

**Table of Contents**

preferred shares. On or after April 20, 2013, we have the right, in certain circumstances, to require you to convert your Series E preferred shares. See Description of the Series E Preferred Shares Company Conversion Option.

**Voting Rights**

Holders of any series of our preferred shares, including the Series E preferred shares, generally have no voting rights. However, if we do not pay distributions on our Series E preferred shares for six or more quarterly periods (whether or not consecutive), the holders of the Series E preferred shares, voting together with the holders of any other series of our preferred shares which have similar voting rights, including our Series B, Series C, and Series D preferred shares, will be entitled to vote for the election of two additional trustees to serve on our board of trustees until we pay or declare and set aside for payment all distributions which we owe on our preferred shares. In addition, the affirmative vote of the holders of at least two-thirds of the Series E preferred shares is required for us to authorize, create or increase the number of shares ranking senior to the Series E preferred shares or to amend our Declaration of Trust in a manner that materially and adversely affects the rights of the holders of the Series E preferred shares. See Description of the Series E Preferred Shares Voting Rights.

**Listing**

We have filed an application to list the Series E preferred shares on the NYSE under the symbol `EPR PrE`. If the application is approved, trading of the Series E preferred shares on the NYSE is expected to begin within 30 days after the date of initial delivery of the Series E preferred shares.

**Form**

The Series E preferred shares will be issued and maintained initially in book-entry form registered in the name of the nominee of The Depository Trust Company.

**Restrictions on Ownership and Transfer**

For us to qualify as a REIT under the Internal Revenue Code of 1986, as amended, referred to herein as the Code, not more than 50% in value of our outstanding shares of beneficial interest may be owned, directly or constructively, by five or fewer individuals, as defined in the Code to include certain entities, during the last half of any taxable year. In addition, our Declaration of Trust and the articles supplementary establishing the Series E preferred shares contain provisions that limit to 9.8% the percentage ownership of our equity by class or series, including the Series E preferred shares or our common shares, by any one person or group of affiliated persons. Our Declaration of Trust and articles supplementary establishing the Series E preferred shares allow our board of trustees to waive this ownership limit, subject to certain conditions. See Description of the Series E Preferred Shares Restrictions on Ownership and Transfer in this prospectus supplement and Description of Certain Provisions of

**Table of Contents**

Maryland Law and EPR's Declaration of Trust and Bylaws Restrictions on Ownership and Transfer of Shares on page 29 of the accompanying prospectus for more information about these restrictions.

Tax consequences	The U.S. federal income tax consequences of purchasing, owning and disposing of the Series E preferred shares and common shares into which the shares are convertible are summarized in Additional U.S. Federal Income Tax Considerations on page S-53 of this prospectus supplement and U.S. Federal Income Tax Considerations on page 32 of the accompanying prospectus.
Concurrent Offering	Concurrently with this public offering of Series E preferred shares, we are offering 2,100,000 common shares (or 2,415,000 common shares if the underwriters exercise their over-allotment option) pursuant to a separate public offering registered under the Securities Act. The completion of the offering of the common shares is not subject to the completion of the offering of Series E preferred shares and the completion of the offering of Series E preferred shares is not subject to the completion of the offering of common shares. See Concurrent Offering of Common Shares .
Use of Proceeds	The net proceeds to us from the sale of Series E preferred shares offered hereby are expected to be approximately \$72.53 million (\$83.44 million if the underwriters exercise their over-allotment option in full), after deducting the underwriting discount and commissions and our estimated offering expenses. As summarized above in this prospectus supplement, we are concurrently offering our common shares pursuant to a separate offering registered under the Securities Act. The net proceeds to us from the sale of our common shares are expected to be approximately \$96.65 million (\$111.18 million if the underwriters exercise their over-allotment option in full), after deducting the underwriting discount and commissions and our estimated offering expenses. We intend to use the net proceeds from this offering and the concurrent offering of our common shares for general business purposes, which may include funding the acquisition, development or financing of properties or the repayment of debt. We are continuously seeking acquisition, development and financing opportunities relating to megaplex movie theatres, entertainment retail centers and other destination recreational and specialty properties. We believe we have a strong pipeline of development, acquisition and financing transaction opportunities and we are a party to several letters of intent and have entered into other commitments in furtherance of these efforts, including our agreement to purchase the remaining 50% interest in CS Fund I for approximately \$39.5 million. For a description of this transaction, see Prospectus Supplement Summary Recent Developments Investments. Pending application of net proceeds from this offering and the concurrent offering of our common shares to the uses described above, we intend to use the net proceeds from this offering and the



**Table of Contents**

concurrent offering of our common shares to reduce indebtedness under our unsecured revolving credit facility and to invest any remaining net proceeds in interest-bearing accounts and short-term interest-bearing securities which are consistent with our qualification as a REIT under the Code. The proceeds we ultimately receive from this offering of Series E preferred shares and the concurrent offering of common shares are dependent upon numerous factors and subject to general market conditions. We may not consummate the concurrent offering of common shares or we may not consummate it for the amount or on the terms planned. Accordingly, the amounts described above may differ materially from the actual amounts we receive. This offering of Series E preferred shares is not conditioned on completion of the concurrent offering of our common shares and the concurrent offering of our common shares is not conditioned on the completion of this offering of Series E preferred shares. See Use of Proceeds.

Settlement Date                      Delivery of the Series E preferred shares will be made against payment therefor on or about April 2, 2008.

Risk Factors                              See the Risk factors section on page S-14 of this prospectus supplement, the Risk Factors section on page 3 of the accompanying prospectus and the Risk Factors section of our annual report on Form 10-K for the year ended December 31, 2007, filed on February 26, 2008, and, to the extent applicable, our quarterly reports on Form 10-Q for other information you should consider before buying our Series E preferred shares.

**Table of Contents****Ratio of earnings to fixed charges and preferred share distributions**

The table below presents our ratio of earnings to combined fixed charges and preferred share distributions by dividing earnings by combined fixed charges and preferred share distributions. For this purpose, earnings is the sum of net income before discontinued operations, equity in earnings of unconsolidated subsidiaries, minority interest in earnings (excluding those that have not incurred fixed charges) and fixed charges (excluding capitalized interest) plus distributed income from unconsolidated subsidiaries. Fixed charges consist of interest incurred on all indebtedness related to continuing operations (including amortization of original issue discount, if any). The ratios are based solely on historical financial information and no pro forma adjustments have been made.

	<b>Years Ended December 31,</b>				
	<b>2007</b>	<b>2006</b>	<b>2005</b>	<b>2004</b>	<b>2003</b>
Ratio of earnings to combined fixed charges and preferred share distributions	1.9X	2.1X	2.0X	2.0X	1.8X

S-13

**Table of Contents**

**Risk factors**

*Before you decide to purchase our Series E preferred shares, you should be aware that there are risks in making this investment. You should carefully consider the risks described below, in the Risk Factors section on page 3 of the accompanying prospectus, in the Risk Factors section of our annual report of on Form 10-K for the year ended December 31, 2007 filed on February 26, 2008, and to the extent applicable, in our quarterly reports on Form 10-Q, together with all other information included or incorporated by reference in this prospectus supplement and the accompanying prospectus, before you decide to invest in our Series E preferred shares.*

***The trading price for the Series E preferred shares will be directly affected by the trading price for our common shares, which is impossible to predict.***

The trading price of the Series E preferred shares will be affected by the trading price for our common shares. Our common share trading price may depend on many factors, including prevailing interest rates, general economic conditions, capital market conditions (which may not be related to the operating performance of companies), the market for similar securities, our financial condition, performance and prospects, variations from analysts' expectations and our issuance of additional debt or equity securities, and may be more volatile than the general trading prices of preferred shares that are not convertible.

The price of our common shares could be affected by possible sales of our common shares by investors who view the Series E preferred shares as a more attractive means of equity participation in us and by hedging or arbitrage trading activity that may develop involving our common shares. The hedging or arbitrage trading activity could, in turn, affect the trading prices of the Series E preferred shares.

***The trading price for the Series E preferred shares could be substantially affected by various other factors.***

As with other publicly-traded securities, the trading price for the Series E preferred shares will depend on many factors other than the trading price of our common shares, which may change from time to time, including:

- the trading price for our Series B, Series C, and Series D Preferred Shares;
- any increases in prevailing interest rates, which may negatively affect the market for the Series E preferred shares;
- the market for similar securities;
- additional issuances of other series or classes of preferred shares;
- general economic conditions or conditions in the financial or real estate markets; and
- our financial condition, performance and prospects.

**Table of Contents**

***The Conversion Rate of the Series E preferred shares may not be adjusted for all dilutive events. Accordingly, we may engage in transactions that could dilute the value of the common shares into which your Series E preferred shares may be convertible.***

As described under Description of the Series E Preferred Shares Conversion Rate Adjustments , we will adjust the Conversion Rate of the Series E preferred shares only for certain events. We will not adjust the Conversion Rate, among other things, for:

the issuance of any of our common shares pursuant to any present or future plan providing for the reinvestment of distributions or interest payable on our securities and the investment of additional optional amounts in common shares under any plan;

the issuance of any of our common shares or rights, warrants or options to purchase such shares pursuant to any present or future employee, trustee or consultant benefit plan, employee agreement or arrangement or program of ours;

the issuance of any of our common shares pursuant to any option, warrant, right, or exercisable, exchangeable or convertible security outstanding as of the date the Series E preferred shares were first issued;

the issuance of any of our common shares in connection with an acquisition;

the issuance of shares of our common stock or the payment of cash upon redemption thereof;

the issuance of any of our common shares in the offering of our common shares we are conducting concurrently with this offering;

accumulated and unpaid distributions; or

a change in the par value of our common shares.

If we engage in any of these types of transactions, the value of the common shares into which your Series E preferred shares may be convertible may be diluted.

***The adjustment to the conversion rate of the Series E preferred shares upon a conversion in connection with certain fundamental changes may not adequately compensate you for the lost option value of the Series E preferred shares as a result of that fundamental change.***

If a Fundamental Change occurs on or prior to April 20, 2018, we will under certain circumstances adjust the Conversion Rate to provide for the issuance of additional common shares upon any conversion of Series E preferred shares in connection with such Fundamental Change. See Description of the Series E Preferred Shares Adjustment to the Conversion Rate upon the Occurrence of a Fundamental Change. This adjustment to the Conversion Rate is only an approximation of the lost option value of the Series E preferred shares as a result of the Fundamental Change and may not adequately compensate shareholders for the loss. In addition, if a Fundamental Change occurs after April 20, 2018, or if the applicable price is less than \$48.18 per share or greater than \$125.00 per share (in each case, subject to adjustment), we will not make an adjustment to the Conversion Rate.

**Table of Contents**

***We may not have the ability to raise the funds necessary to purchase for cash Series E preferred shares upon a fundamental change or otherwise.***

Following a Fundamental Change, you may, in addition to other conversion rights, exercise a special right, which we refer to as the Fundamental Change Conversion Right, to convert your shares of Series E preferred shares as described under Description of the Series E Preferred Shares Special Conversion Right of Series E Preferred Shares upon a Fundamental Change; Company Repurchase Right. Upon conversion of the Series E preferred shares, pursuant to the Fundamental Change Conversion Right or otherwise, we may elect instead to repurchase all or some of your Series E preferred shares to be converted for cash. If we elect to repurchase some or all of your Series E preferred shares in that circumstance, such Series E preferred shares will no longer be entitled to be converted into common shares, and you will be entitled to receive the cash repurchase price from us. We cannot assure you that we will have sufficient financial resources, or will be able to arrange financing, to pay the repurchase price in cash with respect to any Series E preferred shares tendered by holders for conversion upon a Fundamental Change or otherwise. In addition, our then existing indebtedness could provide that a Fundamental Change would constitute an event of default or prepayment event under, and result in the acceleration of the maturity of, such indebtedness or could otherwise contain restrictions which would not allow us to repurchase your Series E preferred shares.

***Your right to receive common shares upon conversion of the Series E preferred shares in connection with a fundamental change may be limited.***

The aggregate number of our common shares issuable in connection with an exercise of the Fundamental Change Conversion Right may not exceed the number of common shares as shall then be authorized and available for issuance. If the number of common shares issuable upon such conversion would exceed shares (or if the underwriters over-allotment option is exercised, shares) or such other number of common shares as shall then be authorized and available for issuance, we will have the option to satisfy the remainder of such conversion in common shares that are authorized for issuance in the future. We will use our best efforts to have any such additional number of common shares authorized for issuance within 180 days of the conversion date but we cannot assure you that we will be able to do so. If we are unable to do so, you will not receive all of the common shares that you would otherwise be entitled to receive.

***You should consider the United States federal income tax consequences of owning Series E preferred shares.***

The U.S. federal income tax consequences of acquiring, owning and disposing of Series E preferred shares and any common shares received upon conversion are summarized under Additional U.S. Federal Income Tax Considerations. Certain of our actions, including an increase in the cash distribution on our common shares, may result in an adjustment to the Conversion Rate that could cause you to be deemed to receive a taxable distribution subject to U.S. federal income tax without the receipt of any cash. If you are a non-U.S. shareholder (as defined in the Additional U.S. Federal Income Tax Considerations ), such deemed distribution may be subject to U.S. federal withholding tax at a 30% rate or any lower rate as may be specified by an applicable treaty. See Additional U.S. Federal Income Tax Considerations. Also, federal tax may be imposed on the gain realized by a non-U.S. shareholder on the sale, repurchase or conversion of Series E preferred shares, depending on whether those shares

**Table of Contents**

constitute United States real property interests, all as more fully explained under Additional U.S. Federal Income Tax Considerations.

Moreover, prospective investors should be aware that as of January 1, 2011, absent legislative action, the maximum capital gains federal income tax rate for U.S. shareholders who are individuals will revert to 20% and the maximum ordinary income tax rate will revert to 39.6%.

***An active trading market for Series E preferred shares may not develop, which may negatively impact their market value and your ability to transfer or sell your shares, and the Series E preferred shares have no stated maturity date.***

The Series E preferred shares are a new issue of securities for which there is currently no public market. Because the Series E preferred shares do not have a stated maturity date, investors seeking liquidity will be limited to selling their shares in the secondary market. Although we will apply to list the Series E preferred shares on the NYSE under the symbol `EPR PrE`, we cannot assure you that an active or sustained trading market for the Series E preferred shares will develop or that the holders will be able to sell their Series E preferred shares. The underwriters have informed us that they intend to make a market in the Series E preferred shares after this offering is completed. However, the underwriters may cease their market making activities at any time. Moreover, even if you are able to sell your Series E preferred shares, we cannot assure you as to the price at which any sales will be made. Future trading prices of the Series E preferred shares will depend on many factors, including, among other things, prevailing interest rates, our operating results, the price of our common shares, and the market for similar securities. Historically, the market for convertible preferred securities has been subject to disruptions that have caused volatility in prices. It is possible that the market for the Series E preferred shares will be subject to disruptions which may have a negative effect on the holders of the Series E preferred shares, regardless of our prospects or financial performance.

***If you hold Series E preferred shares, you will not be entitled to any rights with respect to our common shares, but you will be subject to all changes made with respect to our common shares.***

If you hold Series E preferred shares, you will not be entitled to any rights with respect to our common shares (including, without limitation, voting rights and rights to receive any distributions on our common shares), but you will be subject to all changes affecting the common shares. You will have rights with respect to our common shares only if and when we deliver common shares to you upon conversion of your Series E preferred shares and, in limited cases, under the conversion rate adjustments applicable to the Series E preferred shares. For example, in the event that an amendment is proposed to our Declaration of Trust or bylaws requiring shareholder approval and the record date for determining the shareholders of record entitled to vote on the amendment occurs prior to delivery of the common shares to you following a conversion, you will not be entitled to vote on the amendment, although you will nevertheless be subject to any changes in the powers, preferences or special rights of our common shares.

***We may issue additional securities and thereby materially and adversely affect the price of our common shares and Series E preferred shares.***

We are not restricted from issuing additional common shares, preferred shares, or securities convertible into or exchangeable for our common shares, except that we may not authorize equity securities ranking senior to the Series E preferred shares with respect to distribution

**Table of Contents**

rights or payments upon our liquidation, dissolution or winding up without the affirmative vote of the holders of at least two-thirds of the Series E preferred shares (and the affirmative vote of the requisite number of holders of any other class or series of preferred shares which are entitled to similar voting rights). If we issue additional common shares, preferred shares or convertible or exchangeable securities, the price of our common shares and, in turn, the price of the Series E preferred shares may be materially and adversely affected.

***The value of the conversion right associated with the Series E preferred shares may be substantially lessened or eliminated if we are party to a merger, consolidation, or other similar transaction.***

If we are party to a consolidation, merger, share exchange or sale or lease of all or substantially all of our assets pursuant to which our common shares are converted into the right to receive cash, securities or other property, at the effective time of the transaction, the right to convert the Series E preferred shares into our common shares will be changed into a right to convert such shares into the kind and amount of cash, securities, or other property which the holder would have received if the holder had converted its shares of Series E preferred shares immediately prior to the transaction. This change could substantially lessen or eliminate the value of the conversion privilege associated with the Series E preferred shares in the future. For example, if all of our outstanding common shares were acquired for cash in a merger transaction, each Series E preferred share would become convertible solely into cash and would no longer be convertible into securities whose value would vary depending on our future prospects and other factors.

***Conversion of Series E preferred shares will dilute the ownership interest of existing shareholders.***

The conversion of some or all of the Series E preferred shares, including a conversion upon exercise of the Fundamental Change Conversion Right, will dilute the ownership interests of existing shareholders. Any sales in the public market of the common shares issuable upon such conversion could adversely affect prevailing market prices of our common shares. In addition, the existence of the Series E preferred shares may encourage short selling by market participants because the conversion of the Series E preferred shares could depress the price of our common shares.

***The Series E preferred shares have not been rated and are subordinated to our existing and future debt, and there is no restriction on the issuance of parity preferred securities.***

The Series E preferred shares have not been rated by any nationally recognized statistical rating organization, which may negatively affect their market value and your ability to sell them. The payment of amounts due on the Series E preferred shares will be subordinated to all of our existing and future debt, including our unsecured revolving credit facility, and will be structurally subordinated to the obligations of our subsidiaries. The Series E preferred shares will be on a parity with our existing Series B, Series C, and Series D preferred shares. We may also issue additional preferred shares in the future which are on a parity with (or, upon the affirmative vote or consent of the holders of two-thirds of the outstanding Series E preferred shares and each other class or series of preferred shares ranking on a parity with the Series E preferred shares which are entitled to similar voting rights, voting as a single class, senior to) the Series E preferred shares with respect to the payment of distributions and the distribution of assets upon

**Table of Contents**

liquidation, dissolution or winding up. Any of these factors may affect the trading price for the Series E preferred shares.

*We may not be able to pay distributions upon events of default under our financing documents.*

Some of our financing documents contain restrictions on distributions upon the occurrence of events of default thereunder. If such an event of default occurs, such as our failure to pay principal at maturity or interest when due for a specified period of time, we would be prohibited from making payments on our shares, including the Series E preferred shares and our common shares.

*If our common shares are delisted, your ability to transfer or sell the Series E preferred shares, or common shares upon conversion, may be limited and the market value of the Series E preferred shares will be materially adversely affected.*

The Series E preferred shares do not contain provisions that protect you if our common shares are delisted. Since the Series E preferred shares have no stated maturity date, you may be forced to elect between converting your Series E preferred shares into illiquid shares of our common shares or holding your Series E preferred shares and receiving stated distributions on the shares when, as and if authorized by our board of trustees and declared by us with no assurance as to ever receiving the liquidation preference. In addition, if our common shares are delisted and the Series E preferred shares are then listed, it is likely that the Series E preferred shares will be delisted as well. Accordingly, if our common shares are delisted, your ability to transfer or sell your Series E preferred shares, or common shares upon conversion, may be limited and the market value of the Series E preferred shares will be materially adversely affected.

*We may continue to acquire, develop or finance ski properties, vineyards and wineries, and public charter school properties or real estate related companies focused on those types of properties and this may create risks.*

We have made, and expect to continue to make, acquisition, development and financing investments in ski properties, vineyard and wineries, and public charter school properties, as well as, real estate related companies focused on those types of properties. These investments are subject to various risks, including those specifically attributable to the type of property involved. For instance, ski properties and vineyards and wineries are subject to risks related to weather conditions impacting such properties and the ability of the tenant or mortgagor to satisfy its obligations owed to the Company with respect to such properties. In addition, our investments in public charter schools are subject to various risks including the ability of a school to satisfy the accreditation requirements to receive or maintain its charter, as well as the potential of decreasing enrollment, all of which may impact the ability of the tenant to meet its obligations to the Company.



**Table of Contents**

**Use of proceeds**

The net proceeds to us from the sale of Series E preferred shares offered hereby are expected to be approximately \$72.53 million (\$83.44 million if the underwriters exercise their over-allotment option in full), after deducting the underwriting discount and commissions and our estimated offering expenses.

We are concurrently offering our common shares pursuant to a separate offering registered under the Securities Act. The net proceeds to us from the concurrent offering of our common shares are expected to be approximately \$96.65 million (\$111.18 million if the underwriters exercise their over-allotment option in full), after deducting the underwriting discount and commissions and our estimated offering expenses.

We intend to use the net proceeds from this offering and the concurrent offering of our common shares for general business purposes, which may include funding the acquisition, development or financing of properties or the repayment of debt. We are continuously seeking acquisition, development and financing opportunities relating to megaplex movie theatres, entertainment retail centers and other destination recreational and specialty properties. We believe we have a strong pipeline of development, acquisition and financing transaction opportunities and we are a party to several letters of intent and have entered into other commitments in furtherance of these efforts, including our agreement to purchase the remaining 50% interest in CS Fund I for approximately \$39.5 million. Depending on the timing of this acquisition, we may finance the purchase price with a portion of the proceeds from this offering and the concurrent offering of our common shares or we may finance the purchase price with borrowings under our unsecured revolving credit facility which would then be repaid using a portion of the proceeds from this offering and the concurrent common shares offering.

For a description of this transaction see, Prospectus Supplement Summary Recent Developments Investments. There can be no assurance as to the completion, timing or terms of any of these potential transactions.

Pending application of net proceeds from this offering and the concurrent offering of our common shares to the uses described above, we intend to use a portion of the net proceeds from this offering and the concurrent offering of our common shares to reduce indebtedness under our unsecured revolving credit facility and to invest any remaining net proceeds in interest-bearing accounts and short-term interest-bearing securities which are consistent with our qualification as a REIT under the Code.

The unsecured revolving credit facility bears interest at LIBOR plus 1.30% to 1.75% or the Applicable Base Rate plus 0.00% to 0.20% depending on our leverage ratio at the time of each advance. The unsecured revolving credit facility matures on January 31, 2009 and may be extended for an additional year at our option subject to certain terms and conditions, including payment of an extension fee. JPMorgan Chase Bank, N.A., an affiliate of one of the underwriters, J.P. Morgan Securities, Inc., is a lender under this credit facility and will receive approximately 15% of any proceeds from this offering and the concurrent offering of our common shares that are used to repay indebtedness under the credit facility. In addition, a holding company of JPMorgan Chase Bank, N.A. has entered into a merger agreement with a holding company of Bear Stearns Corporate Lending Inc. Bear Stearns Corporate Lending, Inc. is a lender under the credit facility and will receive approximately 4% of any proceeds from this offering and the concurrent offering of our common shares that are used to repay indebtedness under the credit facility. Royal Bank of Canada, an affiliate of one of the underwriters, RBC

**Table of Contents**

Capital Markets Corporation, is also a lender under the credit facility and will receive approximately 15% of the proceeds of this offering and the concurrent offering of our common shares that are used to repay indebtedness under the credit facility.

The proceeds we ultimately receive from this offering of Series E preferred shares and the concurrent offering of our common shares are dependent upon numerous factors and subject to general market conditions. We may not consummate the offering of the common shares or we may not consummate it for the amount or on the terms planned. Accordingly, the amounts described above may differ materially from the actual amounts we receive. This offering of Series E preferred shares is not conditioned on completion of the concurrent offering of our common shares and the concurrent offering of our common shares is not conditioned on the completion of this offering of Series E preferred shares.

S-21

---

**Table of Contents****Capitalization**

The following table describes our actual capitalization as of December 31, 2007, and our capitalization on an as adjusted basis to reflect (1) the issuance and sale of the 3,000,000 Series E preferred shares offered by this prospectus supplement (assuming no exercise of the underwriters' over-allotment option) and the application of the net proceeds from this offering as described in "Use of Proceeds" and (2) the issuance and sale of both the 3,000,000 Series E preferred shares offered by this prospectus supplement (assuming no exercise of the underwriters' over-allotment option) and the 2,100,000 common shares pursuant to a separate offering registered under the Securities Act (assuming no exercise of the underwriters' over-allotment option) and the application of the net proceeds from both offerings as described in "Use of Proceeds." The proceeds we ultimately receive from this offering of Series E preferred shares and the concurrent offering of our common shares are dependent upon numerous factors and subject to general market conditions. We may not consummate the concurrent offering of our common shares or we may not consummate it for the amount or on the terms planned. The completion of this offering of Series E preferred shares is not subject to the completion of the concurrent offering of the common shares and the completion of the concurrent offering of the common shares is not subject to the completion of this offering of Series E preferred shares. Accordingly, the actual amounts shown in the "As Adjusted" columns may differ materially from those shown below.

This information should be read in conjunction with, and is qualified in its entirety by, the consolidated financial statements and schedules and notes thereto included in our annual report on Form 10-K for the year ended December 31, 2007, incorporated by reference in this prospectus supplement.

**December 31, 2007**

<b>(Dollars in thousands)</b>	<b>Actual</b>	<b>As Adjusted (1)</b>	<b>As Adjusted (2)</b>
		<b>(Unaudited)</b>	<b>(Unaudited)</b>
Debt:			
Unsecured revolving credit facility (3)	\$ 1,081,264	\$ 1,081,264	\$ 1,081,264
Other long-term debt			
Total debt	1,081,264	1,081,264	1,081,264
Minority interest	18,141	18,141	18,141
Shareholders' equity:			
Common shares, \$0.01 par value, 50,000,000 shares authorized; 28,878,285 shares issued, actual and 30,978,285 shares issued, as adjusted	289	289	310
Preferred shares, \$0.01 par value, 25,000,000 shares authorized, actual and as adjusted; 3,200,000 Series B preferred shares issued, actual and as adjusted; 5,400,000 Series C preferred shares issued, actual and as adjusted; 4,600,000 Series D preferred shares issued, actual and as adjusted; and no Series E preferred shares issued, actual and 3,000,000 Series E preferred shares issued, as adjusted	132	162	162

Edgar Filing: ENTERTAINMENT PROPERTIES TRUST - Form 424B5

Additional paid-in capital	1,023,598	1,096,093	1,192,725
Treasury shares, at cost, 793,676 shares	(22,889)	(22,889)	(22,889)
Loans to shareholders	(3,525)	(3,525)	(3,525)
Accumulated other comprehensive income	35,994	35,994	35,994
Distributions in excess of net income	(25,706)	(25,706)	(25,706)
Total shareholders' equity	1,007,893	1,080,418	1,177,071
TOTAL CAPITALIZATION	\$ 2,107,298	\$ 2,179,823	\$ 2,276,476

- (1) This column reflects the issuance and sale of the 3,000,000 Series E preferred shares offered by this prospectus supplement (assuming no exercise of the underwriters' over-allotment option) and the application of the net proceeds from this offering as described in "Use of Proceeds".
- (2) This column reflects the issuance and sale of both the 3,000,000 Series E preferred shares offered by this prospectus supplement (assuming no exercise of the underwriters' over-allotment option) and the 2,100,000 common shares pursuant to a concurrent offering registered under the Securities Act (assuming no exercise of the underwriters' over-allotment option) and the application of the net proceeds from each offering as described in "Use of Proceeds".
- (3) At March 25, 2008, we had \$5.0 million of indebtedness outstanding under our unsecured revolving credit facility.

**Table of Contents****Selected financial data**

This table includes selected historical financial data of EPR. You should read carefully the consolidated financial statements and schedules, and Management's Discussion and Analysis of Financial Condition and Results of Operations, included in our annual report on Form 10-K for the year ended December 31, 2007 and our quarterly reports on Form 10-Q, to the extent applicable. The selected financial data in this table are not intended to replace the consolidated financial statements and schedules included in our annual report on Form 10-K for the year ended December 31, 2007 or our quarterly reports on Form 10-Q, which are incorporated by reference herein. This operating data for each of the five years ended December 31, 2007 reflects the reclassification of discontinued operations related to the June 2007 sale of property. Figures are in thousands except per share data.

**Operating Data**

	<b>Years Ended December 31,</b>				
	<b>2007</b>	<b>2006</b>	<b>2005</b>	<b>2004</b>	<b>2003</b>
Rental revenue	\$ 185,949	\$ 167,283	\$ 144,950	\$ 124,093	\$ 89,696
Other income	2,402	3,274	3,517	557	1,195
Mortgage and other financing income	28,841	10,968	4,882	1,957	452
Property operating expense, net of tenant reimbursements	4,591	4,317	3,593	2,292	698
General and administrative expense	12,970	12,515	7,249	6,093	4,785
Other expense	4,205	3,486	2,985		
Interest expense, net	60,505	48,866	43,749	40,011	31,022
Costs associated with loan refinancing		673		1,134	
Depreciation and amortization	37,422	31,021	27,473	23,241	16,235
Income before gain on sale of land, minority interests, income from joint ventures and discontinued operations	97,499	80,647	68,300	53,836	38,603
Gain on sale of land	129	345			
Minority interests	1,436		(34)	(953)	(1,555)
Equity in income from joint ventures	1,583	759	728	654	401
Income from continuing operations	100,647	81,751	68,994	53,537	37,449
Discontinued operations:					
Income from discontinued operations	777	538	66	176	145
Gain on sale of real estate	3,240				

Edgar Filing: ENTERTAINMENT PROPERTIES TRUST - Form 424B5

Net income	104,664	82,289	69,060	53,713	37,594
Preferred dividend requirements	(21,312)	(11,857)	(11,353)	(5,463)	(5,463)
Series A preferred share redemption costs	(2,101)				

Net income available to common shareholders	\$ 81,251	\$ 70,432	\$ 57,707	\$ 48,250	\$ 32,131
---	-----------	-----------	-----------	-----------	-----------

S-23

---

**Table of Contents**

	<b>Years Ended December 31,</b>				
	<b>2007</b>	<b>2006</b>	<b>2005</b>	<b>2004</b>	<b>2003</b>
Per share data:					
Basic earnings per share data:					
Income from continuing operations available to common shareholders	2.89	2.67	2.31	2.11	1.80
Income from discontinued operations	0.15	0.02		0.01	0.01
Net income available to common shareholders	3.04	2.69	2.31	2.12	1.81
Diluted earnings per share data:					
Income from continuing operations available to common shareholders	2.84	2.63	2.26	2.06	1.76
Income from discontinued operations	0.15	0.02		0.01	0.01
Net income available to common shareholders	2.99	2.65	2.26	2.07	1.77
Shares used for computation (in thousands):					
Basic	26,690	26,147	25,019	22,721	17,780
Diluted	27,171	26,627	25,504	23,664	19,051
Cash dividends declared per common share	\$ 3.04	\$ 2.75	\$ 2.50	\$ 2.25	\$ 2.00

**Balance Sheet Data**

	<b>As of December 31,</b>				
	<b>2007</b>	<b>2006</b>	<b>2005</b>	<b>2004</b>	<b>2003</b>
Net real estate investments	\$ 1,673,313	\$ 1,415,175	\$ 1,303,758	\$ 1,144,553	\$ 900,096
Mortgage notes and related accrued interest receivable	325,442	76,093	44,067		
Total assets	2,171,633	1,571,279	1,414,165	1,213,448	965,918
Common dividends payable	21,344	18,204	15,770	14,097	9,829
Preferred dividends payable	5,611	3,110	2,916	1,366	1,366
Long-term debt	1,081,264	675,305	714,591	592,892	506,555
Total liabilities	1,145,599	714,123	742,509	620,059	521,509
Minority interests	18,141	4,474	5,235	6,049	21,630
Shareholders equity	\$ 1,007,893	\$ 852,682	\$ 666,421	\$ 587,340	\$ 422,779





**Table of Contents**

**Description of the Series E preferred shares**

*The following is a summary of the material terms and provisions of the Series E preferred shares. This description supplements the description of the general terms and provisions of our preferred shares contained in the accompanying prospectus. To the extent the terms described herein differ from the terms described in the accompanying prospectus, you should rely on the terms set forth below. This is a summary and does not completely describe our Series E preferred shares. For a complete description, we refer you to our Declaration of Trust, the Articles Supplementary designating the Series E preferred shares and our Bylaws, each of which is incorporated by reference in this prospectus supplement and the accompanying prospectus and is available from us upon request.*

**General**

Under our Declaration of Trust, we are authorized to issue up to 50,000,000 common shares and up to 25,000,000 preferred shares. As of March 25, 2008, a total of 28,209,974 common shares were issued and outstanding and 836,647 common shares were held in treasury, 3,200,000 Series B preferred shares (liquidation preference \$25.00 per share) were outstanding, 5,400,000 shares of our 5.75% Series C preferred shares (liquidation preference of \$25.00 per share) were outstanding, and 4,600,000 shares of our 7.375% Series D preferred shares (liquidation preference of \$25.00 per share) were outstanding. See Capitalization. See the Articles Supplementary relating to the Series B preferred shares attached as Exhibit 4.6 to our Form 8-K filed with the SEC on January 14, 2005, Series C preferred shares attached as Exhibit 3.2 to our Form 8-K filed with the SEC on December 21, 2006 and Series D preferred shares attached as Exhibit 3.2 to our Form 8-K filed with the SEC on May 4, 2007 for information regarding our Series B, Series C and Series D preferred shares.

We are authorized to issue preferred shares in one or more series, with such designations, preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends, qualifications and terms and conditions of redemption, in each case as permitted by Maryland law and determined by our board of trustees. See Description of Shares of Beneficial Interest and Description of Certain Provisions of Maryland Law and EPR's Declaration of Trust and Bylaws in the accompanying prospectus.

Prior to completing this offering, we will adopt articles supplementary establishing the Series E preferred shares. You may obtain a complete copy of the articles supplementary describing the Series E preferred shares by contacting us. The articles supplementary will initially authorize 3,450,000 Series E preferred shares. Our board of trustees may authorize additional Series E preferred shares from time to time.

The transfer agent, registrar and distribution disbursing agent for the Series E preferred shares will be Computershare Trust Company, N.A. Shares will be subject to the transfer restrictions described below in Restrictions on Ownership and Transfer and in Description of Certain Provisions of Maryland Law and EPR's Declaration of Trust and Bylaws Restrictions on Ownership and Transfer of Shares in the accompanying prospectus.

We have filed an application to list the Series E preferred shares on the NYSE. If the application is approved, trading of the Series E preferred shares on the NYSE is expected to begin within 30 days after the date of initial delivery of the Series E preferred shares.

**Table of Contents**

We expect that the Series E preferred shares initially will be issued in uncertificated, book-entry form.

**Ranking**

The Series E preferred shares will rank, with respect to distribution rights and rights upon our liquidation, dissolution or winding up:

junior to all of our existing and future debt obligations, including convertible or exchangeable debt securities;

senior to our common shares and to any other of our equity securities that by their terms rank junior to the Series E preferred shares with respect to distribution rights or payments upon our liquidation, dissolution or winding up;

on a parity with our existing Series B, Series C, and Series D preferred shares and with other series of our preferred shares or other equity securities that we may later authorize and that by their terms are on a parity with the Series E preferred shares; and

junior to any equity securities that we may later authorize and that by their terms rank senior to the Series E preferred shares (which we may only authorize with the affirmative vote of the holders of at least two-thirds of the Series E preferred shares).

**Distributions**

Subject to the rights of holders of any senior securities we may authorize and designate in the future, holders of the Series E preferred shares will be entitled to receive, when, as and if authorized by our board of trustees and declared by us, out of funds legally available for the payment of distributions, cumulative cash distributions at the rate of 9.00% of the liquidation preference per year (equivalent to \$2.25 per Series E preferred share per year).

Distributions on the Series E preferred shares issued in this offering will accrue and be cumulative from and including the date of original issue by us and will be payable quarterly in arrears on the 15th day of each January, April, July and October (except that the first distribution will be paid on July 15, 2008) or, if not a business day, the next business day, referred to in each case as a Distribution Payment Date. The term *business day* means each day, other than a Saturday or a Sunday, which is not a day on which banks in New York are required to close.

Distributions payable on the Series E preferred shares for any partial period will be computed on the basis of a 360-day year consisting of twelve 30-day months. We will pay distributions to holders of record as they appear in our share records at the close of business on the applicable record date, which will be the same date set for any quarterly distribution payable to holders of our common shares and Series B, Series C and Series D preferred shares, or on 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, each referred to as a Distribution Record Date. A holder's right to receive distributions upon conversion of Series E preferred shares is limited. For a description of these limitations, see *Payment of Distributions Upon Conversion*.

The first distribution on the Series E preferred shares will be paid on July 15, 2008, and will be a pro rata distribution from and including the original issue date to and including July 15, 2008 in the amount of \$0.65 per share.

**Table of Contents**

We will not authorize or pay any distributions on the Series E preferred shares or set aside funds for the payment of distributions if restricted or prohibited by law, or if the terms of any of our agreements, including agreements relating to our indebtedness or our other series of preferred shares, prohibit that authorization, payment or setting aside of funds or provide that the authorization, payment or setting aside of funds is a breach of or a default under that agreement. We are, and may in the future become, a party to agreements which restrict or prevent the payment of distributions on, or the purchase of, shares. These restrictions may include indirect covenants which require us to maintain specified levels of net worth or assets. We do not believe that these restrictions currently have any adverse impact on our ability to pay distributions on the Series E preferred shares.

Notwithstanding the foregoing, distributions on the Series E preferred shares will be cumulative and will accrue whether or not we have earnings, whether or not there are funds legally available for the payment of distributions and whether or not distributions are authorized or declared. Accrued but unpaid distributions on the Series E preferred shares will accumulate as of the due date on which each such distribution payment first becomes payable. Accrued but unpaid distributions on the Series E preferred shares will not bear interest, and holders of the Series E preferred shares will not be entitled to any distributions, whether payable in cash, property or shares, in excess of full cumulative distributions as described above. All of our distributions on the Series E preferred shares, including any capital gain distributions, will be credited first to the earliest accrued and unpaid distribution due with respect to those shares which remain payable.

Unless full cumulative distributions on the Series E preferred shares for all past distribution periods and the then current distribution period have been or contemporaneously are declared and paid in cash or declared and contemporaneously a sum sufficient to pay them in full in cash is set apart for payment, we will not directly or indirectly:

declare, pay, set apart for payment or otherwise make any distributions on any common shares or any other class or series of preferred shares or other equity securities ranking on parity with or junior to the Series E preferred shares as to distributions and upon liquidation (other than a distribution paid in common shares or in any other class or series of preferred shares or other equity securities ranking junior to the Series E preferred shares as to distributions and upon liquidation) or on any class or series of preferred shares or other equity securities ranking on parity with the Series E Preferred Shares as to distributions and upon liquidation;

redeem, purchase or otherwise acquire for any consideration (or pay or make available any monies for a sinking fund for the redemption of any such shares) any common shares or any other class or series of preferred shares or other equity securities ranking junior to or on parity with the Series E preferred shares as to distributions and upon liquidation; provided that this restriction will not limit our acquisition of any such common shares or junior shares (1) by conversion into or exchange for any such common shares or junior shares, (2) by redemption, purchase or other acquisition of our common shares made for purposes of an incentive, benefit or share purchase plan of ours for officers, trustees or employees or others performing or providing similar services, or (3) for the purpose of preserving our status as a real estate investment trust for federal income tax purposes.

When we do not pay distributions in full (or we do not set apart a sum sufficient to pay them in full) upon the Series E preferred shares and any other class or series of preferred shares or other equity securities ranking on a parity as to distributions with the Series E preferred shares, we

## **Table of Contents**

will declare any distributions upon the Series E preferred shares and any other class or series of preferred shares or other equity securities ranking on a parity as to distributions with the Series E preferred shares proportionately so that the distributions declared per share of Series E preferred shares and those other classes or series of preferred shares or other equity securities will in all cases bear to each other the same ratio that accumulated, accrued and unpaid distributions per share on the Series E preferred shares and those other classes or series of preferred shares or other equity securities (which will not include any accumulation in respect of unpaid distributions on such other classes or series of preferred shares or other equity securities for prior distribution periods if those other classes or series of preferred shares or other equity securities do not have cumulative distributions) bear to each other. No interest, or sum of money in lieu of interest, will be payable in respect of any distribution payment or payments on the Series E preferred shares which may be in arrears.

If, for any taxable year, we elect to designate any portion of the distributions, within the meaning of the Code, paid or made available for the year to holders of all classes of our shares of beneficial interest as capital gain dividends, as defined in Section 857 of the Code, then the portion of the distributions designated as capital gain dividends that will be allocable to the record holders of our Series E preferred shares will be the portion of the distributions designated as capital gain dividends multiplied by a fraction, the numerator of which will be the total distributions paid or made available to such record holders of our Series E preferred shares for the year and the denominator of which will be the total distributions paid or made available for the year to holders of all classes of our shares of beneficial interest.

## **Liquidation Rights**

In the event of our voluntary or involuntary liquidation, dissolution or winding up of our affairs, the holders of the Series E preferred shares will be entitled to be paid out of our assets legally available for distribution to our shareholders, after payment of or provision for our debts and other liabilities, a liquidation preference of \$25.00 per share, plus any accrued and unpaid distributions (whether or not authorized or declared) through the date of the payment. The holders of Series E preferred shares will be entitled to receive this liquidating distribution before we distribute any assets to holders of our common shares or any other equity securities that rank junior to the Series E preferred shares as to payments upon our liquidation, dissolution or winding up. If, upon our voluntary or involuntary liquidation, dissolution or winding up, our available assets are insufficient to pay the amount of the liquidation distributions on all outstanding Series E preferred shares and the corresponding amounts payable on all other equity securities ranking on a parity with the Series E preferred shares as to liquidation rights, then the record holders of the Series E preferred shares and all other equity securities ranking on a parity with the Series E preferred shares as to liquidation rights will share proportionately in any such distribution of assets in proportion to the full liquidating distributions to which they would otherwise be respectively entitled. The rights of holders of Series E preferred shares to receive their liquidation preference would be subject to the preferential rights of the holders of any equity securities which are senior to the Series E preferred shares as to liquidation rights.

Holders of the Series E preferred shares will be entitled to notice of any event triggering the right to receive a distribution in connection with any voluntary or involuntary liquidation, dissolution or winding up of our affairs. After payment of the full amount of the liquidating distributions to which they are entitled, holders of our Series E preferred shares will have no right or claim to any of our remaining assets. The consolidation or merger of us with or into any other corporation, trust or entity, or the voluntary sale, lease, transfer or conveyance of all or

## **Table of Contents**

substantially all of our properties or business, will not be deemed to constitute a liquidation, dissolution or winding up of our affairs. In determining whether a distribution (other than upon voluntary or involuntary liquidation), by redemption or other acquisition of shares or otherwise, is permitted under Maryland law, amounts that would be needed, if we were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of the holders of Series E preferred shares will not be added to our total liabilities.

## **Voting Rights**

Holders of Series E preferred shares generally will have no voting rights, except as described below.

If full cumulative distributions are not paid on the Series E preferred shares for six or more quarterly periods (whether or not consecutive), a preferred distribution default will exist, and holders of the Series E preferred shares, voting together as a class with the holders of all other classes or series of our preferred shares ranking on a parity with the Series E preferred shares upon which like voting rights have been conferred and are exercisable, will be entitled to elect two additional trustees to our board of trustees, referred to as preferred share trustees. The election will take place at the next annual meeting of shareholders, or at a special meeting of the holders of Series E preferred shares and any other class or series of preferred shares upon which like voting rights have been conferred and are exercisable called for that purpose and each subsequent annual meeting (or special meeting held in its place) unless and until all distributions accumulated on the Series E preferred shares and on any other class or series of preferred shares upon which like voting rights have been conferred and are exercisable have been paid in full for all past distribution periods and the distribution for the then current distribution period shall have been fully paid or declared and a sum sufficient for the payment thereof set aside for payment. Each preferred share trustee will be elected by a plurality of the votes cast in the election to serve until the trustee's successor is duly elected and qualifies or until the trustee's right to hold the office terminates, whichever occurs earlier, and will be entitled to one vote on any matter.

Upon such election, the size of our board of trustees will be increased by two trustees. So long as a preferred distribution default continues, any vacancy in the office of a preferred distribution trustee elected under this paragraph may be filled by written consent of the other preferred distribution trustee who remains in office or by a vote of the holders of the outstanding Series E preferred shares when they have the voting rights described above (voting together as a class with all other classes or series of preferred shares ranking on a parity with the Series E preferred shares upon which like voting rights have been conferred and are exercisable). If and when all such accumulated distributions shall have been paid in full on the Series E preferred shares and all other classes or series of preferred shares ranking on a parity with the Series E preferred shares upon which like voting rights have been conferred and are exercisable, the voting rights set forth above will terminate (subject to reinstatement in the event of each and every preferred distribution default) the term of office of each of the preferred share trustees so elected will terminate and the size of our board of trustees will be reduced accordingly.

**Table of Contents**

In addition, so long as any Series E preferred shares remain outstanding, the affirmative vote or consent of the holders of at least two-thirds of the outstanding Series E preferred shares (voting separately as a class) will be required to:

amend, alter or repeal any of the provisions of our Declaration of Trust (including the articles supplementary) or our bylaws, whether by merger, consolidation, transfer or conveyance of substantially all of our assets or otherwise, in a manner that materially and adversely affects the powers, rights, privileges or preferences of the Series E preferred shares or the holders of the Series E preferred shares; *provided, however*, that the amendment of, or supplement to, the provisions of our Declaration of Trust so as to authorize, create, increase or decrease the authorized amount of any shares ranking on a parity with or junior to the Series E preferred shares with respect to the payment of distributions and the distribution of assets upon liquidation, dissolution or winding up, or the issuance of any such shares, shall not be deemed to materially adversely affect the powers, rights or preferences of the Series E preferred shares;

effect a share exchange that affects the Series E preferred shares, a consolidation with or merger of us into another entity, or a consolidation with or merger of another entity into us, unless in each such case each Series E preferred share (A) shall remain outstanding without a material and adverse change to its terms and rights or (B) shall be converted into or exchanged for preferred shares of the surviving entity having preferences, rights, powers, restrictions, limitations as to distributions, qualifications and terms or conditions of redemption identical to that of the Series E preferred shares (except for changes that do not materially and adversely affect the holders of the Series E preferred shares);

authorize, reclassify or create, or increase the authorized or issued amount of, any class or series of shares ranking senior to the Series E preferred shares as to distributions and upon liquidation or any security convertible into or evidencing the right to purchase any class or series of such shares; or

Holders of the Series E preferred shares will not have any voting rights with respect to, and the consent of the holders of the Series E preferred shares is not required for, the taking of any corporate action, including any merger or consolidation involving us or a sale of all or substantially all of our assets, regardless of the effect that such merger, consolidation or sale may have upon the powers, preferences, voting power or other rights or privileges of our Series E preferred shares, except as set forth above.

In addition, the voting provisions above will not apply if, at or prior to the time when the act with respect to which the vote would otherwise be required would occur, we have converted, repurchased or otherwise reacquired or called for conversion or repurchase upon proper procedures all outstanding Series E preferred shares.

In any matter in which the Series E preferred shares are entitled to vote, each Series E preferred share will be entitled to one vote. If the holders of Series E preferred shares and another class or series of preferred shares are entitled to vote together as a single class on any matter, the Series E preferred shares and the shares of the other class or series will have one vote for each \$25.00 of liquidation preference.

## **Table of Contents**

### **Conversion Rights**

The holders of the Series E preferred shares, at their option, may, at any time and from time to time, convert some or all of their outstanding Series E preferred shares, by following the procedures described under "Voluntary Conversion Procedures" below, initially at a Conversion Rate of 0.4512 common shares per \$25.00 liquidation preference, which is equivalent to an initial conversion price of approximately \$55.41 per common share (subject to adjustment in certain events). The Series E preferred shares will be convertible, at our option, into either (1) a number of common shares equal to the applicable Conversion Rate, or (2) an amount of cash and common shares as described under "Conversion Settlement" below. In addition, at any time we may irrevocably waive, in our sole discretion, our right to satisfy our obligation to convert the Series E preferred shares (our conversion obligation) solely into our common shares.

We may elect not to issue fractional common shares upon the conversion of Series E preferred shares, in which case we will pay the cash value of such fractional shares based upon the Closing Sale Price of our common shares on the Trading Day immediately prior to the Conversion Date or the Company Conversion Option Date, as the case may be (each as defined below).

Holders of Series E preferred shares are not entitled to any rights of a common shareholder until such holder of Series E preferred shares has converted its Series E preferred shares or unless we have exercised the Company Conversion Option, and only to the extent the Series E preferred shares are deemed to have been converted into common shares under the articles supplementary establishing the Series E preferred shares.

### **Company Conversion Option**

On or after April 20, 2013, we may, at our option, convert some or all of the Series E preferred shares into that number of common shares that are issuable at the then applicable Conversion Rate. We refer to this as the Company Conversion Option. We may exercise the Company Conversion Option only if:

the Closing Sale Price of our common shares equals or exceeds 150% of the then applicable conversion price of the Series E preferred shares for at least 20 Trading Days in a period of 30 consecutive Trading Days (including the last Trading Day of such period) ending on the Trading Day immediately prior to our issuance of a press release announcing our exercise of the Company Conversion Option as described below; and

on or prior to the effective date of the exercise of the Company Conversion Option, we have either declared and paid, or declared and set apart for payment, any unpaid distributions that are accumulated on the Series E preferred shares.

If we convert less than all of the outstanding Series E preferred shares, the transfer agent will select the shares to be converted by lot, on a pro rata basis or in accordance with any other method the transfer agent considers fair and appropriate. We may convert the Series E preferred shares only in a whole number of shares. If a portion of a holder's Series E preferred shares is selected for partial conversion by us and the holder converts a portion of such Series E preferred shares, the number of Series E preferred shares subject to conversion by us will be reduced by the number of shares that the holder converted.

The Closing Sale Price of our common shares on any date means the closing sale price per share (or, if no closing sale price is reported, the average of the bid and asked prices or, if more than

**Table of Contents**

one in either case, the average of the average bid and the average asked prices) on such date as reported by the NYSE or, if our common shares are not reported by the NYSE, in composite transactions for the principal other U.S. national or regional securities exchange on which our common shares are traded. If our common shares are not listed for trading on a U.S. national or regional securities exchange on the relevant date, the Closing Sale Price will be the last quoted bid price for our common shares in the over-the-counter market on the relevant date as reported by the National Quotation Bureau Incorporated or similar organization. If our common shares are not so quoted, the Closing Sale Price will be the average of the mid-point of the last bid and asked prices for our common shares on the relevant date from each of at least three independent nationally recognized investment banking firms selected by us for this purpose.

A Trading Day is any day during which trading in our common shares generally occurs, and there is no market disruption event. For purposes of the definition of Trading Day, market disruption event means the occurrence or existence during the one-half hour period ending on the scheduled close of trading on the principal U.S. national or regional securities exchange on which our common shares is listed for trading of any material suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the stock exchange or otherwise) in our common shares or in any options contracts or future contracts relating to our common shares.

To exercise our Company Conversion Option described above, we must issue a press release for publication on the Dow Jones & Company, Inc., Business Wire or Bloomberg Business News (or, if such organizations are not in existence at the time of issuance of such press release, such other news or press organization as is reasonably calculated to broadly disseminate the relevant information to the public) prior to the opening of business on the first Trading Day following any date on which the conditions to our exercise of the Company Conversion Option described above are met, announcing such conversion and our form of payment. We will also give notice by mail or by publication (with subsequent prompt notice by mail) to holders of our Series E preferred shares (not more than four Trading Days after the date of the press release) and, if required by the rules and regulations of the SEC, we will file a Current Report on Form 8-K (or make such other filing on an appropriate form as may be permitted by the rules and regulations of the SEC), of our exercise of the Company Conversion Option announcing our intention to convert the Series E preferred shares. The effective date for any Company Conversion Option, referred to as the Company Conversion Option Date, will be the date that is selected by us that is no later than five Trading Days after the date on which we issue such press release.

In addition to any information required by applicable law or regulation, the press release and notice of our exercise of the Company Conversion Option will state, as appropriate:

the Company Conversion Option Date;

the form of payment that we elect to deliver upon conversion (unless we have irrevocably elected to waive our right to satisfy our conversion obligation solely in our common shares);

the number of common shares to be issued upon conversion of each Series E preferred share;

the number of Series E preferred shares to be converted; and

that distributions on the Series E preferred shares to be converted will cease to accrue on the Company Conversion Option Date.



**Table of Contents**

**Voluntary Conversion Procedures**

Holders of Series E preferred shares may convert some or all of their shares by surrendering to us at our principal office or at the office of our transfer agent, as may be designated by our board of trustees, the certificate or certificates, if any, for the Series E preferred shares to be converted accompanied by a written notice stating that the holder of Series E preferred shares elects to convert all or a specified whole number of those shares in accordance with the provisions described in this prospectus supplement and the articles supplementary for the Series E preferred shares and specifying the name or names in which the holder of the Series E preferred shares wishes the certificate or certificates, if any, for any common shares to be issued. In case the notice specifies a name or names other than the name of the holder of Series E preferred shares, the notice must be accompanied by payment of all transfer taxes payable upon the issuance of any common shares in that name or names. Other than such transfer taxes, we will pay any documentary, stamp or similar issue or transfer taxes that may be payable in respect of any issuance or delivery of common shares upon conversion of the Series E preferred shares.

The voluntary conversion of any Series E preferred share by a holder of such share will be deemed to have been made at the close of business on the date, referred to as the Conversion Date, on which we have received all of the certificates, if any, to be surrendered, the notice relating to the conversion and payment of all required transfer taxes, if any, or the demonstration to our satisfaction that those taxes have been paid. At the close of business on the Conversion Date, the rights of a holder of Series E preferred shares as to the shares being converted will cease except for the right to receive the conversion payment as described under Conversion Settlement below, and, if applicable, the person entitled to receive common shares will be treated for all purposes as having become the record holder of those common shares at that time.

In addition to the foregoing procedures, if the Series E preferred shares are held in global form, the holder of Series E preferred shares must comply with applicable procedures of The Depository Trust Company or any successor entity (which we collectively refer to as DTC) to convert such holder's Series E preferred shares.

In case any Series E preferred shares are to be converted pursuant to the Company Conversion Option, the right of a holder of Series E preferred shares to voluntarily convert those shares of Series E preferred shares will terminate if we have not received from such holder of Series E preferred shares its conversion notice by 5:00 p.m., New York City time, on the business day immediately preceding the Company Conversion Option Date.

If we have elected to repurchase your Series E preferred shares as described under Description of the Series E Preferred Shares Special Conversion Right of Series E preferred shares upon a Fundamental Change; Company Repurchase Right, your conversion rights (other than the Fundamental Change Conversion Right) as a holder of Series E preferred shares with respect to the Series E preferred shares so subject to repurchase will expire if we have not received your conversion notice by 5:00 p.m., New York City time, on the business day immediately preceding the repurchase date, unless we default on the payment of the Fundamental Change Repurchase Price (as defined below), and your Fundamental Change Conversion Right will automatically not be exercisable but instead you will be entitled to receive the Fundamental Change Repurchase Price from us unless you have converted your Series E preferred shares other than by exercise of the Fundamental Change Conversion Right.

**Table of Contents**

If more than one share of our Series E preferred shares is surrendered for conversion by the same shareholder at the same time, the number of whole common shares issuable upon conversion of those Series E preferred shares will be computed on the basis of the total number of Series E preferred shares so surrendered.

We will at all times reserve and keep available, free from preemptive rights, out of our authorized but unissued shares of beneficial interest, for issuance upon the conversion of Series E preferred shares, a number of our authorized but unissued common shares that will from time to time be sufficient to permit the conversion of all outstanding Series E preferred shares as described above.

**Conversion Settlement**

Upon conversion (whether upon a Company Conversion Option or a voluntary conversion by a holder of Series E preferred shares), we will deliver, at our option, either (1) a number of common shares based upon the applicable Conversion Rate, or (2) an amount of cash and common shares as follows:

cash in an amount equal to the lesser of (a) the Conversion Value and (b) the \$25.00 liquidation preference, and

if the Conversion Value is greater than the \$25.00 liquidation preference, a number of common shares equal to the difference between the Conversion Value and the \$25.00 liquidation preference, divided by the average of the Closing Sale Price of our common shares during the Cash Settlement Averaging Period.

The Conversion Value for each Series E preferred share to be converted is an amount equal to the then applicable Conversion Rate multiplied by the average of the Closing Sale Price of our common shares during the Cash Settlement Averaging Period.

The Cash Settlement Averaging Period for each Series E preferred share is the 20 consecutive Trading Days (including the last Trading Day of such period), starting on, and including the third Trading Day following the Company Conversion Date or the Conversion Date, as the case may be.

At any time, we may irrevocably waive, in our sole discretion, by notice to the holders of the Series E preferred shares, our right to satisfy our conversion obligation solely in common shares pursuant to clause (1) above. We will not be permitted to elect the payment option in clause (1) above if we have made the election to waive our right to do so. If we decide in our sole discretion to irrevocably waive such right, then we will give notice of such waiver by mail or publication (with subsequent prompt notice by mail) to our holders of our Series E preferred shares, and such waiver shall be effective as of the date specified in such notice, or if no date is specified, then as of the date of such notice.

If we exercise the Company Conversion Option, then the press release and notice of our exercise of the Company Conversion Option will state the form of payment we elect to deliver upon conversion (unless we have irrevocably elected to waive our right to satisfy our conversion obligation solely in our common shares), as described above under Company Conversion Option, and such payment election shall apply to all such Series E preferred shares to be converted pursuant to the such Company Conversion Option.

## **Table of Contents**

If we receive proper notice of conversion by a holder in accordance with the conversion procedures described under Voluntary Conversion Procedures above, then we will notify the relevant holders of Series E Preferred Stock within two scheduled Trading Days following the Conversion Date of the form of payment we elect to deliver upon conversion (unless we have irrevocably elected to waive our right to satisfy our conversion obligation solely in our common shares). We will treat all holders converting on the same Trading Day in the same manner. We will not, however, have any obligation to satisfy our conversion obligation arising on different Trading Days in the same manner. That is, we may elect to choose on one Trading day to settle our conversion obligation solely in common shares pursuant to clause (1) above, and choose on another Trading Day to settle in cash and/or common shares pursuant to clause (2) above.

On settlement of our conversion obligation, we will:

reflect the issuance of such number of validly issued, fully paid and non-assessable common shares to which the holder of Series E preferred shares, or the transferee of a holder of Series E preferred shares, will be entitled as described in the first paragraph of this subsection; and

deliver or cause to be delivered, depending upon the form of payment we elect to deliver upon settlement of our conversion obligation (1) if our common shares are then certificated, certificates evidencing the number of validly issued, fully paid and non-assessable common shares, if any, and/or (2) cash, if any, in each case to which the holder of Series E preferred shares, or the transferee of a holder of Series E preferred shares, will be entitled as described in the first paragraph of this subsection.

To the extent that we elect to settle our conversion obligation solely in common shares, we will deliver payment as promptly as practicable after the Company Conversion Option Date or the Conversion Date as the case may be (after giving of any requisite notice and surrender of the certificate or certificates, if any, evidencing the shares of the Series E preferred shares to be converted). To the extent that we elect to settle our conversion obligation in cash and/or common shares, we will deliver payment as promptly as practicable following the third Trading Day after the Cash Settlement Averaging Period (after giving of any requisite notice and surrender of the certificate or certificates, if any, evidencing the shares of the Series E preferred shares to be converted). If less than the full number of Series E preferred shares evidenced by the surrendered certificate or certificates are being converted, we will issue a new certificate or certificates, of like tenor, for the number of shares evidenced by the surrendered certificate or certificates, less the number of shares being converted.

Before the delivery of any common shares upon conversion of the Series E preferred shares, we will comply with all applicable federal and state laws and regulations. All common shares delivered upon conversion of the Series E preferred shares will upon delivery be duly and validly issued, fully paid and non-assessable, free of all liens and charges and not subject to any preemptive rights.

## **Payment of Distributions Upon Conversion**

### **Voluntary Conversion**

*General.* If a holder of Series E preferred shares exercises its conversion rights, upon delivery of the Series E preferred shares for conversion, those Series E preferred shares will cease to cumulate distributions as of the end of the Conversion Date and the holder of those Series E preferred shares will not receive any cash payment representing accrued and unpaid



**Table of Contents**

distributions on the Series E preferred shares, except in those limited circumstances discussed below. Except as provided below, we will make no payment for accrued and unpaid distributions, whether or not in arrears, on Series E preferred shares converted at the election of the holder of Series E preferred shares, or for distributions on the common shares issued upon such conversion.

*Conversion On or Before Record Date.* If we receive a conversion notice before the close of business on a Distribution Record Date, the holder of Series E preferred shares will not be entitled to receive any portion of the distribution payable on such converted shares on the corresponding Distribution Payment Date.

*Conversion After Record Date and Prior to Payment Date.* If we receive a conversion notice after the Distribution Record Date but prior to the corresponding Distribution Payment Date, the holder of Series E preferred shares on the record date will receive on that Distribution Payment Date accrued distributions on those Series E preferred shares, notwithstanding the conversion of those Series E preferred shares prior to that Distribution Payment Date, because that holder of Series E preferred shares will have been the holder of record of the Series E preferred shares on the corresponding record date. At the time that such holder of the Series E preferred shares surrenders Series E preferred shares for conversion, however, it must pay to us an amount equal to the distribution that has accrued and that will be paid on the related Distribution Payment Date.

*Conversion On or After Distribution Payment Date and On or Prior to the Immediately Succeeding Record Date.* If the holder of Series E preferred shares is a holder of Series E preferred shares on a Distribution Record Date and converts such shares of Series E preferred shares into common shares on or after the corresponding Distribution Payment Date, such holder of Series E preferred shares will be entitled to receive the distribution payable on such shares of Series E preferred shares on such Distribution Payment Date, and the holder of Series E preferred shares will not need to include payment of the amount of such distribution upon surrender for conversion of shares of the Series E preferred shares.

*Fundamental Change Conversion Right.* The provisions described in the three preceding paragraphs do not apply to Series E preferred shares which are converted into common shares pursuant to the Fundamental Change Conversion Right or which are repurchased by us in lieu of such conversion. The rights of the holders of such Series E preferred shares to receive accrued and unpaid distributions are described below under Special Conversion Right of Series E preferred shares upon a Fundamental Change; Company Repurchase Right.

**Company Conversion Option**

*General.* If we convert Series E preferred shares pursuant to the Company Conversion Option, whether prior to, on, or after the Distribution Record Date for the current period, all unpaid distributions that are in arrears as of the Company Conversion Option Date will be payable to the holders of Series E preferred shares.

*Conversion After a Payment Date and Prior to the next Record Date.* If we exercise the Company Conversion Option and the Company Conversion Option Date is a date and time that is after the close of business on a Distribution Payment Date and prior to the close of business on the next Distribution Record Date, the holder of Series E preferred shares will not be entitled to receive any portion of the distribution payable for such period on such converted shares on the corresponding Distribution Payment Date.

**Table of Contents**

*Conversion On or After Record Date and Prior to Payment Date.* If we exercise the Company Conversion Option and the Company Conversion Option Date is a date and time that is on or after the close of business on any Distribution Record Date and prior to the close of business on the corresponding Distribution Payment Date, all distributions, including accrued and unpaid distributions, whether or not in arrears, with respect to the Series E preferred shares called for a conversion on such date, will be payable on such Distribution Payment Date to the holder of Series E preferred shares if the holder of Series E preferred shares is the record holder of such shares on such Distribution Record Date.

**Conversion Rate Adjustments**

Subject to and in accordance with the terms of the articles supplementary establishing the Series E preferred shares, we will adjust the Conversion Rate from time to time as follows:

(1) If we issue our common shares as a distribution on our common shares to all holders of our common shares, or if we effect a share split or share combination, we will adjust the Conversion Rate based on the following formula:

$$CR^1 = CR_O \times OS_1/OS_O$$

Where

$CR_O$  = the Conversion Rate in effect immediately prior to the ex-dividend date for such distribution, or the effective date of such share split or share combination;

$CR_1$  = the Conversion Rate in effect immediately on and after the ex-dividend date for such distribution, or the effective date of such share split or share combination;

$OS_1$  = the number of our common shares outstanding immediately after such distribution, or the effective date of such share split or share combination; and

$OS_O$  = the number of our common shares outstanding immediately prior to such distribution, or the effective date of such share split or share combination.

Any adjustment made pursuant to this paragraph (1) shall become effective at the open of business on (a) the ex-dividend date for such distribution or (b) the date on which such split or combination becomes effective, as applicable. If any distribution described in this paragraph (1) is declared but not so paid or made, the new Conversion Rate shall be readjusted to the Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

(2) If we distribute to all holders of our common shares any rights, warrants or options entitling them, for a period expiring not more than 45 days after the date of issuance of such rights, warrants or options, to subscribe for or purchase our common shares at a price per share that is less than the Closing Sale Price of our common shares on the business day immediately preceding the time of announcement of such distribution, we will adjust the Conversion Rate based on the following formula:

$$CR^1 = CR_O \times (OS_O+X)/(OS_O+Y)$$

Where



**Table of Contents**

$CR_0$  = the Conversion Rate in effect immediately prior to the ex-dividend date for such distribution;

$CR^1$  = the Conversion Rate in effect immediately on and after the ex-dividend date for such distribution;

$OS_0$  = the number of our common shares outstanding immediately prior to the ex-dividend date for such distribution;

X = the total number of our common shares issuable pursuant to such rights, warrants or options; and

Y = the number of our common shares equal to the quotient of (A) the aggregate price payable to exercise such rights, warrants or options and (B) the average of the Closing Sale Prices of our common shares for the 10 consecutive Trading Days ending on the business day immediately preceding the date of announcement for the issuance of such rights, warrants or options

For purposes of this paragraph (2), in determining whether any rights, warrants or options entitle the holders of our common shares to subscribe for or purchase our common shares at less than the applicable Closing Sale Price of our common shares, and in determining the aggregate exercise or conversion price payable for such common shares, there shall be taken into account any consideration we receive for such rights, warrants or options and any amount payable on exercise or conversion thereof, with the value of such consideration, if other than cash, to be determined by our board of trustees. If any right, warrant or option described in this paragraph (2) is not exercised or converted prior to the expiration of the exercisability or convertibility thereof, we will adjust the new Conversion Rate to the Conversion Rate that would then be in effect if such right, warrant or option had not been so issued.

(3) If we distribute shares of our beneficial interest, evidence of indebtedness or other assets or property to all holders of our common shares, excluding:

distributions, rights, warrants or options referred to in paragraph (1) or (2) above;

distributions paid exclusively in cash; and

spin-offs, as described below in this paragraph (3),

then we will adjust the Conversion Rate based on the following formula:

$$CR^1 = CR_0 \times SP_0 / (SP_0 - FMV)$$

Where

$CR_0$  = the Conversion Rate in effect immediately prior to the ex-dividend date for such distribution;

$CR^1$  = the Conversion Rate in effect immediately on and after the ex-dividend date for such distribution;



**Table of Contents**

$SP_O$  = the average of the Closing Sale Prices of our common shares for the 10 consecutive Trading Days ending on the business day immediately preceding the ex-dividend date for such distribution; and

FMV = the fair market value (as determined in good faith by our board of trustees) of such shares of beneficial interest, evidences of indebtedness or other assets or property distributed with respect to each of our outstanding common shares on the earlier of the record date or the ex-dividend date for such distribution.

An adjustment made pursuant to the immediately preceding paragraph shall become effective on the ex-dividend date for such distribution.

If we distribute to all of our common shareholders beneficial interests of any class or series, or similar equity interests, of or relating to one of our subsidiaries or other business units, which we refer to as a spin-off, we will adjust the Conversion Rate in effect immediately before the tenth Trading Day from and including the effective date of the spin-off based on the following formula:

$$CR^1 = CR_O \times (FMV_O + MP_O) / MP_O$$

Where

$CR_O$  = the Conversion Rate in effect immediately prior to the tenth Trading Day immediately following, and including, the effective date of the spin-off;

$CR^1$  = the Conversion Rate in effect immediately on and after the tenth Trading Day immediately following, and including, the effective date of the spin-off;

$FMV_O$  = the average of the Closing Sale Prices of the beneficial interest or similar equity interest distributed to holders of our common shares applicable to one share of our common shares over the first 10 consecutive Trading Days after the effective date of the spin-off; and

$MP_O$  = the average of the Closing Sale Prices of our common shares over the first 10 consecutive Trading Days after the effective date of the spin-off.

Any adjustment to the Conversion Rate made pursuant to the immediately preceding paragraph will occur on the tenth consecutive Trading Day from, and including, the effective date of the spin-off; *provided* that in respect of any conversion within the 10 Trading Days following the effective date of any spin-off, references within this paragraph (3) to 10 Trading Days shall be deemed replaced with such lesser number of Trading Days as have elapsed between the effective date of such spin-off and the conversion date in determining the applicable Conversion Rate.

If any such distribution described in this paragraph (3) is declared but not paid or made, the new Conversion Rate shall be re-adjusted to be the Conversion Rate that would then be in effect if such distribution had not been declared.

(4) If we make a cash distribution to all holders of our common shares (excluding any distribution in connection with our liquidation, dissolution or winding up) during any of our quarterly fiscal periods in an aggregate amount that, together with other cash distributions made during such quarterly fiscal period, exceeds the product of \$0.84, which we refer to as the reference distribution, multiplied by the number of our common shares outstanding on

**Table of Contents**

the record date for such distribution, we will adjust the Conversion Rate based on the following formula:

$$CR^1 = CR_O \times SP_O / (SP_O - C)$$

Where

$CR_O$  = the Conversion Rate in effect immediately prior to the ex-dividend date for such distribution;

$CR_1$  = the Conversion Rate in effect immediately after the ex-dividend date for such distribution;

$SP_O$  = the average of the Closing Sale Prices of our common shares for the 10 consecutive Trading Days ending on the business day immediately preceding the earlier of the record date or the day prior to the ex-dividend date for such distribution; and

$C$  = the amount in cash per share we distribute to holders of our common shares that exceeds the reference distribution.

An adjustment to the Conversion Rate made pursuant to this paragraph (4) shall become effective on the ex-dividend date for such distribution. If any distribution described in this paragraph (4) is declared but not so paid or made, the new Conversion Rate shall be re-adjusted to the Conversion Rate that would then be in effect if such distribution had not been declared.

The reference distribution is subject to adjustment in a manner inversely proportional to adjustments to the Conversion Rate; provided that no adjustment will be made to the reference distribution amount for any adjustment made to the Conversion Rate under this paragraph (4).

Notwithstanding the foregoing, if an adjustment is required to be made under this paragraph (4) as a result of a distribution that is not a quarterly dividend, the reference distribution amount will be deemed to be zero.

(5) If we or any of our subsidiaries make a payment in respect of a tender offer or exchange offer for our common shares to the extent that the cash and value of any other consideration included in the payment per share of our common shares exceeds the Closing Sale Price of our common shares on the Trading Day next succeeding the last date on which tenders or exchanges may be made pursuant to such tender offer or exchange offer, we will adjust the Conversion Rate based on the following formula:

$$CR^1 = CR_O \times (AC + (SP_1 \times OS_1)) / (OS_O \times SP_1)$$

Where

$CR_O$  = the Conversion Rate in effect on the date immediately following the date such tender or exchange offer expires;

$CR_1$  = the Conversion Rate in effect on the second day immediately following the date such tender or exchange offer expires;

$AC$  = the aggregate value of all cash and any other consideration (as determined by our board of trustees) paid or payable for our common shares purchased in such tender or exchange offer;



**Table of Contents**

$OS_0$  = the number of our common shares outstanding immediately prior to the date such tender or exchange offer expires;

$OS_1$  = the number of our common shares outstanding immediately after the date such tender or exchange offer expires (after giving effect to the purchase or exchange of shares pursuant to such tender or exchange offer); and

$SP_1$  = the Closing Sale Price of our common shares for the Trading Day commencing on the Trading Day next succeeding the date such tender or exchange offer expires.

If the application of the foregoing formula would result in a decrease in the Conversion Rate, no adjustment to the Conversion Rate will be made.

Any adjustment to the conversion rate made pursuant to this paragraph (5) shall become effective on the second day immediately following the date such tender offer or exchange offer expires. If we or one of our subsidiaries is obligated to purchase our common shares pursuant to any such tender or exchange offer but is permanently prevented by applicable law from effecting any such purchase or all such purchases are rescinded, we will re-adjust the new Conversion Rate to be the Conversion Rate that would be in effect if such tender or exchange offer had not been made.

If we have in effect a rights plan while any of the Series E preferred shares remain outstanding, holders of the Series E preferred shares will receive, upon a conversion of such shares in respect of which we have elected to deliver our common shares, in addition to such common shares, rights under our shareholder rights agreement unless, prior to conversion, the rights have expired, terminated or been redeemed or unless the rights have separated from our common shares. If the rights provided for in any rights plan that our board of trustees may adopt have separated from the common shares in accordance with the provisions of the applicable shareholder rights agreement so that holders of the Series E preferred shares would not be entitled to receive any rights in respect of our common shares that we elect to deliver upon conversion of the Series E preferred shares, we will adjust the Conversion Rate at the time of separation as if we had distributed to all holders of our capital shares, evidences of indebtedness or other assets or property pursuant to paragraph (3) above, subject to readjustment upon the subsequent expiration, termination or redemption of the rights.

Notwithstanding the foregoing, in no event will the Conversion Price be reduced below \$0.01, subject to adjustment for share splits and combinations and similar events.

We will not make any adjustment to the Conversion Rate if holders of our Series E preferred shares are permitted to participate, on an as-converted basis, in the transactions described above.

The Conversion Rate will not be adjusted except as specifically set forth in this subsection entitled Conversion Rate Adjustments and in Special Conversion Right of Series E Preferred Shares upon a Fundamental Change; Company Repurchase Right. Without limiting the foregoing, the conversion rate will not be adjusted for:

the issuance of any of our common shares pursuant to any present or future plan providing for the reinvestment of distributions or interest payable on our securities and the investment of additional optional amounts in common shares under any plan;

**Table of Contents**

the issuance of any of our common shares or options or rights to purchase such shares pursuant to any present or future employee, trustee, manager or consultant incentive or benefit plan or program of or assumed by us or any of our subsidiaries;

the issuance of any common shares pursuant to any option, warrant, right, or exercisable, exchangeable or convertible security outstanding as of the date Series E preferred shares were first issued;

the issuance of any common shares, including in the offering of our common shares that we are conducting concurrently with this offering, or the payment of cash upon redemption of any of our common shares;

a change in the par value of the common shares;

accumulated and unpaid distributions; or

the issuance of our common shares or the payment of cash upon redemption thereof.

No adjustment in the Conversion Rate pursuant to the numbered paragraphs above will be required unless the adjustment would require an increase or decrease of at least 1% of the Conversion Rate. If the adjustment is not made because the adjustment does not change the Conversion Rate by at least 1%, then the adjustment that is not made will be carried forward and taken into account in any future adjustment. In addition, at the end of each fiscal year, beginning with the fiscal year ending on December 31, 2008, we will give effect to any adjustments that we have otherwise deferred pursuant to this provision, and those adjustments, if any, will no longer be carried forward and taken into account in any subsequent adjustment. All required calculations will be made to the nearest cent or 1/1000th of a share, as the case may be. Notwithstanding the foregoing, if the Series E preferred shares are called for redemption, all adjustments not previously made will be made on the applicable redemption date. If certain of the possible adjustments to the Conversion Price of the common shares of the Series E preferred shares are made (or if failures to make certain adjustments occur), a holder of such shares may be deemed to have received a distribution from us even though such holder has not received any cash or property as a result of such adjustments. We intend to withhold federal income tax (in the case of a non-United States holder) with respect to any deemed distribution from us from cash payments of distributions and any payments in redemption, repurchase or conversion of the shares of the Series E preferred shares. See **Additional U.S. Federal Income Tax Considerations** in this prospectus supplement.

In the case of the following events, each of which we refer to as a Business Combination:

any recapitalization, reclassification or change of our common shares (other than changes resulting from a subdivision or combination);

a consolidation, merger or combination involving us;

a sale, conveyance or lease to another entity of all or substantially all of our property and assets (other than to one or more of our subsidiaries); or

a statutory share exchange;

in each case, as a result of which our common shareholders are entitled to receive stock, other securities, other property or assets (including cash or any combination thereof) with respect to or in exchange for our common shares, a holder of Series E preferred shares will be entitled



**Table of Contents**

thereafter to convert such Series E preferred shares into the kind and amount of stock, other securities or other property or assets (including cash or any combination thereof) which a holder of Series E preferred shares would have owned or been entitled to receive upon such Business Combination as if such holder of Series E preferred shares held a number of our common shares equal to the Conversion Rate in effect on the effective date for such Business Combination, multiplied by the number of Series E preferred shares held by such holder of Series E preferred shares, except that, for a Business Combination that also constitutes a Fundamental Change, a holder of Series E preferred shares will not receive the Make-Whole Premium (as defined below) if a holder of Series E preferred shares does not convert its Series E preferred shares in connection with such Fundamental Change. See Adjustment to the Conversion Rate upon the Occurrence of a Fundamental Change . In the event that our common shareholders have the opportunity to elect the form of consideration to be received in such Business Combination, we will make adequate provision whereby the holders of Series E preferred shares shall have a reasonable opportunity to determine the form of consideration into which all of the Series E preferred shares, treated as a single class, shall be convertible from and after the effective date of such Business Combination. Such determination shall be based on the weighted average of elections made by the holders of Series E preferred shares who participate in such determination, shall be subject to any limitations to which all of our common shareholders are subject, such as pro rata reductions applicable to any portion of the consideration payable in such Business Combination, and shall be conducted in such a manner as to be completed by the date which is the earliest of (1) the deadline for elections to be made by our common shareholders, and (2) two business days prior to the anticipated effective date of the Business Combination.

We will provide notice of the opportunity to determine the form of such consideration, as well as notice of the determination made by the holders of our Series E preferred shares (and the weighted average of elections), by posting such notice with DTC and providing a copy of such notice to the transfer agent. If the effective date of a Business Combination is delayed beyond the initially anticipated effective date, holders of Series E preferred shares will be given the opportunity to make subsequent similar determinations in regard to such delayed effective date. We may not become a party to any such transaction unless its terms are consistent with the foregoing. None of the foregoing provisions shall affect the rights of the holders of Series E preferred shares to convert Series E preferred shares into our common shares prior to the effective date.

To the extent permitted by law, we may, from time to time, increase the Conversion Rate by any amount for a period of at least 20 days or any longer period required by law, so long as the increase is irrevocable during that period and our board of trustees determines that the increase is in our best interests. Such a determination by our board of trustees shall be conclusive. We will mail a notice of the increase to holders at least 15 business days before the day the increase commences. In addition, we may also increase the Conversion Rate as we determine to be advisable in order to avoid taxes to recipients of certain distributions.

Except as described above in this section, we will not adjust the Conversion Rate for any issuance of our common shares or any securities convertible into or exchangeable or exercisable for our common shares or rights to purchase our common shares or such convertible, exchangeable or exercisable securities.

**Table of Contents**

**Adjustment to the Conversion Rate upon the Occurrence of a Fundamental Change**

If, on or prior to April 20, 2018, a Fundamental Change takes place (See Special Conversion Right of Series E Preferred Shares upon a Fundamental Change; Company Repurchase Right ), and a holder converts the Series E preferred shares in connection with such Fundamental Change, we will increase, as described below under The Increase in the Conversion Rate , the Conversion Rate applicable to shares that are surrendered for conversion. A conversion of the Series E preferred shares will be deemed for these purposes to be in connection with a Fundamental Change if the notice of conversion of the Series E preferred shares is received by the conversion agent from and including the effective date of such Fundamental Change to, and including, the Fundamental Change Conversion Date (as defined below under Special Conversion Right of Series E Preferred Shares upon a Fundamental Change; Company Repurchase Right) for that Fundamental Change.

We will also give notice by mail or by publication (with subsequent prompt notice by mail) to holders of our Series E preferred shares of the anticipated effective date of any proposed Fundamental Change which will occur on or prior to April 20, 2018. We must make this mailing or publication at least 15 days before the anticipated effective date of the Fundamental Change. In addition, no later than the third business day after the completion of such Fundamental Change, we must make an additional notice announcing such completion.

If a holder surrenders Series E preferred shares for conversion in connection with such Fundamental Change we have announced, but such Fundamental Change is not consummated, then the holder will not be entitled to the increased Conversion Rate referred to above in connection with the conversion.

**The Increase in the Conversion Rate**

If a holder elects to convert in connection with a Fundamental Change on or prior to April 20, 2018, we will increase the Conversion Rate by reference to the table below, based on the date when the Fundamental Change becomes effective, which we refer to as the effective date, and the applicable price. If the Fundamental Change is a transaction or series of related transactions and the consideration (excluding cash payments for fractional shares or pursuant to statutory appraisal rights) for our common shares in the Fundamental Change consists solely of cash, then the applicable price will be the cash amount paid per share of our common shares in the transaction. If the transaction is an asset sale and the consideration paid for our property and assets (or for the property and assets of us and our subsidiaries on a consolidated basis) consists solely of cash, then the applicable price will be the cash amount paid for our property and assets, expressed as an amount per share of our common shares outstanding on the effective date of the asset sale. In all other cases, the applicable price will be the average of the Closing Sale Price of our common shares for the ten consecutive Trading Days immediately preceding the effective date. Our board of trustees will make appropriate adjustments, in its good faith determination, to account for any adjustment to the Conversion Rate that becomes effective, or any event requiring an adjustment to the Conversion Rate where the ex-dividend date of the event occurs, at any time during those ten consecutive Trading Days.

The following table sets forth the number of additional common shares per \$25.00 liquidation preference per Series E preferred share that will be added to the Conversion Rate applicable to Series E preferred shares that are converted in connection with a Fundamental Change, which



**Table of Contents**

we refer to as the Make-Whole Premium. If an event occurs that requires an adjustment to the Conversion Rate, we will, on the date we must adjust the Conversion Rate, adjust each applicable price set forth in the first column of the table below by multiplying the applicable price in effect immediately before the adjustment by a fraction:

whose numerator is the Conversion Rate in effect immediately before the adjustment; and

whose denominator is the adjusted Conversion Rate.

In addition, we will adjust the number of additional shares in the table below in the same manner in which, and for the same events for which, we must adjust the Conversion Rate as described under Conversion Rate Adjustments.

**Number of Additional Common Shares Issuable  
per \$25.00 Liquidation Preference**

Effective Date	Applicable Price								
	\$48.18	\$55.00	\$65.00	\$75.00	\$85.00	\$95.00	\$105.00	\$115.00	\$125.00
April 2, 2008	0.0676	0.0598	0.0414	0.0303	0.0234	0.0186	0.0152	0.0126	0.0106
April 15, 2008	0.0676	0.0598	0.0414	0.0303	0.0234	0.0186	0.0152	0.0126	0.0106
April 15, 2009	0.0676	0.0563	0.0378	0.0269	0.0203	0.0159	0.0129	0.0107	0.0090
April 15, 2010	0.0676	0.0525	0.0333	0.0226	0.0164	0.0126	0.0101	0.0083	0.0070
April 15, 2011	0.0676	0.0484	0.0279	0.0172	0.0115	0.0084	0.0066	0.0054	0.0046
April 15, 2012	0.0676	0.0441	0.0206	0.0093	0.0047	0.0030	0.0023	0.0019	0.0017
April 15, 2013	0.0676	0.0447	0.0156	0.0001	0.0000	0.0000	0.0000	0.0000	0.0000
April 15, 2014	0.0676	0.0475	0.0180	0.0026	0.0000	0.0000	0.0000	0.0000	0.0000
April 15, 2015	0.0676	0.0516	0.0225	0.0041	0.0000	0.0000	0.0000	0.0000	0.0000
April 15, 2016	0.0676	0.0522	0.0251	0.0079	0.0000	0.0000	0.0000	0.0000	0.0000
April 15, 2017	0.0676	0.0518	0.0246	0.0078	0.0000	0.0000	0.0000	0.0000	0.0000
April 15, 2018	0.0676	0.0459	0.0175	0.0020	0.0000	0.0000	0.0000	0.0000	0.0000

The exact applicable price and effective date may not be as set forth in the table above, in which case:

if the actual applicable price is between two applicable prices listed in the table above, or the actual effective date is between two dates listed in the table above, we will determine the number of additional shares by linear interpolation between the numbers of additional shares set forth for the two applicable prices, or for the two dates based on a 365-day year, as applicable;

if the actual applicable price is greater than \$125.00 per share (subject to adjustment), we will not increase the Conversion Rate as described above and no additional shares will be issuable upon conversion; and

if the actual applicable price is less than \$48.18 per share (subject to adjustment), we will not increase the Conversion Rate as described above and no additional shares will be issuable upon conversion.

## **Table of Contents**

However, we will not increase the Conversion Rate as described above to the extent the increase will cause the Conversion Rate to exceed 0.5188. We will adjust this maximum Conversion Rate in the same manner in which, and for the same events for which, we must adjust the Conversion Rate as described under Conversion Rate Adjustments.

Our obligation to satisfy the additional share requirement could be considered a penalty, in which case the enforceability thereof would be subject to general principles of reasonableness of economic remedies.

### **Special Conversion Right of Series E preferred shares upon a Fundamental Change; Company Repurchase Right**

In the event of a Fundamental Change described below, when the applicable price of our common shares described under The Increase in the Conversion Rate is less than \$48.18 per share, then each holder of Series E preferred shares will have the special right, referred to as the Fundamental Change Conversion Right, in addition to any other applicable conversion right, to convert some or all of its Series E preferred shares on the relevant Fundamental Change Conversion Date into a number of our common shares per \$25.00 liquidation preference equal to such liquidation preference plus accrued and unpaid distributions to, but not including, such Fundamental Change Conversion Date divided by 98% of the Market Price of our common shares, referred to as the Fundamental Change Conversion Rate. The Market Price of our common shares will be determined prior to the applicable Fundamental Change Conversion Date. The determination of the Market Price is described below under Determination of Market Price. A holder of Series E preferred shares which has elected to convert such shares otherwise than pursuant to the Fundamental Change Conversion Right will not be able to exercise the Fundamental Change Conversion Right.

If a holder of Series E preferred shares elects to convert Series E preferred shares as described in the preceding paragraph, we may elect, in lieu of that conversion, to repurchase for cash some or all of such Series E preferred shares at a repurchase price equal to 100% of the liquidation preference of the Series E preferred shares to be repurchased plus accrued and unpaid distributions to, but not including, such Fundamental Change Conversion Date, referred to as the Fundamental Change Repurchase Price; *provided* that if the relevant Fundamental Change Conversion Date is on a date that is after a Distribution Record Date and on or prior to the corresponding Distribution Payment Date, we will pay such distributions to the holder of record on the corresponding Distribution Record Date, which may or may not be the same person to whom we will pay the Fundamental Change Repurchase Price, and the Fundamental Change Repurchase Price will be equal to 100% of the liquidation preference of the Series E preferred shares to be repurchased.

In the event we elect to repurchase Series E preferred shares that would otherwise be converted into common shares on a Fundamental Change Conversion Date, such Series E preferred shares shall not be converted into common shares and the holder of such shares will be entitled to receive the Fundamental Change Repurchase Price in cash from us.

Subject to the next sentence, the aggregate number of our common shares issuable in connection with the exercise of the Fundamental Change Conversion Right may not exceed 2,223,804 shares (or if the underwriters over-allotment option is exercised, 2,557,375 shares) or such other number of common shares as shall then be authorized and available for issuance. If the number of common shares issuable upon such conversion would exceed 2,223,804 shares (or

**Table of Contents**

if the underwriters' over-allotment option is exercised, 2,557,375 shares) or such other number of common shares as shall then be authorized and available for issuance, we will have the option to satisfy the remainder of such conversion in common shares that are authorized for issuance in the future. We will use our best efforts to have any such additional number of common shares authorized for issuance within 180 days of the Fundamental Change Conversion Date.

Within 15 days after the occurrence of a Fundamental Change, we will provide to the holder of Series E preferred shares and the transfer agent a notice of the occurrence of the Fundamental Change and of the resulting repurchase right. Such notice will state:

the events constituting the Fundamental Change;

the date of the Fundamental Change;

the last date on which the holder of Series E preferred shares may exercise the Fundamental Change Conversion Right;

to the extent applicable, the Fundamental Change Conversion Rate and the Fundamental Change Repurchase Price;

whether we will elect to repurchase some or all of the Series E preferred shares as to which the Fundamental Change Conversion Right may be exercised and, if we will not purchase all such Series E preferred shares, indicating the percentage which we may elect to repurchase;

unless we have elected to repurchase all Series E preferred shares as to which the Fundamental Change Conversion Right has been exercised, the method of calculating the Market Price of our common shares;

the Fundamental Change Conversion Date;

the name and address of the paying agent and the conversion agent;

the Conversion Rate and any adjustment to the Conversion Rate that will result from the Fundamental Change;

that Series E preferred shares as to which the Fundamental Change Conversion Right has been exercised may be converted at the applicable Conversion Rate, if otherwise convertible, only if the notice of exercise of the Fundamental Change Conversion Right has been properly withdrawn; and

the procedures that the holder of Series E preferred shares must follow to exercise the Fundamental Change Conversion Right.

We will also issue a press release for publication on the Dow Jones & Company, Inc., Business Wire or Bloomberg Business News (or, if such organizations are not in existence at the time of issuance of such press release, such other news or press organization as is reasonably calculated to broadly disseminate the relevant information to the public) prior to the opening of business on the first Trading Day following any date on which we provide such notice to the holders of Series E preferred shares.

The Fundamental Change Conversion Date will be a date no less than 20 days nor more than 35 days after the date on which we give the above notice. To exercise the Fundamental Change Conversion Right, the holder of Series E preferred shares must deliver, on or before the close of



**Table of Contents**

business on the Fundamental Change Conversion Date, the Series E preferred shares to be converted, duly endorsed for transfer, together with a written conversion notice completed, to our transfer agent. The conversion notice will state:

the relevant Fundamental Change Conversion Date;

the number of Series E preferred shares to be converted; and

that the Series E preferred shares are to be converted pursuant to the applicable provisions of the Series E preferred shares.

If the Series E preferred shares are held in global form, the conversion notice must comply with applicable DTC procedures.

Holders of Series E preferred shares may withdraw any notice of exercise of its Fundamental Change Conversion Right (in whole or in part) by a written notice of withdrawal delivered to our transfer agent prior to the close of business on the business day prior to the Fundamental Change Conversion Date. The notice of withdrawal shall state:

the number of withdrawn Series E preferred shares;

if certificated Series E preferred shares have been issued, the certificate numbers of the withdrawn Series E preferred shares; and

the number of shares, if any, which remains subject to the conversion notice.

If the Series E preferred shares are held in global form, the notice of withdrawal must comply with applicable DTC procedures.

Series E preferred shares as to which the Fundamental Change Conversion Right has been properly exercised and for which the conversion notice has not been properly withdrawn will be converted into common shares in accordance with the Fundamental Change Conversion Right on the Fundamental Change Conversion Date, unless we have elected to repurchase such Series E preferred shares.

The holder of any Series E preferred share which we have elected to repurchase and as to which the conversion election has not been properly withdrawn will receive payment of the Fundamental Change Repurchase Price promptly following the later of the Fundamental Change Conversion Date or the time of book-entry transfer or delivery of the Series E preferred shares. If the paying agent holds cash sufficient to pay the Fundamental Change Repurchase Price of the Series E preferred shares on the business day following the Fundamental Change Conversion Date, then:

the Series E preferred shares will cease to be outstanding and distributions will cease to accrue (whether or not book-entry transfer of the Series E preferred shares is made or whether or not the Series E preferred shares certificate is delivered to the transfer agent); and

all of the other rights of the holders of Series E preferred shares will terminate (other than the right to receive the Fundamental Change Repurchase Price upon delivery or transfer of the Series E preferred shares).

A Fundamental Change generally will be deemed to occur upon the occurrence of a change in control or a termination of trading .



**Table of Contents**

A change in control generally will be deemed to occur at such time as:

any person or group (as those terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934 as amended, referred to as the Exchange Act) is or becomes the beneficial owner (as that term is used in Rule 13d-3 under the Exchange Act), directly or indirectly, of 50% or more of the total outstanding voting power of all classes of our shares of beneficial interest entitled to vote generally in the election of trustees, or the voting share ;

there occurs a sale, transfer, lease, conveyance or other disposition of all or substantially all of our property or assets, or of all or substantially all of the property or assets of us and our subsidiaries on a consolidated basis, in one transaction or a series of related transactions, to any person or group (as those terms are used in Sections 13(d) and 14(d) of the Exchange Act), including any group acting for the purpose of acquiring, holding, voting or disposing of securities within the meaning of Rule 13d-5(b)(1) under the Exchange Act;

we consolidate with, or merge with or into, another person or any person consolidates with, or merges with or into, us, unless the persons that beneficially owned, directly or indirectly, our voting share(s) immediately prior to such consolidation or merger beneficially owned, directly or indirectly, immediately after such consolidation or merger, shares of the surviving or continuing corporation's voting share representing at least a majority of the total outstanding voting power of all outstanding classes of voting share of the surviving or continuing corporation;

the following persons cease for any reason to constitute a majority of our board of trustees:

individuals who on the first issue date of the Series E preferred shares constituted our board of trustees; and

any new trustees whose election to our board of trustees or whose nomination for election by our shareholders was approved by at least a majority of our trustees then still in office either who were trustees on such first issue date of the Series E preferred shares or whose election or nomination for election was previously so approved; or

we are liquidated or dissolved or holders of our shares of beneficial interest approve any plan or proposal for our liquidation or dissolution.

Notwithstanding the foregoing, a transaction described in the second and third bullet points above will not constitute a change in control if at least 90% of the consideration (other than cash payments for fractional shares or pursuant to statutory appraisal rights) in such transaction consists of common shares and any associated rights traded on a U.S. national securities exchange (or which will be so traded when issued or exchanged in connection with such transaction).

A termination of trading is deemed to occur if our common shares (or other common shares into which the Series E preferred shares are then convertible) are neither listed for trading on a United States national securities exchange nor approved for trading on an established automated over-the-counter trading market in the United States.

There is no precise, established definition of the phrase all or substantially all under applicable law. Accordingly, there may be uncertainty as to whether a sale, transfer, lease, conveyance or other disposition of less than all of our property or assets, or of less than all of the property or assets of us and our subsidiaries on a consolidated basis, would permit a holder to exercise the Fundamental Change Conversion Right above.

**Table of Contents**

In connection with a Fundamental Change repurchase, we will comply with all U.S. federal and state securities laws in connection with any offer by us to repurchase the Series E preferred shares upon a Fundamental Change.

This Fundamental Change conversion and repurchase feature may make more difficult or discourage a party from taking over our company and removing incumbent management. We are not aware, however, of any specific effort to accumulate our shares of beneficial interest with the intent to obtain control of our company by means of a merger, tender offer, solicitation or otherwise. In addition, the Fundamental Change repurchase feature is not part of a plan by management to adopt a series of anti-takeover provisions. Instead, the Fundamental Change conversion and repurchase feature is a result of negotiations between us and the underwriters.

We could, in the future, enter into certain transactions, including recapitalizations that would not constitute a Fundamental Change but would increase the amount of debt outstanding or otherwise adversely affect the holders of Series E preferred shares. The incurrence of significant amounts of additional debt could adversely affect our ability to service our debt, and to permit us to elect to repurchase the Series E preferred shares upon a Fundamental Change.

If a Fundamental Change were to occur, we may not have enough funds to pay the Fundamental Change Repurchase Price. In addition, we may in the future incur indebtedness with similar change in control provisions permitting the holders thereof to accelerate or to require us to purchase such indebtedness upon the occurrence of similar events or on some specific dates. Our option to make a repurchase upon a Fundamental Change may be exercised by a third party that effects the payment of the Fundamental Change Repurchase Price in the manner, at the times and otherwise in compliance in all material respects with the requirements hereof and purchases all Series E preferred shares as to which the Fundamental Change Conversion Right was properly exercised and not withdrawn and which we elected to repurchase and otherwise complies with the obligations in connection therewith.

**Determination of Market Price**

Market Price means, with respect to any Fundamental Change Conversion Date, the average of the Closing Sale Prices of our common shares for the ten consecutive Trading Days ending on the third Trading Day prior to the Fundamental Change Conversion Date, appropriately adjusted to take into account the occurrence, during the period commencing on the first Trading Day of such ten Trading Day period and ending on the Fundamental Change Conversion Date of any event requiring an adjustment of the Conversion Rate as described under **Conversion Rate Adjustments** ; *provided* that in no event shall the Market Price be less than \$0.01, subject to adjustment for share splits and combinations, reclassifications and similar events.

Because the Market Price of our common shares is determined prior to the Fundamental Change Conversion Date, you will bear the market risk with respect to the value of our common shares, if any, to be received from the date as of which the Market Price is determined to the date on which you receive such shares. In addition, the Market Price of our common shares is an average price rather than the price as of a single date.



## **Table of Contents**

### **No Maturity; Redemption**

The Series E preferred shares have no maturity date and will not be subject to any sinking fund. We are not required to redeem or repurchase the Series E preferred shares, and, except in certain circumstances described above under Special Conversion Right of Series E Preferred Shares upon a Fundamental Change; Company Repurchase Right , we may not repurchase or redeem Series E preferred shares except to the extent necessary to preserve the company's qualification as a real estate investment trust. Accordingly, the Series E preferred shares will remain outstanding indefinitely unless Series E preferred shareholders or we decide to convert them or we decide to purchase them in connection with a Fundamental Change. See Conversion Rights , Company Conversion Option and Special Conversion Right of Series E Preferred Shares upon a Fundamental Change; Company Repurchase Right .

Subject to applicable law, we may purchase Series E preferred shares in the open market, by tender or by private agreement. Any Series E preferred shares that we reacquire will be returned to the status of authorized but unissued Series E preferred shares, unless determined otherwise by our board of trustees.

### **Restrictions on Ownership and Transfer**

Our Declaration of Trust restricts the number of shares which may be owned by shareholders. Generally, for us to qualify as a REIT under the Code, not more than 50% in value of our outstanding shares may be owned, directly or indirectly, by five or fewer individuals (defined in the Code to include certain entities and constructive ownership among specified family members) at any time during the last half of a taxable year. The shares must also be beneficially owned by 100 or more persons during at least 335 days of a taxable year of 12 months or a proportionate part of a shorter taxable year. In order to maintain our qualification as a REIT, our Declaration of Trust contains restrictions on the acquisition of shares intended to ensure compliance with these requirements.

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

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

The Series E preferred shares will be subject to provisions of our Declaration of Trust, including the articles supplementary for the Series E preferred shares, under which any Series E preferred shares owned by a shareholder in excess of the Ownership Limit, will automatically be designated Excess Shares and transferred to a trust for the exclusive benefit of a charitable beneficiary which we will designate. Owners of Excess Shares are entitled to compensation for their Excess Shares in accordance with the terms of our Declaration of Trust, but such compensation may be less than the amount they paid for those Excess Shares.

**Table of Contents**

The articles supplementary for the Series E preferred shares and our Declaration of Trust contain provisions that allow our board of trustees to waive this ownership limit, subject to certain conditions.

**Form and Book-Entry System**

The Series E preferred shares will initially be issued and maintained in the form of global securities held in book-entry form. DTC or its nominee will be the sole registered holder of the Series E preferred shares. Owners of beneficial interests in the Series E preferred shares represented by the global securities will hold their interests pursuant to the procedures and practices of DTC. As a result, beneficial interests in any such securities will be shown on, and transfers will be effected only through, records maintained by DTC and its direct and indirect participants and any such interest may not be exchanged for certificated securities, except in limited circumstances. Owners of beneficial interests must exercise any rights in respect of other interests, including any right to convert or require repurchase of their interests in the Series E preferred shares, in accordance with the procedures and practices of DTC. Owners of such beneficial interests will not be holders and will not be entitled to any rights provided to the holders of the Series E preferred shares under the global securities or the articles supplementary. We and any of our agents may treat DTC as the sole holder and registered owner of the global securities.

Any holder of Series E preferred shares will have the right to request a certificate therefor and upon such request made in writing to the Transfer Agent and Registrar for the Series E preferred Shares, we will cause to be issued a duly executed certificate for such Series E preferred shares registered in the name in which the Series E preferred shares were held in book-entry form or such other name(s) as specified by the holder in writing. In addition, the Series E preferred shares, represented by one or more global securities, will be exchangeable for certificated securities with the same terms if:

DTC is unwilling or unable to continue as depository or if DTC ceases to be a clearing agency registered under the Exchange Act and a successor depository is not appointed by us within ninety (90) days; or

we decide to discontinue use of the system of book-entry transfer through DTC.

DTC has advised us as follows: DTC is a limited-purpose trust company organized under the New York Banking Law, a banking organization within the meaning of the New York Uniformed Commercial Code, and a clearing agency registered pursuant to the provisions of Section 17A of the Exchange Act. DTC facilitates the settlement of transactions amongst participants through electronic computerized book-entry changes in participants' accounts, eliminating the need for physical movement of securities certificates. DTC's participants include securities brokers and dealers, including the underwriters, banks, trust companies, clearing corporations and other organizations, some of whom and/or their representatives own DTC. Access to DTC's book-entry system is also available to others, such as banks, brokers, dealers and trust companies that clear through or maintain a custodial relationship with a participant, either directly or indirectly.

**Table of Contents**

**Additional U.S. federal income tax considerations**

Please read the prospectus under the heading "U.S. Federal Income Tax Considerations" on page 32 of the accompanying prospectus for additional U.S. federal income tax considerations that apply to this offering.

The following summary describes certain material U.S. federal income tax consequences relating to the acquisition, ownership and disposition of the Series E preferred shares. This summary supplements and updates the more detailed description of these matters in the "U.S. Federal Income Tax Considerations" section of the accompanying prospectus. Stinson Morrison Hecker LLP will render a legal opinion that the discussions in this section and in the "U.S. Federal Income Tax Considerations" section of the accompanying prospectus are accurate in all material respects and, taken together, fairly summarize the federal income tax consequences discussed in those sections. Specifically, subject to qualifications and assumptions contained in its opinion, Stinson Morrison Hecker LLP will give opinions to the effect that we have been organized and have qualified as a REIT under the Internal Revenue Code of 1986, as amended (the "Code"), for our 1997 taxable year through the date hereof, and that our actual operation through the date hereof and current investments and proposed plan of operation will enable us to continue to meet the requirements for qualification and taxation as a REIT under the Code. Investors should be aware, however, that opinions of counsel are not binding upon the Internal Revenue Service or any court.

In providing its opinion, Stinson Morrison Hecker LLP is relying, without independent investigation, as to certain factual matters upon the statements and representations contained in an officer's certificate provided by the Company.

This summary is based on current law and does not address all aspects of taxation that may be relevant to particular shareholders in light of their personal investment or tax circumstances, or to certain types of shareholders (including, without limitation, dealers or traders in securities, insurance companies, financial institutions, partnerships, broker-dealers, and shareholders that hold our shares as part of a hedge, straddle, conversion transaction or other arrangement) subject to special treatment under U.S. federal income tax laws.

It should be noted that the current tax rates referenced in this discussion are set to expire at the end of 2010. Absent legislative action, the maximum capital gains federal income tax rate for U.S. Shareholders who are individuals will revert to 20% at that time and the maximum ordinary income tax rate will revert to 39.6%.

**You should consult your own tax advisor regarding the specific tax consequences of the purchase, ownership and sale or conversion of the Series E preferred shares.**

**Taxation of the Company**

As a REIT, the Company generally will not have to pay Federal corporate income taxes on its net income that it currently distributes to shareholders. This treatment substantially eliminates the "double taxation" at the corporate and shareholder levels that generally results from investment in a regular corporation, subject to general exceptions that result in corporate level tax. See "U.S. Federal Income Tax Consequences - Taxation of the Company - General" in the prospectus. In order to maintain its status as a REIT, the Company must meet certain asset and income tests. See "U.S. Federal Income Tax Consequences - Taxation of the Company - Requirements for Qualification" in the prospectus.

## **Table of Contents**

### **Foreign investments**

We and our subsidiaries may hold investments in, and pay taxes to, foreign countries. Taxes we pay in foreign jurisdictions may not be passed through to, or used by, our U.S. Shareholders as a foreign tax credit or otherwise. However, such taxes would create a tax deduction which would reduce REIT taxable income. Our foreign investments might also generate foreign currency gains and losses. According to recent guidance provided by the IRS, to the extent that a REIT incurs foreign currency gain which is attributable to income recognized by a REIT that is qualifying income under the 95% and 75% income tests, then the foreign currency gain is also qualifying income under the 95% and 75% income tests. No assurance can be given that foreign currency gains that we recognize directly or through pass-through subsidiaries will be qualifying income under the 95% or 75% income tests. Furthermore, no assurance can be given that a combination of non-qualifying income, such as certain foreign currency gains, personal property rents, and other non-qualifying income, will not adversely affect our ability to satisfy the REIT qualification requirements.

### **Taxation of shareholders**

#### **Taxation of taxable domestic shareholders**

As used herein, the term **U.S. Shareholder** means a holder of Series E preferred shares who (for U.S. federal income tax purposes) (i) is a citizen or resident of the United States, (ii) is a corporation, partnership or other entity created or organized in or under the laws of the United States or any political subdivision thereof (except, in the case of a partnership, the Treasury provides otherwise by regulations), (iii) is an estate the income of which is subject to U.S. federal income taxation regardless of its source, or (iv) is a trust whose administration is subject to the primary supervision of a U.S. court and which has one or more U.S. persons who have the authority to control all substantial decisions of the trust, or has a valid election in effect under applicable U.S. Treasury regulations to be treated as a U.S. person.

As long as EPR qualifies as a REIT, we generally will not be subject to federal income tax on our net income distributed to our shareholders. As long as EPR qualifies as a REIT, distributions made out of our current or accumulated earnings and profits (and not designated as capital gain distributions) will generally constitute dividends taxable to our taxable corporate U.S. Shareholders as ordinary income taxed at a maximum rate of 35% and such U.S. Shareholders will not be eligible for the dividends received deduction otherwise available with respect to distributions received by corporate U.S. Shareholders. Because we are a REIT for federal income tax purposes, ordinary dividend income paid to individual U.S. Shareholders generally will not constitute qualified dividend income eligible for the current reduced tax rate of 15%. Dividends received from a REIT generally are treated as qualified dividend income eligible for the reduced tax rate only to the extent that the REIT has received qualified dividend income from other non-REIT corporations, such as taxable REIT subsidiaries. In addition, if a REIT pays U.S. federal income tax on its undistributed net taxable income or on certain gains from the disposition of assets acquired from C corporations, the excess of the income subject to tax over the taxes paid will be treated as qualified dividend income in the subsequent taxable year.

Distributions made by us that are properly designated as capital gain dividends will be taxable to U.S. Shareholders as gains (to the extent they do not exceed our actual net capital gain for the taxable year) from the sale or disposition of a capital asset. Depending on the period of time we held the assets which produced the gains, and on certain designations, if any, which

**Table of Contents**

may be made by us, such gains may be taxable to noncorporate U.S. Shareholders at a 15% or 25% rate (through 2010 under current law), without regard to the period for which the U.S. Shareholder has held the Series E preferred shares. U.S. Shareholders that are corporations may, however, be required to treat up to 20% of certain capital gain dividends as ordinary income. To the extent we make distributions (not designated as capital gain dividends) in excess of our current and accumulated earnings and profits, such distributions will be treated first as a tax-free return of capital to each U.S. Shareholder, reducing the adjusted basis which such U.S. Shareholder has in his Series E preferred shares for tax purposes by the amount of such distribution (but not below zero). Distributions in excess of a U.S. Shareholder's adjusted basis in his shares will be taxable as capital gain (provided that the shares have been held as a capital asset) and will be taxable as long-term capital gain if the Series E preferred shares have been held for more than one year. Dividends declared by us in October, November or December of any year and payable to a shareholder of record on a specified date in any such month shall be treated as both paid by us and received by the shareholder on December 31st of that year; provided the dividend is actually paid by us on or before January 31st of the following calendar year. Shareholders may not include in their own income tax returns any net operating losses or capital losses of EPR.

Distributions made by us and gain arising from the sale or exchange by a U.S. Shareholder of shares will not be treated as passive activity income, and, as a result, U.S. Shareholders generally will not be able to apply any passive losses against such income or gain. Distributions made by us (to the extent they do not constitute a return of capital) generally will be treated as investment income for purposes of computing the investment interest limitation. Gain arising from the sale or other disposition of Series E preferred shares and certain qualifying distributions (or distributions treated as such), will not be treated as investment income under certain circumstances.

**Redemption of Series E preferred shares**

Redemption of Series E preferred shares for cash will be treated under Section 302 of the Code as a dividend taxable as a distribution (to the extent of our current and accumulated earnings and profits) unless the redemption satisfies one of the tests set forth in Section 302(b) of the Code and is therefore treated as a sale or exchange of the redeemable shares. A redemption characterized as a dividend distribution would not be eligible for the dividends received deduction for corporate shareholders. The redemption will be treated as a sale or exchange if it (i) is substantially disproportionate with respect to you, (ii) results in a complete termination of your share interest in EPR, or (iii) is not essentially equivalent to a dividend with respect to you, all within the meaning of Section 302(b) of the Code. In determining whether any of these tests have been met, common shares considered to be owned by you by reason of certain constructive ownership rules set forth in the Code, as well as common shares actually owned by you, must generally be taken into account. If you do not own (actually or constructively) any common shares of EPR, or an insubstantial percentage of our outstanding common shares, a redemption of your Series E preferred shares is likely to qualify for sale or exchange treatment because the redemption would not be essentially equivalent to a dividend. However, because the determination as to whether any of the alternative tests of Section 302(b) of the Code will be satisfied with respect to your Series E preferred shares depends upon the facts and circumstances at the time the determination must be made, you are advised to consult your own tax advisor to determine such tax treatment.

## **Table of Contents**

If a redemption of Series E preferred shares is treated as a sale or exchange to you, it will be treated as a taxable sale or exchange of the shares. As a result, you will recognize gain or loss for federal income tax purposes in an amount equal to the difference between (i) the amount of cash and the fair market value of any property received (less any portion thereof attributable to accumulated and declared but unpaid dividends, which will be taxable as a dividend to the extent of our current and accumulated earnings and profits), and (ii) your adjusted basis in the Series E preferred shares for tax purposes. Such gain or loss will be capital gain or loss if the Series E preferred shares have been held as a capital asset, and will be long-term gain or loss if the Series E preferred shares have been held for more than one year. The deductibility of capital losses are subject to limitations. If a redemption of Series E preferred shares is treated as a distribution taxable as a dividend, the amount of the dividend will be measured by the amount of cash and the fair market value of any property received by you and your adjusted basis in the redeemable Series E preferred shares will be transferred to your remaining shares in EPR. If you do not own any of our other shares, such basis may, under certain circumstances, be transferred to a related person or it may be lost entirely.

### **Disposition of Series E preferred shares**

If you are a U.S. Shareholder (as defined below) and you sell or dispose of your Series E preferred shares, you will recognize gain or loss for federal income tax purposes in an amount equal to the difference between the amount of cash and the fair market value of any property you receive on the sale or other disposition and your adjusted basis in the Series E preferred shares for tax purposes. This gain or loss will be capital gain or loss if you have held the Series E preferred shares as a capital asset and, if you are a U.S. Shareholder, will be long-term capital gain or loss if you have held the Series E preferred shares for more than one year at the time of disposition. Long term capital gains of an individual U.S. Shareholder are generally taxed at preferential rates.

In general, if you are a U.S. Shareholder and you recognize loss upon the sale or other disposition of Series E preferred shares that you have held for six months or less, after applying the holding period rules set forth in the Code, the loss you recognize will be treated as a long-term capital loss to the extent you received distributions from us which were required to be treated as long-term capital gains.

Capital losses recognized by a U.S. Shareholder upon disposition of our Series E preferred shares that were held more than one year at the time of disposition will be considered long term capital losses and are generally available only to offset capital gain income of the U.S. Shareholder but not ordinary income (except in the case of individuals who may apply up to \$3,000 per year of the excess, if any, of capital losses over capital gains to offset ordinary income).

### **Conversion of Series E preferred shares**

If you receive a number of our common shares as a result of a conversion or repurchase of our Series E preferred shares, then the transaction will be treated as a recapitalization. As such, you would recognize income or gain only to the extent of the lesser of (1) the excess, if any, of the value of the cash and common shares you receive over your adjusted tax basis in your Series E preferred shares surrendered or (2) the cash you receive. Any cash you receive, up to the amount of income or gain recognized, would generally be characterized as a dividend to the extent that a surrender of your Series E preferred shares to us for cash only would be taxable as a dividend,

**Table of Contents**

taking into account your continuing actual or constructive ownership interest in our shares, if any, as discussed above, and the balance of the recognized amount, if any, will be gain. Your basis in your common shares received would be equal to your basis for your Series E preferred shares surrendered, less any cash received, plus any income or gain recognized. Your holding period in your common shares received would be the same as your holding period for the Series E preferred shares surrendered. Non-U.S. shareholders may not be eligible for the foregoing partial nonrecognition rules and may instead be subject to special rules discussed below.

Under Section 305 of the Code, convertible preferred stock that may be redeemed at a premium (that is, a price higher than its issue price) may have this redemption premium treated as a constructive distribution.

Under applicable Treasury Regulations, constructive distribution treatment is required in the case of callable preferred stock only if, based on all of the facts and circumstances as of the issue date, redemption pursuant to this call right is more likely than not to occur. Even if this redemption is more likely than not to occur, constructive distribution treatment is not required if the redemption premium is solely in the nature of a penalty for premature redemption, i.e., it is a premium paid as a result of changes in economic conditions over which neither we nor you have control. The Treasury Regulations also provide a safe harbor pursuant to which an issuer's right to redeem will not be treated as more likely than not to occur. While there can be no assurance in this regard, we believe that constructive distribution treatment on the Series E preferred shares will not be required.

You generally will not recognize any income, gain or loss upon conversion of Series E preferred shares into common shares except with respect to cash, if any, you receive in lieu of a fractional common share. Your income tax basis in the common shares you receive on the conversion generally will be the same as your adjusted tax basis in the Series E preferred shares just prior to the time of conversion, reduced by any basis allocable to any fractional share. Your holding period for the common shares you receive will generally include the holding period of the Series E preferred shares converted. Any cash you receive in lieu of a fractional common share upon conversion will be treated as a payment in exchange for the fractional common share. Accordingly, your receipt of cash in lieu of a fractional share generally will result in capital gain or loss, measured by the difference between the cash you receive for the fractional share and your adjusted tax basis attributable to the fractional share. Non-U.S. shareholders may not be eligible for the foregoing rules and may instead be subject to special rules discussed below.

Your rights to convert your Series E preferred shares into common shares allow for the conversion price to be adjusted under a number of circumstances, generally to ensure that you receive an economically equivalent number of shares from a conversion following stock splits and stock dividends of our common shares, and also following certain cash distributions on common shares in excess of threshold amounts. Section 305 of the Code treats some of these adjustments as constructive taxable distributions. In general, you would be deemed to receive a constructive distribution if the conversion price is adjusted for a taxable distribution to the holders of common shares. Constructive distributions so treated would be taxable first as dividends to the extent paid out of our allocable current or accumulated earnings and profits, next as a nontaxable return of capital to the extent of your basis in your Series E preferred shares, and finally as gain from the sale or exchange of your Series E preferred shares. Your adjusted tax basis in your Series E preferred shares would be increased by constructive distributions to you taxable as dividends or gain, and would be unaffected by constructive distributions

## **Table of Contents**

that were nontaxable returns of capital. Conversely, a failure to appropriately adjust the conversion price of your Series E preferred shares could result in a constructive distribution to holders of common shares that would be taxable to them in a similar manner.

As more fully explained in the section **Taxation of Non-U.S. Shareholders** below, nonrecognition treatment may not apply at all, and a non-U.S. shareholder may be subject to federal income tax, increased United States tax filing requirements, and possibly a branch profits tax, in respect of all the gain realized on the sale, repurchase or conversion of our Series E preferred shares, if those shares constitute United States real property interests under Section 897 of the Code and related Treasury regulations. The Series E preferred shares will not constitute such United States real property interests if we are a domestically controlled REIT. A domestically controlled REIT is a REIT in which at all times during the preceding five-year period less than 50% in value of its shares is held directly or indirectly by foreign persons. We believe that we are and will be a domestically controlled REIT and thus a non-U.S. shareholder's gain on sale, repurchase or conversion of our Series E preferred shares will not be subject to United States federal income taxation. However, because our shares are publicly traded, we can provide no assurance that we will be a domestically controlled REIT. If we are not a domestically controlled REIT, but the Series E preferred shares are regularly traded, as defined by applicable Treasury regulations, on an established securities market like the NYSE, then a non-U.S. shareholder's gain on sale, repurchase or conversion of our Series E preferred shares will not be subject to United States federal income taxation as a sale of a United States real property interest, if the non-U.S. shareholder has at all times during the preceding five years owned 5% or less by value of that class of shares. In this regard, because the Series E preferred shares of others may be repurchased and are convertible, your percentage interest in the Series E preferred shares may increase even if you acquire no additional Series E preferred shares.

## **Backup withholding**

We will report to our domestic shareholders and to the IRS the amount of distributions paid during each calendar year, and the amount of tax withheld, if any from those distributions. Under the backup withholding rules, a shareholder may be subject to backup withholding at the rate equal to the fourth lowest rate of tax under Section 1(c) of the Code (which is currently 28%) with respect to distributions paid and redemption proceeds unless the shareholder (a) is a corporation or comes within certain other exempt categories and, when required, demonstrates this fact, or (b) provides a taxpayer identification number, certifies as to no loss of exemption from backup withholding, and otherwise complies with applicable requirements of the backup withholding rules. Notwithstanding the foregoing, we will institute backup withholding with respect to a shareholder when instructed to do so by the IRS. A shareholder that does not provide us with his correct taxpayer identification number may also be subject to penalties imposed by the IRS. Any amount paid as backup withholding will be creditable against the shareholder's U.S. federal income tax liability.

## **Taxation of tax-exempt shareholders**

The IRS has issued a revenue ruling in which it held that amounts distributed by a REIT to a tax-exempt employees pension trust do not constitute unrelated business taxable income (UBTI). Revenue rulings, however, are interpretive in nature and are subject to revocation or modification by the IRS. Based upon the ruling and the analysis therein, distributions by us to a shareholder that is a tax-exempt entity should not constitute UBTI, provided the tax exempt



**Table of Contents**

entity has not financed the acquisition of its Series E preferred shares with acquisition indebtedness within the meaning of the Code, and the Series E preferred shares are not otherwise used in an unrelated trade or business of the tax-exempt entity. In addition, REITs generally treat the beneficiaries of qualified pension trusts as the beneficial owners of REIT shares owned by such pension trusts for purposes of determining if more than 50% of the REIT's shares are owned by five or fewer individuals. However, if a pension trust owns more than 10% of the REIT's shares (by value), it can be subject to UBTI on all or a portion of REIT distributions made to it, if the REIT is treated as a pension-held REIT. A pension-held REIT is any REIT if more than 25% (by value) of its shares are owned by one pension trust, or one or more pension trusts each owns 10% (by value) of such shares, and in the aggregate, such pension trusts own more than 50% (by value) of its shares. We do not expect to be treated as a pension-held REIT. However, because our common shares are publicly traded, and it is anticipated the Series E preferred shares will be publicly traded, no assurance can be given in this regard.

For social clubs, voluntary employee benefit associations, supplemental unemployment benefit trusts and qualified group legal services plans exempt from U.S. federal income tax under Section 501(c)(7), (9), (17) and (20) of the Code, respectively, income from an investment in EPR will constitute UBTI. However, income from an investment in EPR will not constitute UBTI for voluntary employee benefit associations, supplemental unemployment trusts and qualified group legal services plans if the organization is able to deduct amounts set aside or placed in reserve for certain purposes so as to offset the UBTI generated by its investment in EPR. Such prospective shareholders should consult with their own tax advisors concerning these set aside and reserve requirements.

**Taxation of Non-U.S. shareholders**

The rules governing U.S. federal income taxation of the ownership and disposition of Series E preferred shares by persons who are not U.S. Shareholders ( Non-U.S. Shareholders ) are complex and no attempt is made in this prospectus supplement to provide more than a summary of these rules. Prospective Non-U.S. Shareholders should consult with their own tax advisors to determine the impact of federal, state, local and any foreign income tax laws with regard to an investment in EPR, including any reporting requirements.

Distributions that are not attributable to gain from sales or exchanges by us of United States real property interests ( USRPIs ), as defined in the Code, and not designated by us as capital gain distributions will be treated as distributions of ordinary income to the extent they are made out of our current or accumulated earnings and profits. Unless such distributions are effectively connected with the Non-U.S. Shareholder's conduct of a U.S. trade or business (or, if an income tax treaty applies, are attributable to a U.S. permanent establishment of the Non-U.S. Shareholder), the gross amount of the distributions will ordinarily be subject to U.S. withholding tax at a 30% or lower treaty rate, if applicable. In general, Non-U.S. Shareholders will not be considered engaged in a U.S. trade or business (or, in the case of an income tax treaty, as having a U.S. permanent establishment) solely by reason of their ownership of Series E preferred shares. If income on Series E preferred shares is treated as effectively connected with the Non-U.S. Shareholder's conduct of a U.S. trade or business (or, if an income tax treaty applies, is attributable to a U.S. permanent establishment of the Non-U.S. Shareholder), the Non-U.S. Shareholder generally will be subject to a tax at graduated rates, in the same manner as U.S. Shareholders are taxed with respect to such distributions (and may also be subject to the 30% branch profits tax in the case of a shareholder that is a foreign corporation). We expect to withhold U.S. income tax at the rate of 30% on the gross amount of any distributions of

**Table of Contents**

ordinary income made to a Non-U.S. Shareholder unless the Non-U.S. Shareholder provides us with a (i) properly executed IRS Form W-8BEN claiming an exemption from or reduction in the rate of withholding under the benefit of a tax treaty, or (ii) IRS Form W-8ECI claiming that the distribution is not subject to withholding because it is effectively connected with the Non-U.S. Shareholder's conduct of a U.S. trade or business (or, if an income tax treaty applies, is attributable to a U.S. permanent establishment of the Non-U.S. Shareholder).

Unless the Series E preferred shares constitute USRPIs, distributions in excess of our current and accumulated earnings and profits will not be taxable to a shareholder to the extent such distributions do not exceed the adjusted basis of the shareholder's Series E preferred shares but rather will reduce the adjusted basis of the shares. To the extent such distributions exceed the adjusted basis of a Non-U.S. Shareholder's Series E preferred shares, such distributions will give rise to tax liability if the Non-U.S. Shareholder would otherwise be subject to tax on any gain from the sale or disposition of his shares, as described below. If it cannot be determined at the time a distribution is made whether or not the distribution will be in excess of our current and accumulated earnings and profits, the distributions will be subject to withholding at the same rate as distributions. If, however, Series E preferred shares are treated as USRPIs, then, unless otherwise treated as a distribution for withholding tax purposes as described below, any distributions in excess of our current or accumulated earnings and profits will generally be subject to 10% withholding and to the extent such distributions also exceed the adjusted basis of a Non-U.S. Shareholder's Series E preferred shares, they will also give rise to gain from the sale or exchange of the shares, the tax treatment of which is described below.

Distributions that are designated by us at the time of distribution as capital gain distributions (other than those arising from the disposition of a USRPI) generally will not be subject to taxation, unless (i) investment in the Series E preferred shares is effectively connected with the Non-U.S. Shareholder's U.S. trade or business (or, if an income tax treaty applies, is attributable to a U.S. permanent establishment of the Non-U.S. Shareholder), in which case the Non-U.S. Shareholder will be subject to the same treatment as U.S. Shareholders with respect to such gain (except that a shareholder that is a foreign corporation may also be subject to the 30% branch profits tax), or (ii) the Non-U.S. Shareholder is a non-resident alien individual who is present in the U.S. for 183 days or more during the taxable year and either has a tax home in the U.S. or sold his shares under circumstances in which the sale was attributable to a U.S. office, in which case the non-resident alien individual will be subject to a 30% tax on the individual's capital gains.

Under the provisions of the Foreign Investment in Real Property Tax Act of 1980 ( FIRPTA ), a distribution made to a non-U.S. Shareholder, to the extent attributable to gains from dispositions of USRPIs held by us directly or through pass-through subsidiaries ( USRPI capital gains ), will be considered effectively connected with a U.S. trade or business of the non-U.S. Shareholder and will be subject to U.S. federal income tax at the rates applicable to U.S. Shareholders, without regard to whether the distribution is designated as a capital gain dividend. In addition, we will be required to withhold tax equal to 35% of the amount of capital gain dividends to the extent the dividends constitute USRPI capital gains. Distributions subject to FIRPTA may also be subject to a 30% branch profits tax in the hands of a non-U.S. Shareholder that is a corporation. However, the 35% withholding tax will not apply to any capital gain dividend with respect to any class of our stock which is regularly traded on an established securities market located in the U.S. if the non-U.S. Shareholder did not own more than 5% of such class of stock at any time during the taxable year. Instead any capital gain dividend will be treated as a

**Table of Contents**

distribution subject to the rules discussed under the paragraph above. Also, the branch profits tax will not apply to such a distribution.

Gain recognized by a Non-U.S. Shareholder upon a sale, repurchase or conversion of Series E preferred shares will generally not be taxed under FIRPTA if the shares do not constitute USRPIs. Series E preferred shares will not be considered USRPIs if we qualify as a domestically controlled REIT, or if the Series E preferred shares are part of a class that is regularly traded on an established securities market and the holder owned less than 5% of the class sold during a specified testing period. A domestically controlled REIT is defined generally as a real estate investment trust in which at all times during a specified testing period less than 50% in value of its shares was held directly or indirectly by foreign persons. We believe we are a domestically controlled REIT, and therefore the sale of Series E preferred shares will not be subject to taxation under FIRPTA. If the gain on the sale of Series E preferred shares were to be subject to taxation under FIRPTA, the Non-U.S. Shareholder would be subject to the same treatment as U.S. Shareholders with respect to such gain (subject to applicable alternative minimum tax and a special alternative minimum tax in the case of nonresident alien individuals), and the purchaser of the shares may be required to withhold 10% of the purchase price and remit such amount to the IRS. However, since our common shares are publicly traded and it is anticipated our Series E preferred shares will be publicly traded as well, no assurance can be given in this regard.

Gain not subject to FIRPTA will be taxable to a Non-U.S. Shareholder if (i) investment in the Series E preferred shares is effectively connected with a U.S. trade or business of the Non-U.S. Shareholder (or, if an income tax treaty applies, is attributable to a U.S. permanent establishment of the Non-U.S. Shareholder), in which case the Non-U.S. Shareholder will be subject to the same treatment as U.S. Shareholders with respect to such gain, or (ii) the Non-U.S. Shareholder is a nonresident alien individual who was present in the U.S. for 183 days or more during the taxable year and has a tax home in the U.S., in which case the nonresident alien individual will be subject to a 30% tax on the individual's capital gains. If the gain on the sale of Series E preferred shares were to be subject to taxation under FIRPTA, the Non-U.S. Shareholder would be subject to the same treatment as U.S. Shareholders with respect to such gain (subject to applicable alternative minimum tax and a special alternative minimum tax in the case of nonresident alien individuals).

Effective generally from and after 2006, a special wash sale rule applies to a non-U.S. shareholder who owns any class of our shares if (1) the shareholder owns more than 5% of that class of shares at any time during the one-year period ending on the date of the distribution described below, or (2) that class of our shares is not, within the meaning of applicable Treasury Regulations, regularly traded on a domestic established securities market such as the NYSE. Although there can be no assurance in this regard, we believe that our common shares and our Series E preferred shares will be regularly traded on an established securities market within the meaning of applicable Treasury regulations, as described in the accompanying prospectus. We thus anticipate this new wash sale rule to apply, if at all, only to a non-U.S. shareholder that owns more than 5% of either our common shares or our Series E preferred shares. Such a non-U.S. shareholder will be treated as having made a wash sale of our shares if it (1) disposes of an interest in our shares during the 30 days preceding the ex-distribution date of a distribution by us that, but for such disposition, would have been treated by the non-U.S. shareholder in whole or in part as gain from the sale or exchange of a United States real property interest, and then (2) acquires or enters into a contract to acquire a substantially identical interest in our shares, either actually or constructively through a related party, during the 61-day period beginning 30 days prior to the ex-distribution date. In the event of such a wash sale, the non-

## **Table of Contents**

U.S. shareholder will have gain from the sale or exchange of a USRPI in an amount equal to the portion of the distribution that, but for the wash sale, would have been a gain from the sale or exchange of a USRPI. As described in the accompanying prospectus, a non-U.S. shareholder's gain from the sale or exchange of a USRPI can trigger increased United States taxes, such as the branch profits tax applicable to non-U.S. corporations, and increased United States tax filing requirements.

If the proceeds of a disposition of Series E preferred shares are paid by or through a U.S. office of a broker, the payment is subject to information reporting and backup withholding unless the disposing Non-U.S. Shareholder certifies as to his name, address and non-U.S. status or otherwise establishes an exemption. Generally, U.S. information reporting and backup withholding will not apply to a payment of disposition proceeds if the payment is made outside the U.S. through a non-U.S. office of a non-U.S. broker.

U.S. information reporting requirements (but not backup withholding) will apply, however, to a payment of disposition proceeds outside the U.S. if (i) the payment is made through an office outside the U.S. of a broker that is either (a) a U.S. person, (b) a foreign person that derives 50% or more of its gross income for certain periods from the conduct of a trade or business in the U.S., (c) a controlled foreign corporation for U.S. federal income tax purposes, or (d) a foreign partnership more than 50% of the capital or profits of which is owned by one or more U.S. persons or which engages in a U.S. trade or business, and (ii) the broker fails to obtain documentary evidence that the shareholder is a Non-U.S. Shareholder and that certain conditions are met or that the Non-U.S. Shareholder otherwise is entitled to an exemption.

## **Possible legislative or other actions affecting tax consequences**

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

Moreover, prospective investors should be aware that as of January 1, 2011, absent legislative action, the maximum capital gains federal income tax rate for U.S. shareholders who are individuals will revert to 20% and the maximum ordinary income tax rate will revert to 39.6%.

## **State tax consequences and withholding**

We and our shareholders may be subject to state or local taxation in various state or local jurisdictions, including those in which we or they transact business or reside. The state and local tax treatment of EPR and our shareholders may not conform to the U.S. federal income tax consequences discussed above. Several states in which we may own properties may treat REITs as ordinary corporations. We do not believe, however, that shareholders will be required to file state tax returns, other than in their respective states of residence, as a result of the ownership of shares. However, you should consult your own tax advisor regarding the effect of state and local tax laws on an investment in our shares.

**Table of Contents**

**You are advised to consult with your own tax advisor regarding the specific tax consequences to you of the ownership and sale of shares in an entity electing to be taxed as a real estate investment trust, including the federal, state, local, foreign, and other tax consequences of such purchase, ownership, sale, and election and of potential changes in applicable tax laws.**

S-63

---

**Table of Contents****Underwriting**

J.P. Morgan Securities Inc. and Morgan Stanley & Co. Incorporated are acting as the representatives of the underwriters named below. We and J.P. Morgan Securities Inc. and Morgan Stanley & Co. Incorporated as representatives of the underwriters, have entered into an underwriting agreement concerning the Series E preferred shares being offered by this prospectus supplement and the accompanying prospectus. The underwriters' obligations are several and not joint, which means that each underwriter is required to purchase a specified number of shares, but is not responsible for the commitment of any other underwriter to purchase shares. Subject to the terms and conditions of the underwriting agreement, each underwriter has severally agreed to purchase the number of Series E preferred shares set forth opposite its name below at the public offering price on the cover page of this prospectus supplement less the underwriting discount.

<b>Underwriter</b>	<b>Number of Shares</b>
J.P. Morgan Securities, Inc.	1,350,000
Morgan Stanley & Co. Incorporated	1,200,000
RBC Capital Markets Corporation	450,000
<b>Total</b>	<b>3,000,000</b>

The underwriting agreement provides that the obligations of the underwriters are conditional and may be terminated at their discretion based on their assessment of the state of the financial markets. The obligations of the underwriters may also be terminated upon the occurrence of the events specified in the underwriting agreement. The underwriters are severally committed to purchase all of the Series E preferred shares being offered if any shares are purchased, other than those shares covered by the over-allotment option described below.

We have granted the underwriters an option to purchase up to 450,000 additional Series E preferred shares to be sold in this offering at the public offering price, less the underwriting discounts and commissions described on the cover page of this prospectus supplement. The underwriters may exercise this option solely to cover over-allotments, if any. This option may be exercised, in whole or in part, at any time within the 30-day period after the date of this prospectus supplement. To the extent the option is exercised, the underwriters will be severally committed, subject to certain conditions, to purchase the additional Series E preferred shares in proportion to their respective commitments as indicated in the table above.

The underwriters are offering the shares, subject to prior sale, when, as and if issued to and accepted by them, subject to approval of legal matters by their counsel, including the validity of the shares, and other conditions contained in the underwriting agreement, such as the receipt by the underwriters of officers' certificates and legal opinions. The underwriters reserve the right to withdraw, cancel or modify offers to the public without notice and to reject orders in whole or in part.

The underwriters propose to offer the Series E preferred shares directly to the public initially at the public offering price set forth on the cover page of this prospectus supplement and to selected dealers at such price less a concession not to exceed \$0.45 per share. The underwriters may allow, and such selected dealers may reallow, a concession not to exceed \$0.15 per share. After the commencement of this offering, the underwriters may change the public offering price and other selling terms.



**Table of Contents**

The following table shows the initial public offering price, underwriting discount and proceeds, before expenses, to us. The information assumes either no exercise or full exercise by the underwriters of their over-allotment option.

	<b>Per Share</b>		<b>Total</b>	
			<b>No Exercise</b>	<b>Full Exercise</b>
Initial public offering price	\$ 25.00	\$	75,000,000	\$ 86,250,000
Underwriting discounts and commissions payable by us	\$ 0.75	\$	2,250,000	\$ 2,587,500
Proceeds, before expenses, to us	\$ 24.25	\$	72,750,000	\$ 83,662,500

We estimate that the total expenses of this offering payable by us, excluding underwriting discounts and commissions, will be approximately \$225,000.

We have agreed in the underwriting agreement to indemnify the underwriters against certain liabilities, including liabilities under the Securities Act of 1933, as amended, and, where such indemnification is unavailable, to contribute to payments that the underwriters may be required to make in respect of such liabilities.

The Series E preferred shares are a new issue of securities and, prior to acceptance of the Series E preferred shares for listing on the NYSE, there will be no established trading market for the Series E preferred shares. We have filed an application to list the Series E preferred shares on the NYSE under the symbol, EPR PrE. If this application is approved, we expect trading in the Series E preferred shares to commence within a 30-day period after the initial delivery of the Series E preferred shares. In order to meet the requirements for listing the Series E preferred shares on the NYSE, the underwriters have undertaken to sell (i) Series E preferred shares to ensure a minimum of 100 beneficial holders with a minimum of 100,000 Series E preferred shares outstanding and (ii) a sufficient number of Series E preferred shares so that following this offering, the Series E preferred shares have a minimum aggregate market value of \$2 million.

The underwriters have advised us that they intend to make a market in the Series E preferred shares, but they are not obligated to do so and may discontinue market making at any time without notice. No assurance can be given as to the liquidity of the trading market for the Series E preferred shares.

In order to facilitate this offering of Series E preferred shares, the underwriters may engage in transactions that stabilize, maintain or otherwise affect the market price of the Series E preferred shares in accordance with Regulation M under the Securities Exchange Act of 1934, as amended.

The underwriters have advised us that they may make short sales of Series E preferred shares in connection with this offering, resulting in the sale by the underwriters of a greater number of shares than they are required to purchase pursuant to the underwriting agreement. The short position resulting from those short sales will be deemed a covered short position to the extent it does not exceed the number of shares the underwriters have the right to purchase in this offering including the 450,000 shares subject to their over-allotment option and will be deemed a naked short position to the extent it exceeds the number. A naked short position is more likely to be created if the underwriters are concerned that there may be downward pressure on the trading price of the Series E preferred shares in the open market that could adversely affect investors who purchase shares in this offering.





**Table of Contents**

The underwriters may reduce or close out a covered short position either by exercising the over-allotment option or by purchasing shares in the open market. In determining which of these alternatives to pursue, the underwriters will consider the price at which shares are available for purchase in the open market as compared to the price at which they may purchase shares through the over-allotment option. Any naked short position will be closed out by purchasing shares in the open market. Open market purchases made by the underwriters to cover all or a portion of their short position may be effected on the NYSE or otherwise. Similar to other purchase transactions, the underwriters' purchases to cover a short position or to stabilize the market price of the Series E preferred shares may have the effect of raising or maintaining the market price of the Series E preferred shares or preventing or mitigating a decline in the market price of the Series E preferred shares following this offering. As a result, the common shares may trade at a price that is higher than the price that otherwise might prevail in the open market.

No representation is made as to the magnitude or effect of any such stabilization or other activities. The underwriters are not required to engage in these activities and, if commenced, may discontinue any of these activities at any time.

We have agreed that, except pursuant to the underwriting agreement or the concurrent offering of our common shares, we will not offer, sell, contract to sell, pledge, grant any option to purchase or otherwise dispose of, directly or indirectly, or file with the SEC or cause to be declared effective a registration statement under the Securities Act relating to, any common shares, any other equity security of ours or any of our subsidiaries on parity with or senior to the common shares (with respect to distribution rights or payments upon our liquidation, dissolution or winding up) or any securities that are convertible into, that are exchangeable or exercisable for, or that represent the right to receive, any such securities (which we refer to as relevant securities), or publicly disclose the intention to make any such offer, sale, pledge, grant, disposition or filing, in each case for a period of 90 days after the date of this prospectus supplement, without the prior written consent of J.P. Morgan Securities Inc. and Morgan Stanley & Co. Incorporated, subject to certain exceptions and the extension described below.

Our executive officers have agreed that they will not (1) (a) offer, sell, contract to sell, pledge, grant any option to purchase or otherwise dispose of, directly or indirectly, any relevant security or (b) enter into any swap, hedge or other arrangement that transfers, in whole or in part, any of the economic consequences of ownership of a relevant security, whether any of these transactions are to be settled by delivery of relevant securities or other securities, in cash or otherwise, or publicly disclose the intention to make any such offer, sale, pledge, grant or disposition, or enter into any such transaction, swap, hedge or other arrangement, or (2) file, or participate in the filing of, with the SEC a registration statement under the Securities Act of 1933, as amended, relating to, or exercise any rights to require registration with the SEC of, or circulate or participate in the circulation of any preliminary or final prospectus or other disclosure document with respect to, any proposed offering or sale of any relevant security without, in each case, the prior written consent of J.P. Morgan Securities Inc. and Morgan Stanley & Co. Incorporated for a period of 90 days after the date of this prospectus supplement, subject to certain exceptions and to the extension described below.

In the event that either (1) during the last 17 days of the lock-up period applicable to us or our executive officers, we release earnings results or material news or a material event relating to us occurs or (2) prior to the expiration of the applicable lock-up period, we announce that we will release earnings results during the 16-day period beginning on the last day of the

**Table of Contents**

applicable lock-up period, then in either case the expiration of the applicable lock-up period will be extended until the expiration of the 18-day period beginning on the date of the release of the earnings results or the occurrence of the material news or event, as applicable, unless J.P. Morgan Securities Inc. and Morgan Stanley & Co. Incorporated waive in writing, such an extension.

From time to time, the underwriters and/or their affiliates have engaged in, and may in the future engage in, investment banking and other commercial dealings in the ordinary course of business with us for which they have received, and expect to receive, customary fees and commissions for these transactions. JPMorgan Chase Bank, N.A., an affiliate of one of the underwriters, J.P. Morgan Securities, Inc., is a lender under our unsecured revolving credit facility and will receive approximately 15% of any proceeds from this offering and the concurrent offering of our common shares that are used to repay indebtedness under the credit facility. In addition, a holding company of JPMorgan Chase Bank, N.A. has entered into a merger agreement with a holding company of Bear Stearns Corporate Lending Inc. Bear Stearns Corporate Lending, Inc. is a lender under the credit facility and will receive approximately 4% of any proceeds from this offering and the concurrent offering of our common shares that are used to repay indebtedness under the credit facility. Royal Bank of Canada, an affiliate of one of the underwriters, RBC Capital Markets Corporation, is also a lender under the credit facility and will receive approximately 15% of the proceeds of this offering and the concurrent offering of our common shares that are used to repay indebtedness under the credit facility. Each underwriter is an underwriter for our concurrent offering of common shares.

It is expected that delivery of the Series E preferred shares will be made on or about April 2, 2008, which will be the fourth business day following the date of pricing of the Series E preferred shares.

**Legal matters**

Stinson Morrison Hecker LLP will issue an opinion regarding the validity of the Series E preferred shares offered by this prospectus supplement. In addition, the discussion under the caption **Additional U.S. Federal Income Tax Considerations** in this prospectus supplement and **U.S. Federal Income Tax Considerations** in the accompanying prospectus (as amended and supplemented by **Additional U.S. Federal Income Tax Considerations** in this prospectus supplement) is based on the tax opinion of Stinson Morrison Hecker LLP. Certain legal matters in connection with this offering will be passed upon for the underwriters by Dechert LLP.

**Experts**

The consolidated financial statements and schedules of EPR as of December 31, 2007 and 2006 and for each of the years in the three-year period ended December 31, 2007 have been incorporated by reference in this prospectus supplement and the accompanying prospectus and in the registration statement of which this prospectus supplement and the accompanying prospectus are a part, in reliance upon the reports of KPMG LLP, independent registered public accounting firm, incorporated by reference herein and upon the authority of that firm as experts in accounting and auditing. The audit report covering the December 31, 2006 financial statements refers to a change in the method of quantifying errors in 2006.

**Table of Contents**

**Available information**

We are subject to the informational requirements of the Exchange Act, and in accordance with those requirements, we file reports and other information with the SEC. The reports and other information can be inspected and copied at the public reference facilities maintained by the SEC at Room 1580, 100 F Street, N.E., Washington, D.C. 20549. Copies of this material can be obtained by mail from the Public Reference Section of the SEC at Room 1580, 100 F Street, N.E., Washington, D.C. 20549 at prescribed rates. The public may obtain information on the operation of the public reference room by calling the SEC at 1-800-SEC-0330. The SEC maintains an Internet website (<http://www.sec.gov>) that contains reports, proxy and information statements and other materials that are filed through the SEC Electronic Data Gathering, Analysis and Retrieval (EDGAR) system. In addition, our common shares, our Series B preferred shares, Series C preferred shares and Series D preferred shares are listed on the New York Stock Exchange and we are required to file reports, proxy and information statements and other information with the New York Stock Exchange. These documents can be inspected at the principal office of the New York Stock Exchange, 20 Broad Street, New York, New York 10005.

We have filed with the SEC a registration statement on Form S-3 (Registration File No. 333-140978) covering the securities offered by this prospectus supplement. You should be aware that this prospectus supplement does not contain all of the information contained or incorporated by reference in that registration statement and its exhibits and schedules. You may inspect and obtain the registration statement, including exhibits, schedules, reports and other information that we have filed with the SEC, as described in the preceding paragraph. Statements contained in this prospectus supplement concerning the contents of any document we refer you to are not necessarily complete and in each instance we refer you to the applicable document filed with the SEC for more complete information.

**Table of Contents**

**PROSPECTUS**

**Entertainment Properties Trust**

**Debt Securities, Common Shares, Preferred Shares,  
Depository Shares and Warrants**

We may offer, from time to time, in one or more series or classes and in amounts, at prices and on terms that we will determine at the time of offering:

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

common shares of beneficial interest ( common shares );

preferred shares of beneficial interest ( preferred shares );

depository shares representing preferred shares of beneficial interest ( depository shares ); or

warrants.

These securities may be offered and sold separately or together in units with other securities described in this prospectus. We will provide the specific terms of these securities in supplements to this prospectus or other offering materials. You should read this prospectus, the applicable prospectus supplement and other applicable offering materials carefully before you invest.

The securities may be sold directly or through agents, underwriters or dealers. If any agent, dealer or underwriter is involved in selling the securities, its name, the applicable purchase price, fee, commission or discount arrangement, and the net proceeds to us from the sale of the securities will be described in a prospectus supplement or other offering materials. See Plan of Distribution.

Our common shares are listed on the New York Stock Exchange under the symbol **EPR**. The last reported sale price of our common shares on the New York Stock Exchange on February 26, 2007 was \$67.88 per share. Our Series A Cumulative Redeemable Preferred Shares ( Series A Preferred Shares ), Series B Cumulative Redeemable Preferred Shares ( Series B Preferred Shares ) and Series C Cumulative Convertible Preferred Shares ( Series C Preferred Shares ) are listed on the New York Stock Exchange under the symbols **EPR PrA**, **EPR PrB**, and **EPR PrC**, respectively.

To preserve our qualification as a real estate investment trust or REIT for U.S. federal income tax purposes and for other purposes, we impose restrictions on ownership of our common and preferred shares. See U.S. Federal Income Tax Considerations and Description of Certain Provisions of Maryland Law and EPR's Declaration of Trust and Bylaws in this prospectus.

**Investing in these securities involves certain risks. See the Risk Factors section on page 3 of this prospectus as well as the Risk Factors section of our most recent annual report on Form 10-K and, to the extent applicable, our quarterly reports on Form 10-Q.**

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

Our principal executive office is located at 30 W. Pershing Road, Suite 201, Kansas City, Missouri 64108. The telephone number for our principal executive office is (816) 472-1700.

The date of this prospectus is February 27, 2007.

---

**TABLE OF CONTENTS**

<u>About This Prospectus</u>	1
<u>Incorporation of Certain Information by Reference</u>	1
<u>Cautionary Statement Concerning Forward-Looking Statements</u>	2
<u>Risk Factors</u>	3
<u>The Company</u>	3
<u>Use of Proceeds</u>	4
<u>Ratio of Earnings to Fixed Charges and Ratio of Earnings to Combined Fixed Charges and Preferred Share</u>	
<u>Distributions</u>	4
<u>Description of Debt Securities</u>	5
<u>Description of Shares of Beneficial Interest</u>	14
<u>Description of Depositary Shares</u>	21
<u>Description of Warrants</u>	25
<u>Description of Certain Provisions of Maryland Law and EPR's Declaration of Trust and Bylaws</u>	27
<u>U.S. Federal Income Tax Considerations</u>	32
<u>Plan of Distribution</u>	46
<u>Legal Opinions</u>	47
<u>Experts</u>	48
<u>Available Information</u>	48

**Table of Contents**

**ABOUT THIS PROSPECTUS**

This prospectus is part of a registration statement (No. 333- ) that we filed with the Securities and Exchange Commission ( SEC ) using a shelf registration process. Under this shelf process, we may sell any combination of the securities described in this prospectus from time to time in one or more offerings.

This prospectus provides you with a general description of the securities we may offer. Each time we offer and sell securities, we will provide a prospectus supplement or other offering materials that contain specific information about the terms of the offering and the securities offered. The prospectus supplement or other offering materials also may add to, update or change information provided in this prospectus. You should read this prospectus, the applicable prospectus supplement, the other applicable offering materials and the other information described in Available Information and Incorporation of Certain Information by Reference prior to investing.

As allowed by SEC rules, this prospectus does not contain all the information you can find in the registration statement or the exhibits to the registration statement. For further information, we refer you to the registration statement, including its exhibits and schedules. Statements contained in this prospectus about the provisions or contents of any contract, agreement or any other document referred to are not necessarily complete. For each of these contracts, agreements or documents filed as an exhibit to the registration statement, we refer you to the actual exhibit for a more complete description of the matters involved.

We have not authorized any dealer, salesman or other person to give any information or to make any representation other than those contained or incorporated by reference in this prospectus, any applicable supplement to this prospectus or any other applicable offering materials. You must not rely upon any information or representation not contained or incorporated by reference in this prospectus or any applicable supplement to this prospectus or any other applicable offering materials as if we had authorized it. This prospectus, any applicable prospectus supplement and any other applicable offering materials do not constitute an offer to sell or the solicitation of an offer to buy any securities other than the registered securities to which they relate. Nor do this prospectus, any accompanying prospectus supplement or any other applicable offering materials constitute an offer to sell or the solicitation of an offer to buy securities in any jurisdiction to any person to whom it is unlawful to make such offer or solicitation in such jurisdiction. You should assume that the information appearing in this prospectus, the accompanying prospectus supplement or any other offering materials is accurate only as of the date on their respective covers, and you should assume that the information appearing in any document incorporated or deemed to be incorporated by reference in this prospectus, any accompanying prospectus supplement or any other applicable offering materials is accurate only as of the date that document was filed with the SEC. Our business, financial condition, results of operations and prospects may have changed since those dates.

Unless otherwise indicated or unless the context requires otherwise, all references in this prospectus to we, us, our, the Company or EPR mean Entertainment Properties Trust. When we refer to our Declaration of Trust we mean Entertainment Properties Trust's Amended and Restated Declaration of Trust, including the articles supplementary for each series of preferred shares, as amended. When we refer to our Bylaws we mean Entertainment Properties Trust's Bylaws, as amended.

**INCORPORATION OF CERTAIN INFORMATION BY REFERENCE**

The SEC allows us to incorporate by reference the information we file with the SEC, which means 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 we later file with the SEC, modifies or replaces that information.

The documents listed below have been filed by us under the Securities Exchange Act of 1934, as amended (the Exchange Act ), (File No. 1-13561) and are incorporated by reference in this prospectus:

1. Our annual report on Form 10-K for the year ended December 31, 2006 filed on February 28, 2007.
2. The description of our common shares included in our registration statement on Form 8-A filed on November 4, 1997.

**Table of Contents**

3. The description of our Series A Preferred Shares included in our registration statement on Form 8-A filed on May 24, 2002.

4. The description of our Series B Preferred Shares included in our registration statement on Form 8-A filed on January 12, 2005.

5. The description of our Series C Preferred Shares included in our registration statement on Form 8-A filed on December 21, 2006.

In addition, all documents filed by us under Section 13(a), 13(c), 14 or 15(d) of the Exchange Act (excluding any information that is deemed to have been furnished and not filed with the SEC) after the date of this prospectus and prior to the termination of the offering of the securities covered by this prospectus are incorporated by reference herein.

To obtain a free copy of any of the documents incorporated by reference in this prospectus (other than exhibits, unless they are specifically incorporated by reference in the documents) please contact us at:

**Investor Relations Department  
Entertainment Properties Trust  
30 W. Pershing Road, Suite 201  
Kansas City, Missouri 64108  
(816) 472-1700/FAX (816) 472-5794  
Email [info@eprkc.com](mailto:info@eprkc.com)**

Our SEC filings also are available on our Internet website at [www.eprkc.com](http://www.eprkc.com). The information on our website is not, and you must not consider the information to be, a part of this prospectus.

**CAUTIONARY STATEMENT CONCERNING FORWARD-LOOKING STATEMENTS**

With the exception of historical information, this prospectus and our reports filed under the Exchange Act and incorporated by reference in this prospectus and other offering materials and documents deemed to be incorporated by reference herein or therein may contain 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 Exchange Act, such as those pertaining to our acquisition or disposition of properties, our capital resources, future expenditures for development projects and our results of operations. Forward-looking statements involve numerous risks and uncertainties and you should not rely on them as predictions of actual events. There is no assurance the events or circumstances reflected in the forward-looking statements will occur. You can identify forward-looking statements by use of words such as will be, intend, continue, believe, may, expect, hope, anticipate, goal, forecast, or other comparable terms in discussions of strategy, plans or intentions. Forward-looking statements necessarily are dependent on assumptions, data or methods that may be incorrect or imprecise.

Factors that could materially and adversely affect us include, but are not limited to, the factors listed below:

General business and economic conditions;

Our ability to compete effectively;

Defaults in the performance of lease terms by our tenants;

Risk of our tenants filing for bankruptcy;

Risk of our tenants not renewing their leases;

The concentration of leases with our single largest tenant;

Our continued qualification as a REIT;

Risks relating to real estate ownership and development;

Risks associated with use of leverage to acquire properties;

**Table of Contents**

Fluctuations in interest rates;

Acts of terrorism;

Risk of potential uninsured losses, including from natural disasters;

Risks involved in joint ventures;

Risks in leasing multi-tenant properties;

Risks of environmental liability;

Our ability to raise capital;

Our ability to pay distributions to our shareholders;

Changes in laws and regulations, including tax laws and regulations;

Risks associated with changes in the Canadian exchange rate; and

Certain limits on change in control imposed under law and by our Declaration of Trust and Bylaws.

You should consider the risks described in the **Risk Factors** section of our most recent annual report on Form 10-K and, to the extent applicable, our quarterly reports on Form 10-Q, in evaluating any forward-looking statements included or incorporated by reference in this prospectus.

Given these uncertainties, you should not place undue reliance on these forward-looking statements. We undertake no obligation to publicly update or revise any forward-looking statements included or incorporated by reference in this prospectus whether as a result of new information, future events or otherwise. In light of the factors referred to above, the future events discussed or incorporated by reference in this prospectus may not occur and actual results, performance or achievements could differ materially from those anticipated or implied in the forward-looking statements.

**RISK FACTORS**

An investment in our securities involves certain risks. See the **Risk Factors** section of our most recent annual report on Form 10-K and, to the extent applicable, our quarterly reports on Form 10-Q, to read about factors you should consider before investing in our securities.

**THE COMPANY**

We are a self-administered real estate investment trust, or **REIT**. As of February 26, 2007, our real estate portfolio consists of:

megaplex movie theatre properties (including joint venture properties)

entertainment retail centers (including joint venture properties)

other specialty properties

megaplex movie theatre properties, entertainment retail centers and other specialty properties under development

land parcels leased to restaurant and retail operators adjacent to several of our theatre properties

We generally lease our single-tenant properties to tenants on a long-term triple-net basis that requires the tenant to assume the primary risks involved in operating the property and to pay substantially all expenses associated with the operation and maintenance of the property. We also provide secured mortgage financing, as appropriate, and we own multi-tenant properties which are managed for us by third-party management companies.

**Table of Contents**

Beginning with our taxable year ended December 31, 1997, we elected to be treated as a REIT for U.S. federal income tax purposes. In order to maintain our status as a REIT, we must comply with a number of requirements under federal income tax law that are discussed in U.S. Federal Income Tax Considerations.

Our executive offices are located at 30 W. Pershing Road, Suite 201, Kansas City, Missouri 64108. Our telephone number is (816) 472-1700.

**USE OF PROCEEDS**

Unless otherwise indicated in the applicable prospectus supplement or other applicable offering materials, EPR intends to use the net proceeds from any sale of common shares, preferred shares, depositary shares, warrants or debt securities under this prospectus for general business purposes, which may include funding the acquisition, development or financing of properties and repayment of debt. Further details relating to the use of net proceeds from any specific offering will be described in the applicable prospectus supplement or other applicable offering materials.

**RATIO OF EARNINGS TO FIXED CHARGES AND  
RATIO OF EARNINGS TO COMBINED FIXED CHARGES AND PREFERRED  
SHARE DISTRIBUTIONS**

The table below presents our ratio of earnings to fixed charges by dividing earnings by fixed charges. For this purpose, earnings is the sum of net income before equity in earnings of unconsolidated subsidiaries, minority interest in earnings and fixed charges (excluding capitalized interest) plus distributed income from unconsolidated joint ventures. Fixed charges consist of interest incurred on all indebtedness. The ratios are based solely on historical financial information and no pro forma adjustments have been made.

		<b>Years Ended December 31</b>			
	<b>2006</b>	<b>2005</b>	<b>2004</b>	<b>2003</b>	<b>2002</b>
Ratio of earning to fixed charges	2.7X	2.6X	2.3X	2.2X	2.2X

The table below presents our ratio of earnings to combined fixed charges and preferred share distributions by dividing earnings by combined fixed charges and preferred share distributions. The terms earnings and fixed charges have the meanings assigned above. The ratios are based solely on historical financial information and no pro forma adjustments have been made.

		<b>Years Ended December 31</b>			
	<b>2006</b>	<b>2005</b>	<b>2004</b>	<b>2003</b>	<b>2002</b>
Ratio of earning to combined fixed charges and preferred share distributions	2.2X	2.0X	2.0X	1.8X	1.9X

**Table of Contents**

**DESCRIPTION OF DEBT SECURITIES**

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

**General**

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

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

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

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

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

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

The indentures provide that we may issue debt securities from time to time in one or more series and that we may denominate the debt securities and make them payable in foreign currencies. The indentures do not limit the aggregate principal amount of debt securities that can be issued thereunder. The prospectus supplement or other



**Table of Contents**

offering materials for a series of debt securities will provide information relating to the terms of the series of debt securities being offered, which may include:

the issue price of the debt securities of the series;

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

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

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

the amount payable upon maturity or upon acceleration;

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

any limits on ownership or transferability;

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

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

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

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

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

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

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

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

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

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

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

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

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

**Table of Contents**

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

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

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

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

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

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

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

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

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

identity of registrar and paying agent;

the forms of the debt securities of the series;

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

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

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

**Subordination**

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

the indebtedness ranking senior to the debt securities being offered;

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

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

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

### **Interest Rate**

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

### **Original Issue Discount**

One or more series of debt securities offered by this prospectus may be sold at a substantial discount below their stated principal amount, bearing no interest or interest at a rate that at the time of issuance is below market rates. The material federal income tax consequences and special considerations applicable to any series of debt securities generally will be described in the applicable prospectus supplement or other applicable offering materials.

**Table of Contents**

**Registered Global Securities**

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

- by the depository for the registered global security to a nominee of the depository;
- by a nominee of the depository to the depository or another nominee of the depository; and
- by the depository or any nominee to a successor of the depository or a nominee of the successor.

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

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

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

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

- may not have the debt securities represented by a registered global security registered in their names;
- will not receive or be entitled to receive physical delivery of debt securities represented by a registered global security in definitive form; and
- will not be considered the owners or holders of debt securities represented by a registered global security under the indenture.

Accordingly, each person owning a beneficial interest in a registered global security must rely on the procedures of the depositary for the registered global security and, if the person is not a participant, on the procedures of the participant through which the person owns its interests, to exercise any rights of a holder under the indenture applicable to the registered global security.

**Payment of Interest on and Principal of Registered Global Securities**

Unless otherwise specified in the applicable prospectus supplement or other applicable offering materials, we will make payments of principal, premium, if any, interest on and additional amounts with respect to debt securities

## **Table of Contents**

represented by a registered global security registered in the name of a depository or its nominee to the depository or its nominee as the registered owner of the registered global security. None of the Company, the trustee, or any paying agent for debt securities represented by a registered global security will have any responsibility or liability for

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

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

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

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

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

## **Exchange of Registered Global Securities**

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

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

we do not appoint a successor depository within 90 days.

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

## **Covenants by the Company**

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

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

## **Events of Default**

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

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

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

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



**Table of Contents**

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

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

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

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

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

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

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

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

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

the trustee shall have failed to institute such proceeding within 60 days.

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

**Supplemental Indentures**

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

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

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

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

**Table of Contents**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

that series:

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

waive any past default under the indenture, except

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

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

## **Table of Contents**

### **Satisfaction and Discharge of the Indenture; Defeasance**

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

In addition, to the extent set forth in a supplemental indenture with respect to a series of debt securities, we may have a legal defeasance option (pursuant to which we may terminate, with respect to the debt securities of a particular series, all of our obligations under such debt securities and the indenture with respect to such debt securities) and a covenant defeasance option (pursuant to which we may terminate, with respect to the debt securities of a particular series, our obligations with respect to such debt securities under certain specified covenants contained in the indenture). If we have and exercise a legal defeasance option with respect to a series of debt securities, payment of such debt securities may not be accelerated because of an event of default. If we have and exercise a covenant defeasance option with respect to a series of debt securities, payment of such debt securities may not be accelerated because of an event of default related to the specified covenants.

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

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

### **Mergers, Consolidations and Certain Sales of Assets**

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

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

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

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

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

## **Table of Contents**

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

## **Governing Law**

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

## **Conversion or Exchange Rights**

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

the conversion or exchange price;

the conversion or exchange period;

restrictions on conversion, including to maintain REIT status;

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

events requiring adjustment to the conversion or exchange price; and

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

## **Concerning the Trustee**

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

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

## **Notices**

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



**Table of Contents**

**DESCRIPTION OF SHARES OF BENEFICIAL INTEREST**

*The following description of our shares of beneficial interest ( shares ) is only a summary and is subject to, and qualified in its entirety by reference to, the provision governing such shares contained in our Declaration of Trust and Bylaws, copies of which we have previously filed with the SEC. Because it is a summary, it does not contain all of the information that may be important to you. See Available Information for information about how to obtain copies of the Declaration of Trust and Bylaws. This summary also is subject to and qualified by reference to the descriptions of the particular terms of the securities described in the applicable prospectus supplement or other applicable offering materials.*

Our Declaration of Trust authorizes us to issue up to 50,000,000 common shares, par value \$0.01 per share, and 15,000,000 preferred shares, par value \$0.01 per share, 2,300,000 of which are designated as Series A Preferred Shares, 3,200,000 of which are designated as Series B Preferred Shares, and 6,000,000 of which are designated as Series C Preferred Shares, and authorizes our Board of Trustees to determine, at any time and from time to time the number of authorized shares of beneficial interest, as described below. As of February 26, 2007, we had 26,458,875 common shares issued and outstanding, 2,300,000 Series A Preferred Shares issued and outstanding, 3,200,000 Series B Preferred Shares issued and outstanding, and 5,400,000 Series C Preferred Shares issued and outstanding. As of the date of this prospectus no other class or series of preferred shares has been established. For a summary of restrictions on ownership and transfers of shares, see Description of Certain Provisions of Maryland Law and EPR's Declaration of Trust and Bylaws Restrictions on Ownership and Transfers of Shares.

Our Declaration of Trust contains a provision permitting our Board of Trustees, without any action by our shareholders, to amend the Declaration of Trust at any time to increase or decrease the aggregate number of shares or the number of shares of any class that we have authority to issue. Our Declaration of Trust further authorizes our Board of Trustees to cause us to issue our authorized shares and to reclassify any unissued shares into other classes or series. We believe that this ability of our Board of Trustees will provide us with flexibility in structuring possible future financings and acquisitions and in meeting other business needs which might arise. Although our Board of Trustees has no intention at the present time of doing so, it could authorize us to issue a new class or series that could, depending upon the terms of the class or series, delay, defer or prevent a change of control of EPR.

The transfer agent and registrar for our shares is UMB Bank, n.a.

**Common Shares**

All of our common shares are entitled to the following, subject to the preferential rights of any other class or series of shares which may be issued and to the provisions of our Declaration of Trust regarding the restriction of the ownership of shares:

to receive distributions on our shares if, as and when authorized by our Board of Trustees and declared by us out of assets legally available for distribution;

upon our liquidation, dissolution, or winding up, to receive all remaining assets available for distribution to common shareholders after satisfaction of our liabilities and the preferential rights of any preferred shares.

Subject to the provisions of our Declaration of Trust on restrictions on transfer, each outstanding common share entitles the holder to one vote on all matters submitted to a vote of shareholders, including the election of trustees. Holders of our common shares do not have cumulative voting rights in the election of trustees.

Holders of our common shares have no preference, conversion, exchange, sinking fund, redemption or, except to the extent expressly required by the law pertaining to Maryland real estate investment trusts, appraisal rights. Shareholders have no preemptive rights to subscribe for any of our securities.

For other information with respect to our common shares, including effects that provisions in our Declaration of Trust and Bylaws may have in delaying, deferring or preventing a change in our control, see Description of Certain Provisions of Maryland Law and EPR's Declaration of Trust and Bylaws below.

**Table of Contents**

**Preferred Shares**

***General***

Our Declaration of Trust authorizes our Board of Trustees to determine the preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications and terms and conditions of redemption of our authorized and unissued preferred shares. These may include:

the distinctive designation of each series and the number of shares that will constitute the series;

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

the distribution rate on the shares of the series, any restriction, limitation or condition upon the payment of the distribution, whether distributions will be cumulative, and the dates on which distributions accumulate and are payable;

the prices at which, and the terms and conditions on which, the shares of the series may be redeemed, if the shares are redeemable;

the purchase or sinking fund provisions, if any, for the purchase or redemption of shares of the series;

any preferential amount payable upon shares of the series upon our liquidation or the distribution of our assets;

if the shares are convertible, the price or rates of conversion at which, and the terms and conditions on which, the shares of the series may be converted into other securities; and

whether the series can be exchanged, at our option, into debt securities, and the terms and conditions of any permitted exchange.

The issuance of preferred shares, or the issuance of any rights or warrants to purchase preferred shares, could discourage an unsolicited acquisition proposal. In addition, the rights of holders of common shares will be subject to, and may be adversely affected by, the rights of holders of any preferred shares that we may issue in the future.

The following describes some general terms and provisions of the preferred shares to which a prospectus supplement or other applicable offering materials may relate. The statements below describing the preferred shares are in all respects subject to and qualified in their entirety by reference to the applicable provisions of our Declaration of Trust, including the articles supplementary for the applicable series of preferred shares, and our Bylaws.

The applicable prospectus supplement or other applicable offering materials will describe the specific terms as to each issuance of preferred shares, including:

the description or designation of the preferred shares;

the number of the preferred shares offered;

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

the offering price of the preferred shares;

whether distributions will be cumulative and, if so, the distribution rate, when distributions will be paid, or the method of determining the distribution rate if it is based on a formula or not otherwise fixed;

the date from which distributions on the preferred shares shall accumulate;

the provisions for any auctioning or remarketing, if any, of the preferred shares;

the provision, if any, for redemption or a sinking fund;

the liquidation preference per share;

any listing of the preferred shares on a securities exchange;

**Table of Contents**

whether the preferred shares will be convertible and, if so, the security into which they are convertible and the terms and conditions of conversion, including the conversion price or the manner of determining it;

whether interests in the preferred shares will be represented by depositary shares as more fully described below under *Description of Depositary Shares* ;

a discussion of material federal income tax considerations;

the relative ranking and preferences of the preferred shares as to distribution and liquidation rights;

any limitations on issuance of any preferred shares ranking senior to or on a parity with the series of preferred shares being offered as to distribution and liquidation rights;

any limitations on direct or beneficial ownership and restrictions on transfer, in each case as may be appropriate to preserve our status as a real estate investment trust or otherwise; and

any other specific preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications and terms and conditions of redemption of the preferred shares.

As described under *Description of Depositary Shares*, we may, at our option, elect to offer depositary shares evidenced by depositary receipts. If we elect to do this, each depositary receipt will represent a fractional interest in a share of the particular series of the preferred shares issued and deposited with a depositary. The applicable prospectus supplement or other applicable offering materials will specify that fractional interest.

***Rank***

Unless our Board of Trustees otherwise determines and we so specify in the applicable prospectus supplement or other applicable offering materials, we expect that the preferred shares will, with respect to distribution rights and rights upon liquidation or dissolution, rank senior to all of our common shares.

***Distributions***

Holders of preferred shares of each series will be entitled to receive dividends at the rates and on the dates shown in the applicable prospectus supplement or other offering materials. Even though the preferred shares may specify a fixed rate of distribution, our Board of Trustees must authorize and declare those distributions and they may be paid only out of assets legally available for payment. We will pay each distribution to holders of record as they appear on our share transfer books on the record dates fixed by our Board of Trustees. In the case of preferred shares represented by depositary receipts, the records of the depositary referred to under *Description of Depositary Shares* will determine the persons to whom distributions are payable.

Distributions on any series of preferred shares may be cumulative or noncumulative, as provided in the applicable prospectus supplement or other offering materials. We refer to each particular series, for ease of reference, as the applicable series. Cumulative distributions will be cumulative from and after the date shown in the applicable prospectus supplement or other applicable offering materials. If our Board of Trustees fails to authorize a distribution on any applicable series that is noncumulative, the holders will have no right to receive, and we will have no obligation to pay, a distribution in respect of the applicable distribution period, whether or not distributions on that series are declared payable in the future.

Unless otherwise provided in the applicable prospectus or other applicable offering materials, if the applicable series is entitled to a cumulative distribution, we may not declare, or pay or set aside for payment, any full distributions on any other series of preferred shares ranking, as to distributions, on a parity with or junior to the applicable series, unless we declare, and either pay or set aside for payment, full cumulative distributions on the applicable series for all past distribution periods and the then current distribution period. If the applicable series does not have a cumulative distribution, we must declare, and pay or set aside for payment, full distributions for the then current distribution period only unless otherwise provided in the applicable prospectus supplement or other applicable offering materials. Unless otherwise provided in the applicable prospectus or other applicable offering materials, when distributions are not paid, or set aside for payment, in full upon any applicable series and the shares

## **Table of Contents**

of any other series ranking on a parity as to distributions with the applicable series, we must declare, and pay or set aside for payment, all distributions upon the applicable series and any other parity series proportionately, in accordance with accrued and unpaid distributions of the several series. Unless otherwise provided in the applicable prospectus supplement or other applicable offering materials, for these purposes, accrued and unpaid distributions do not include unpaid distribution periods on noncumulative preferred shares. No interest will be payable in respect of any distribution payment that may be in arrears unless otherwise provided in the applicable prospectus or other applicable offering materials.

Unless otherwise provided in the applicable prospectus supplement or other applicable offering materials, except as provided in the immediately preceding paragraph, unless we declare, and pay or set aside for payment, full cumulative distributions, including for the then current period, on any cumulative applicable series, we may not declare, or pay or set aside for payment, any distributions upon common shares or any other equity securities ranking junior to or on a parity with the applicable series as to distributions or upon liquidation. The foregoing restriction does not apply to distributions paid in common shares or other equity securities ranking junior to the applicable series as to distributions and upon liquidation, unless otherwise provided in the applicable prospectus supplement or other applicable offering materials. Unless otherwise provided in the applicable prospectus supplement or other applicable offering materials, if the applicable series is noncumulative, we need only declare, and pay or set aside for payment, the distribution for the then current period, before declaring distributions on common shares or junior or parity securities. In addition, under the circumstances that we could not declare a distribution, we may not redeem, purchase or otherwise acquire for any consideration any common shares or other parity or junior equity securities, except upon conversion into or exchange for common shares or other junior equity securities, unless otherwise provided in the applicable prospectus supplement or other applicable offering materials. We may, however, make purchases and redemptions otherwise prohibited pursuant to certain redemptions or pro rata offers to purchase the outstanding shares of the applicable series and any other parity series of preferred shares, unless otherwise provided in the applicable prospectus supplement or other applicable offering materials.

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

### ***Redemption***

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

If a series of preferred shares is subject to mandatory redemption, we will specify in the applicable prospectus supplement or other applicable offering materials the number of shares we are required to redeem, when those redemptions start, the redemption price, and any other terms and conditions affecting the redemption. The redemption price will include all accrued and unpaid distributions, except in the case of noncumulative preferred shares. The redemption price may be payable in cash or other property, as specified in the applicable prospectus supplement or other applicable offering materials. If the redemption price for preferred shares of any series is payable only from the net proceeds of our issuance of shares of beneficial interest, the terms of the preferred shares may provide that, if no shares of beneficial interest shall have been issued or to the extent the net proceeds from any issuance are insufficient to pay in full the aggregate redemption price then due, the preferred shares will automatically and mandatorily be converted into shares of beneficial interest pursuant to conversion provisions specified in the applicable prospectus supplement or other applicable offering materials.

### ***Liquidation Preference***

The applicable prospectus supplement or other applicable offering materials will show the liquidation preference of the applicable series. Upon our voluntary or involuntary liquidation, before any distribution may be made to the holders of our common shares or any other shares of beneficial interest ranking junior in the distribution of assets upon any liquidation to the applicable series, the holders of that series will be entitled to receive, out of our assets legally available for distribution to shareholders, liquidating distributions in the amount of the liquidation preference, plus an amount equal to all distributions accrued and unpaid. In the case of a



**Table of Contents**

noncumulative applicable series, accrued and unpaid distributions include only the then current distribution period. After payment of the full amount of the liquidating distributions to which they are entitled, the holders of preferred shares will have no right or claim to any of our remaining assets. If liquidating distributions shall have been made in full to all holders of preferred shares, our remaining assets will be distributed among the holders of any other shares of beneficial interest ranking junior to the preferred shares upon liquidation, according to their rights and preferences and in each case according to their number of shares.

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

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

***Voting Rights***

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

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

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

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

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

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

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

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

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

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

## **Table of Contents**

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

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

### ***Conversion Rights***

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

### ***Our Exchange Rights***

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

### **Series A Cumulative Redeemable Preferred Shares**

Our Series A Preferred Shares provide for quarterly payments of cumulative dividends at the rate of 9.50% of the \$25 per share liquidation preference of the Series A Preferred Shares, or a fixed rate of \$2.375 per share each year. Dividends not declared or paid in any quarter continue to accumulate. On liquidation of the Company, holders of the Series A Preferred Shares are entitled to a liquidation preference of \$25 per share plus all accumulated, accrued and unpaid dividends before any amount is payable to the holders of our common shares. The Series A Preferred Shares are not redeemable prior to May 29, 2007, except in limited circumstances relating to the preservation of our status as a REIT. On or after that date, we may at our own option redeem the Series A Preferred Shares in whole or in part by paying the \$25 per share liquidation preference plus all accumulated, accrued and unpaid dividends. The Series A Preferred Shares rank senior to our common shares and on a parity with our Series B Preferred Shares, Series C Preferred Shares and other parity securities we may issue in the future with respect to the payment of dividends and amounts on liquidation, dissolution and winding up. Holders of Series A Preferred Shares generally have no voting rights, except that if dividends on the Series A Preferred Shares have not been paid for six or more quarterly periods (whether or not consecutive), holders of the Series A Preferred Shares (together with other shares having like voting rights) are entitled to elect two additional trustees to the Board of Trustees to serve until all unpaid dividends have been paid or declared and set aside for payment. In addition, certain material and adverse changes to the terms of the Series A Preferred Shares cannot be made without the affirmative vote of at least two-thirds of the outstanding Series A Preferred Shares and the holders of all other shares on a parity with the Series A Preferred Shares and having like voting rights.

### **Series B Cumulative Redeemable Preferred Shares**

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

**Table of Contents**

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

**Series C Cumulative Convertible Preferred Shares**

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

**Table of Contents**

**DESCRIPTION OF DEPOSITARY SHARES**

*The following is a summary of the material provisions of any deposit agreement and of the depositary shares and depositary receipts representing depositary shares. Because it is a summary, it does not contain all of the information that may be important to you. If you want more information, you should read the form of deposit agreement and depositary receipts which we will file as exhibits to the registration statement of which this prospectus is part prior to an offering of depositary shares. See Available Information. This summary also is subject to and qualified by reference to the descriptions of the particular terms of the securities described in the applicable prospectus supplement or other applicable offering materials and by the terms of the applicable final deposit agreement and depositary receipts.*

**General**

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

Depositary receipts issued pursuant to the applicable deposit agreement will evidence ownership of depositary shares. Upon surrender of depositary receipts at the office of the depositary, and upon payment of the charges provided in and subject to the terms of the applicable deposit agreement, a holder of depositary shares will be entitled to receive the preferred shares underlying the surrendered depositary receipts.

**Distributions**

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

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

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

**Withdrawal of Preferred Shares**

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

## **Table of Contents**

### **Redemption of Depositary Shares**

If we redeem a series of the preferred shares underlying the depositary shares, the depositary will redeem those shares from the proceeds received by it. The depositary will mail notice of redemption not less than 30 days, and not more than 60 days, before the date fixed for redemption to the record holders of the depositary receipts evidencing the depositary shares we are redeeming at their addresses appearing in the depositary's books. The redemption price per depositary share will be equal to the applicable fraction of the redemption price per share payable with respect to the series of the preferred shares. The redemption date for depositary shares will be the same as that of the preferred shares. If we are redeeming less than all of the depositary shares, the depositary will select the depositary shares we are redeeming by lot or pro rata as the depositary may determine.

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

### **Voting of the Preferred Shares**

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

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

### **Liquidation Preference**

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

### **Conversion or Exchange of Preferred Shares**

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



depository receipt for any unconverted depository shares.

**Federal Income Tax Consequences Relating to Depository Shares**

As an owner of depository shares, you will be treated for U.S. federal income tax purposes as if you were an owner of the series of preferred shares represented by the depository shares. Therefore, you will be required to take

## **Table of Contents**

into account, for U.S. federal income tax purposes, income and deductions to which you would be entitled if you were a holder of the underlying series of preferred shares. In addition:

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

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

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

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

We and the applicable depositary will be permitted to amend the provisions of the depositary receipts and the deposit agreement. However, the holders of at least a majority of the applicable depositary shares then outstanding must approve any amendment that adds or increases fees or charges or prejudices an important right of holders. Every holder of an outstanding depositary receipt at the time any amendment becomes effective, by continuing to hold the receipt, will be bound by the applicable deposit agreement, as amended.

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

all depositary shares have been redeemed;

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

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

## **Charges of a Depositary**

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

## **Resignation and Removal of Depositary**

A depositary may resign at any time by delivering to us notice of its election to do so. In addition, we may at any time remove a depositary. Any resignation or removal will take effect when we appoint a successor depositary and it

accepts the appointment. We must appoint a successor depositary within 60 days after delivery of the notice of resignation or removal.

**Table of Contents**

**Miscellaneous**

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

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

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

**Table of Contents**

**DESCRIPTION OF WARRANTS**

*The following is a summary of the material terms of our warrants and the warrant agreement. Because it is a summary, it does not contain all of the information that may be important to you. If you want more information, you should read the forms of warrants and the warrant agreement which we will file as exhibits to the registration statement of which this prospectus is part. See Available Information. This summary also is subject to and qualified by reference to the descriptions of the particular terms of the securities described in the applicable prospectus supplement or other applicable offering materials and the terms of the applicable final warrant agreement and warrants.*

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

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

the title of the warrants

the offering price for the warrants

the aggregate number of the warrants

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

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

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

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

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

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

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

information relating to book-entry procedures

anti-dilution provisions of the warrants, if any

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

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

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

**Table of Contents**

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

**Table of Contents**

**DESCRIPTION OF CERTAIN PROVISIONS OF MARYLAND LAW AND EPR S  
DECLARATION OF TRUST AND BYLAWS**

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

**Trustees**

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

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

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

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

**Advance Notice of Trustee Nominations and New Business**

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

Under our Bylaws, a shareholder's notice of nominations for Trustee or business to be transacted at an annual meeting of shareholders must be delivered to our secretary at our principal office not later than the close of business on the 60th day and not earlier than the close of business on the 90th day prior to the first anniversary of the preceding year's annual meeting. In the event that the date of the annual meeting is advanced by more than 30 days or delayed by more than 60 days from the anniversary date of the preceding year's annual meeting, a shareholder's notice must be delivered to us not earlier than the close of business on the 90th day prior to such annual meeting and not later than the later of: (i) the 60th day prior to such annual meeting, or (ii) the 10th day following the day on which we first make a public



announcement of the date of such meeting. The public announcement of a postponement or of an adjournment of such annual meeting to a later date or time will not commence a new time period for the giving of a shareholder's notice. If the number of Trustees to be elected to our Board of Trustees is increased and we make no public announcement of such action at least 70 days prior to the first anniversary of the preceding year's annual meeting, a shareholder's notice also will be considered timely, but only with respect to nominees for any new positions created by such increase, if the notice is delivered to our secretary at

## **Table of Contents**

our principal office not later than the close of business on the 10th day immediately following the day on which such public announcement is made.

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

## **Meetings of Shareholders**

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

## **Liability and Indemnification of Trustees and Officers**

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

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

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

in the case of any criminal proceeding, the director or officer had reasonable cause to believe that the act or omission was unlawful.

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

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

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

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

## **Table of Contents**

predecessor of EPR in any of the capacities described in (a) or (b) above and to any employee or agent of EPR or its predecessors.

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

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

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

## **Shareholder Liability**

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

## **Actions by Shareholders by Written Consent**

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

## **Restrictions on Ownership and Transfer of Shares**

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

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

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

**Business Combinations**

The MGCL contains a provision which regulates business combinations with interested shareholders. This provision applies to Maryland real estate investment trusts like us. Under the MGCL, business combinations such as

## **Table of Contents**

mergers, consolidations, share exchanges and the like between a Maryland real estate investment trust and an interested shareholder or an affiliate of an interested shareholder are prohibited for five years after the most recent date on which the shareholder becomes an interested shareholder. Under the MGCL the following persons are deemed to be interested shareholders:

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

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

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

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

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

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

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

## **Control Share Acquisitions**

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

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

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

a majority or more of all voting power.

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

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

**Table of Contents**

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

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

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

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

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

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

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

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

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

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

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

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

the business combination provisions of the MGCL;

the control share acquisition provisions of the MGCL; and

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



**Table of Contents**

**U.S. FEDERAL INCOME TAX CONSIDERATIONS**

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

*This summary is based on current law, is for general information only and is not tax advice. The tax treatment to holders of our securities will vary depending on a holder's particular situation. This summary does not address all aspects of federal income taxation that may be relevant to a holder of securities in light of his or her personal investments or tax circumstances. Moreover, this summary does not address tax considerations applicable to certain types of holders subject to special treatment under the federal income tax laws (including, without limitation dealers or traders in securities, financial institutions, insurance companies and shareholders that hold our stock as part of a hedge, straddle, conversion transaction or other arrangement) except to the extent discussed under the subheadings *Taxation of Tax-Exempt Shareholders* and *Taxation of Non-U.S. shareholders*. In addition, the summary below does not consider the effect of any foreign, state, local or other tax laws that may be applicable to holders of our shares.*

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

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

**Taxation of the Company**

***General***

We elected to be taxed as a REIT under Sections 856 through 860 of the Code, commencing with our taxable year ended December 31, 1997. We believe we have been organized and have operated in a manner which allows us to qualify for taxation as a REIT under the Code commencing with our taxable year ended December 31, 1997. We intend to continue to operate in this manner.

In the opinion of Stinson Morrison Hecker LLP, we have qualified as a REIT under the Code for our taxable years ended December 31, 1997 through December 31, 2006, we are organized in conformity with the requirements for qualification as a REIT, and our current and proposed method of operation will enable us to meet the requirements for qualification and taxation as a REIT under the Code for our taxable year ending December 31, 2007 and for future taxable years. It must be emphasized that this opinion is based upon certain assumptions and representations as to factual matters made by us, including representations made by us in a representation letter and certificate provided by

our officers and our factual representations set forth herein and in registration statements previously filed with the SEC. Any variation from the factual statements set forth herein, in registration statements previously filed with the SEC, or in the representation letter and certificate we have provided to Stinson Morrison Hecker LLP may affect the conclusions upon which its opinion is based.

The opinions of Stinson Morrison Hecker LLP are based on existing law as contained in the Code and Treasury Regulations promulgated thereunder, in effect on the date of this prospectus, and the interpretations of such provisions and Treasury Regulations by the IRS and court decisions, all of which are subject to change either prospectively or retroactively, and to possibly different interpretations. Stinson Morrison Hecker LLP will have no

**Table of Contents**

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

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

If we qualify for taxation as a REIT, we generally will not be subject to federal corporate income taxes on our taxable income that is distributed currently to our shareholders. This treatment substantially eliminates the double taxation (once at the corporate level when earned and once again at the shareholders' level when distributed) that generally results from investment in an ordinary Subchapter C corporation. However, we will be subject to federal income tax as follows:

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

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

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

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

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

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

Seventh, if we acquire any asset from a corporation which is or has been a Subchapter C corporation in a transaction in which the basis of the asset in our hands is determined by reference to the basis of the asset in the hands of the

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

**Table of Contents**

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

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

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

***Requirements for Qualification as a REIT***

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

- (1) which is managed by one or more trustees or directors;
- (2) the beneficial ownership of which is evidenced by transferable shares or transferable certificates;
- (3) which would be taxable as a domestic corporation, but for Sections 856 through 859 of the Code;
- (4) which is neither a financial institution or an insurance company within the meaning of certain provisions of the Code;
- (5) the beneficial ownership of which is held by 100 or more persons;
- (6) not more than 50% in value of the outstanding shares of which is owned, actually or constructively, by five or fewer individuals (as defined in the Code to include certain entities) during the last half of each taxable year;
- (7) that meets certain other tests, described below, regarding the nature of its income and assets and the amount of its distributions; and
- (8) that elects to be a REIT, or has made such election for a previous year, and satisfies the applicable filing and administrative requirements to maintain qualification as a REIT.

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

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

**Table of Contents*****Ownership of Interests in Partnerships, Limited Liability Companies and Qualified REIT Subsidiaries and Taxable REIT Subsidiaries.***

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

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

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

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

***Asset Tests***

At the close of each quarter of our taxable year, we must satisfy four tests relating to the nature and diversification of our assets. First, at least 75% of the value of our total assets must be represented by (1) interests in real property, (2) interests in mortgages on real property, (3) share (or transferable certificates of beneficial interest) in other REIT s, (4) cash, (5) cash items (including receivables arising in the ordinary course of the REIT s business) and (6) government securities (as well as certain temporary investments in stock or debt instruments purchased with the proceeds of new capital raised by EPR for the one-year period beginning on the date of receipt of such new capital). Second, not more than 25% of our total assets may be represented by securities, other than those securities



**Table of Contents**

includable in the 75% asset test. Third, of the investments included in the 25% asset class, and except for investments in another REIT, a QRS or a TRS, the value of any one issuer's securities may not exceed 5% of the value of our total assets, and we may not own more than 10% of the total vote or value of the outstanding securities of any one issuer except, in the case of the 10% value test, securities satisfying the straight debt safe-harbor. Certain types of securities we may own are disregarded as securities solely for purposes of the 10% value test, including, but not limited to, any loan to an individual or an estate, any obligation to pay rents from real property and any security issued by a REIT. In addition, commencing January 1, 2005, solely for purposes of the 10% value test, the determination of our interest in the assets of a partnership or limited liability company in which we own an interest will be based on our proportionate interest in any securities issued by the partnership or limited liability company, excluding for this purpose certain securities described in the Code. Fourth, no more than 20% of the value of our assets may be comprised of securities of one or more TRSs.

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

Commencing with our taxable year beginning January 1, 2005, certain relief provisions may be available to us if we fail to satisfy the asset tests described above after the 30 day cure period. Under these provisions, we will be deemed to have met the 5% and 10% REIT asset tests if (i) the value of our nonqualifying assets does not exceed the lesser of (a) 1% of the total value of our assets at the end of the applicable quarter or (b) \$10,000,000, and (ii) we dispose of the nonqualifying assets or otherwise satisfy such tests within six months after the last day of the quarter in which the failure to satisfy the asset tests is discovered or the period of time prescribed by Treasury Regulations. For a failure that exceeds the de minimis thresholds described above which is due to reasonable cause and not willful neglect, we may avoid disqualification as a REIT under any of the asset tests, after the 30 day cure period, by taking steps including (i) disposing of sufficient nonqualifying assets, or taking other actions, which allow us to meet the asset test within six months after the last day of the quarter in which the failure to satisfy the asset tests is discovered or the period of time prescribed by Treasury Regulations, (ii) paying a tax equal to the greater of (a) \$50,000 or (b) the highest corporate tax rate multiplied by the net income generated by the nonqualifying assets and (iii) filing a schedule describing each asset that caused the failure in accordance with applicable Treasury Regulations.

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

***Gross Income Tests***

We must satisfy two gross income requirements for each taxable year to maintain our qualification as a REIT. First, in each taxable year at least 75% of our gross income must be qualifying income. Qualifying income generally includes (i) rents from real property (except as modified below), (ii) interest on obligations collateralized by mortgages on, or interests in, real property and real estate mortgages, other than gain from property held primarily for sale to customers in the ordinary course of our trade or business (dealer property), (iii) dividends or other distributions on shares in other REITs, as well as gain from the sale of those shares, (iv) abatements and refunds of real property taxes, (v) income from the operation, and gain from the sale, of property acquired at or in lieu of a foreclosure of the mortgage collateralized by such property (foreclosure property), (vi) commitment fees received for agreeing to make loans

collateralized by mortgages on real property or to purchase or lease real property, (vii) qualified temporary investment income, and (viii) gain from the sale or other disposition of a real estate asset which is not a prohibited transaction. Second, in each taxable year at least 95% of our gross income (excluding gross income from prohibited transactions) must be derived directly or indirectly from income from the

**Table of Contents**

real property investments described above or dividends, interest and gain from the sale or disposition of stock or securities (or from any combination of the foregoing).

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

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

We, or an actual or constructive owner of 10% or more of our capital shares, must not actually or constructively own 10% or more of the interests in the tenant, or, if the tenant is a corporation, 10% or more of the voting power or value of all classes of stock of the tenant. Rents received from any such tenant that is our TRS, however, will not be excluded from the definition of rents from real property as a result of this condition if at least 90% of the space at the property to which the rents relate is leased to third parties, and the rents paid by the TRS are comparable to rents paid by our other tenants for comparable space. Whether rents paid by a TRS are substantially comparable to rents paid by other tenants is determined at the time the lease with the TRS is entered into, extended, and modified, if such modification increases the rents due under such lease. Notwithstanding the foregoing, however, if a lease with a controlled taxable REIT subsidiary is modified and such modification results in an increase in the rents payable by such TRS, any such increase will not qualify as rents from real property. For purposes of this rule, a controlled taxable REIT subsidiary is a TRS in which we own stock possessing more than 50% of the voting power or more than 50% of the total value of outstanding stock of such TRS.

Rent attributable to personal property, leased in connection with a lease of real property, must not be greater than 15% of the total rent received under the lease. If this condition is not met, then the portion of the rent attributable to personal property will not qualify as rents from real property.

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

We do not intend to charge rent for any property that is based in whole or in part on the net income or profits of any person (except by reason of being based on a percentage of gross receipts or sales, as described above), and generally we do not intend to rent any personal property (other than in connection with a lease of real property where either less than 15% of the total rent is attributable to personal property or an amount immaterial to our operations is attributable to personal property). We directly perform services under certain of our leases, but such services are not rendered to the occupant of the property. Furthermore, these services are usual and customary management services provided by landlords renting space for occupancy in the geographic areas in which we own property. To the extent that the performance of any services provided by us would cause amounts received from our tenants to be excluded from rents from real property, we intend to hire a TRS, or an independent contractor from whom we derive no revenue, to perform such services.

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

From time to time, we may enter into hedging transactions with respect to one or more of our assets or liabilities. Our hedging activities may include entering into interest rate swaps, caps, and floors, options to purchase these items, and futures and forward contracts. Any income we derive from a hedging transaction will be nonqualifying income for purposes of the 75% gross income test. The term *hedging transaction*, as used above,

## **Table of Contents**

generally means any transaction we enter into in the normal course of our business primarily to manage the risk of interest rate changes or fluctuations with respect to borrowings made or to be made by us. To the extent that we hedge with other types of financial instruments, the income from those transactions is not likely to be treated as qualifying income for purposes of the gross income tests. We intend to structure any hedging transactions in a manner that does not jeopardize our status as a REIT.

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

- (i) our failure to meet these tests was due to reasonable cause and not due to willful neglect; and
- (ii) following our identification of the failure to meet the 75% or 95% gross income tests for any taxable year, we file a schedule with the IRS setting forth each item of our gross income for purposes of the 75% or 95% gross income tests for such taxable year in accordance with Treasury Regulations.

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

- (i) our failure to meet these tests was due to reasonable cause and not due to willful neglect;
- (ii) we attach a schedule of the sources of our income to our federal income tax return; and
- (iii) any incorrect information on the schedule was not due to fraud with intent to evade tax.

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

### ***Prohibited Transaction Income***

Any gain we realize on the sale of any property, other than foreclosure property, held primarily for sale to customers in the ordinary course of business, will be treated as income from a prohibited transaction that is subject to a 100% penalty tax. Whether property is held primarily for sale to customers in the ordinary course of a trade or business depends on all the facts and circumstances surrounding the particular transaction. We do not intend to engage in prohibited transactions.

### ***Penalty Tax***

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

respective incomes. If the IRS successfully makes such an assertion, we would be required to pay a 100% penalty tax on the excess of an arm's-length fee for tenant services over the amount actually paid.

***Annual Distribution Requirements***

To maintain our qualification as a REIT, we are required to distribute dividends (other than capital gain dividends) to our shareholders each year in an amount at least equal to (A) the sum of (i) 90% of our REIT taxable income (computed before deductions for dividends paid and excluding net capital gain) and (ii) 90% of our net

## **Table of Contents**

income (after tax), if any, from foreclosure property; minus (B) the excess of the sum of certain items of noncash income (i.e., income attributable to leveled stepped rents, original issue discount on purchase money debt, or a like-kind exchange that is later determined to be taxable) over 5% of REIT taxable income as described above.

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

We must pay the distributions described above in the taxable year to which they relate ( current distributions ), or in the following taxable year if they are either (i) declared before we timely file our tax return for such year and paid on or before the first regular dividend payment after such declaration ( throwback distributions ) or (ii) paid during January to shareholders of record in October, November or December of the prior year ( deemed current distributions ). To the extent that we do not distribute all of our net capital gain or distribute at least 90%, but less than 100%, of our REIT taxable income, as adjusted, we will be subject to tax thereon at regular ordinary and capital gain corporate tax rates. In addition, we would be subject to a 4% excise tax to the extent we fail to distribute during each calendar year (or in the case of distributions with declaration and record dates falling in the last three months of the calendar year, by the end of January immediately following such year) at least the sum of 85% of our REIT ordinary income for such year, 95% of our REIT capital gain income for the year (other than certain long-term capital gains for which we make a capital gains designation and on which we pay the tax), and any undistributed taxable income from prior periods. Any REIT taxable income and net capital gain on which a REIT-level corporate income tax is imposed for any year is treated as an amount distributed during that year for purposes of calculating the excise tax.

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

We generally expect that our REIT taxable income will be less than our cash flow because of the allowance of depreciation and other non-cash charges in computing REIT taxable income. Accordingly, we anticipate that we generally will have sufficient cash or liquid assets to enable us to satisfy the distribution requirements described above. However, from time to time, we may not have sufficient cash or other liquid assets to meet these distribution requirements because of timing differences between the actual receipt of income and actual payment of deductible expenses, and the inclusion of income and deduction of expenses in arriving at our taxable income. Further, it is possible that from time to time we may be allocated a share of net capital gain attributable to any depreciated property we sell that exceeds our allocable share of cash attributable to that sale. If these circumstances occur, we may need to arrange for borrowings, or may need to pay dividends in the form of taxable share dividends, in order to meet the distribution requirements.

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

### ***Failure to Qualify***

If we fail to qualify for taxation as a REIT in any taxable year, and the relief provisions do not apply, we will be subject to tax (including any applicable alternative minimum tax) on our taxable income at regular corporate rates. Distributions to shareholders in any year in which we fail to qualify will not be deductible by us, and we will not be

required to distribute any amounts to our shareholders. As a result, our failure to qualify as a REIT would reduce the cash available for distribution by us to our shareholders. In addition, if we fail to qualify as a REIT, all distributions to shareholders would be taxable as ordinary income to the extent of our current and accumulated earnings and profits, and, subject to certain limitations of the Code, corporate distributees may be eligible for the dividends received deduction. Unless entitled to relief under specific statutory provisions, we also would be disqualified from



## **Table of Contents**

taxation as a REIT for the four taxable years following the year during which we lost our qualification. It is not possible to state whether in all circumstances we would be entitled to this statutory relief.

Commencing with our taxable year beginning January 1, 2005, specified cure provisions are available to us in the event that we violate a provision of the Code that would result in our failure to qualify as a REIT. These cure provisions would reduce the instances that could lead to our disqualification as a REIT for violations due to reasonable cause and would instead generally require the payment of a monetary penalty.

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

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

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

- (i) is a citizen or resident of the United States;
- (ii) is a corporation, partnership or other entity classified as a corporation or partnership for United States federal income tax purposes, created or organized in or under the laws of the United States or any political subdivision thereof unless, in the case of a partnership, Treasury Regulations provide otherwise;
- (iii) is an estate the income of which is subject to United States federal income taxation regardless of its source; or
- (iv) is a trust whose administration is subject to the primary supervision of a United States court and which has one or more United States persons who have the authority to control all substantial decisions of the trust.

## ***Distributions Generally***

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

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

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

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

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

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

**Table of Contents**

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

***Capital Gain Distributions***

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

***Passive Activity Losses and Investment Interest Limitations***

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

***Retention of Net Long-Term Capital Gains***

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

- (i) include its proportionate share of our undistributed long-term capital gains in computing its long-term capital gains in its return for its taxable year in which the last day of our taxable year falls (subject to certain limitations as to the amount that is includable);
- (ii) be deemed to have paid the capital gains tax imposed on us on the designated amounts included in the U.S. shareholder's long-term capital gains;
- (iii) receive a credit or refund for the amount of tax deemed paid by it;

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

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

**Table of Contents**

***Dispositions of Shares***

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

The maximum tax rate for individual taxpayers on net long-term capital gains (i.e., the excess of net long-term capital gain over net short-term capital loss) is currently 15% for most assets. In the case of individuals whose ordinary income is taxed at a 10% or 15% rate, the 15% rate is reduced to 5%. Absent future legislation, the maximum tax rate on long-term capital gains will return to 20% in 2011.

***Redemption of Shares***

If we redeem any of our shares held by you, the tax treatment of the redemption must be determined based on facts at the time of redemption. In general, you will recognize gain or loss (as opposed to dividend income) equal to the difference between the amount received by you in the redemption and your adjusted tax basis in your shares redeemed if such redemption results in a complete termination of your interest in all classes of our equity securities, is a substantially disproportionate redemption or is not essentially equivalent to a dividend with respect to you. In applying these tests, you must take into account your ownership of all classes of our equity securities. You also must take into account any equity securities that are considered to be constructively owned by you.

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

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

***Backup Withholding***

We report to our U.S. shareholders and the IRS the amount of dividends paid during each calendar year, and the amount of any tax withheld. Under the backup withholding rules, a shareholder may be subject to backup withholding with respect to dividends paid at the fourth lowest rate of tax under Section 1(c) of the Code (which is currently 28%) unless the holder is a corporation or comes within certain other exempt categories and, when required, demonstrates this fact, or provides a taxpayer identification number, certifies as to no loss of exemption from backup withholding,

and otherwise complies with applicable requirements of the backup withholding rules. A U.S. shareholder that does not provide us with its correct taxpayer identification number may also be subject to penalties imposed by the IRS. Backup withholding is not an additional tax. Any amount paid as backup withholding will be creditable against the shareholders' income tax liability. In addition, we may be required to withhold a portion of capital gain distributions to any shareholders who fail to certify their non-foreign status. See Taxation of Non-U.S. shareholders.

## Table of Contents

### **Taxation of Tax-Exempt Shareholders**

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

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

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

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

### **Taxation of Non-U.S. Shareholders**

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

### ***Distributions***

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

effectively connected income exemption. In general, Non-U.S. shareholders will not be considered engaged in a U.S. trade or business (or in the case of an income tax treaty, as having a U.S. permanent establishment) solely by reason of their ownership of shares.

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



**Table of Contents**

Non-U.S. shareholder that is a corporation also may be subject to an additional branch profits tax at a 30% rate or such lower rate as may be specified by an applicable income tax treaty.

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

you file with us an IRS Form W-8BEN evidencing eligibility for a reduced treaty rate of withholding under an applicable treaty; or

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

***Return of Capital Distributions***

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

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

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

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

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

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

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

Generally, you will be taxed at the same capital gain rates applicable to U.S. shareholders (subject to applicable alternative minimum tax and a special alternative minimum tax in the case of nonresident alien individuals). We will be required to withhold and to remit 35% of any distribution to you that could be treated as a capital gain dividend. The amount withheld is creditable against your U.S. federal income tax liability. However, any distribution with

respect to any class of shares which is regularly traded on an established securities market located in the United States is not subject to FIRPTA, and therefore, not subject to the 35% U.S. withholding tax described above, if you did not own more than 5% of such class of shares at any time during the one-year period ending on the date of the distribution (the 5% Exception ). Instead, such distributions will be treated as ordinary dividend distributions.

## **Table of Contents**

### ***Retention of Net Capital Gains***

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

### ***Sale of Shares***

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

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

If gain on the sale or exchange of our shares were subject to taxation under FIRPTA, you would be subject to regular United States federal income tax with respect to such gain in the same manner as a taxable U.S. shareholder (subject to any applicable alternative minimum tax and a special alternative minimum tax in the case of nonresident alien individuals) and the purchaser of the shares would be required to withhold and remit to the IRS 10% of the purchase price.

### ***Backup Withholding Tax and Information Reporting***

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

Payments of dividends or of proceeds from the disposition of shares made to you may be subject to information reporting and backup withholding unless you establish an exemption, for example, by properly certifying your Non-U.S. shareholder status on an IRS Form W-8BEN or another appropriate version of IRS Form W-8. Notwithstanding the foregoing, backup withholding and information reporting may apply if either we have or our paying agent has actual knowledge, or reason to know, that you are a U.S. person.

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

**Possible Legislative or Other Actions Affecting Tax Consequences**

Prospective investors should recognize that the present U.S. federal income tax treatment of an investment in us may be modified by legislative, judicial or administrative action at any time, and that any such action may affect

**Table of Contents**

investments and commitments previously made. The rules dealing with U.S. federal income taxation are constantly under review by persons involved in the legislative process and by the IRS and the U.S. Treasury Department, resulting in revisions of regulations and revised interpretations of established concepts as well as statutory changes. Revisions in U.S. federal tax laws and interpretations thereof could adversely affect the tax consequences of an investment in us.

**State and Local Tax Consequences**

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

**PLAN OF DISTRIBUTION**

We may sell common shares, preferred shares, depositary shares, warrants and debt securities:

- through underwriters or dealers
- through agents
- directly to one or more purchasers, including our affiliates
- directly to shareholders
- or through any combination of these methods

We may effect the distribution of common shares, preferred shares, depositary shares, warrants and debt securities from time to time in one or more transactions either:

- at a fixed price or prices which may be changed
- at market prices prevailing at the time of sale
- at prices relating to those market prices
- at negotiated prices

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

- the plan of distribution
- the terms of the offering
- the names of any agents

the name or names of any managing underwriter or underwriters

the purchase price of the securities

the net proceeds from the sale of the securities

any delayed delivery arrangements

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

any initial public offering price

**Table of Contents**

any discounts or concessions allowed or reallocated or paid to dealers

any commissions paid to agents

If we use underwriters in the sale, they will buy the securities for their own account. The underwriters may then resell from time to time the securities in one or more transactions at a fixed public offering price, at any market price in effect at the time of sale or at a discount from any such market price. The obligations of the underwriters to purchase the securities will be subject to certain conditions. The underwriters will be obligated to purchase all the securities offered if they purchase any securities. Any discounts or concessions allowed or re-allowed or paid to dealers may be changed by the underwriters from time to time.

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

Some or all of the securities that we offer through this prospectus may be new issues of securities with no established trading market. Any underwriters to whom we sell securities for public offering and sale may make a market in those securities, but they will not be obligated to and they may discontinue any market making at any time without notice. Accordingly, we cannot assure you of the liquidity of, or continued trading markets for, any securities offered pursuant to this prospectus. If we use dealers in the sale, we will sell securities to those dealers as principals. The dealers may then resell the securities to the public at any market price or other prices to be determined by the dealers at the time of resale. If we use agents in the sale, unless we inform you otherwise in the prospectus supplement or other applicable offering materials they will use their reasonable best efforts to solicit purchasers for the period of their appointment. If we sell directly, no underwriters or agents would be involved. In the prospectus supplement or other applicable offering materials, we will name any agent involved in the offer or sale of the offered securities, and we will describe any commissions payable to the agent. We are not making an offer of securities in any state that does not permit such an offer.

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

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

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

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

### **LEGAL OPINIONS**

Stinson Morrison Hecker LLP will issue an opinion about the validity of the securities and EPR's qualification and taxation as a REIT under the Code. In addition, the description of EPR's taxation and qualification as a REIT



**Table of Contents**

under the caption "U.S. Federal Income Tax Considerations" is based upon the opinion of Stinson Morrison Hecker LLP. Underwriters, dealers or agents who we identify in a prospectus supplement or other applicable offering materials may have their counsel give an opinion on certain legal matters relating to the securities or the offering.

**EXPERTS**

Our consolidated financial statements and schedules as of December 31, 2006 and December 31, 2005 and for each of the years in the three-year period ended December 31, 2006 and management's assessment of the effectiveness of internal control over financial reporting as of December 31, 2006 have been incorporated by reference in this prospectus and in the registration statement of which this prospectus is a part, in reliance upon the reports of KPMG LLP, independent registered public accounting firm, incorporated by reference herein, and upon the authority of said firm as experts in accounting and auditing. The audit report covering the December 31, 2006 financial statements refers to a change in the method of quantifying errors in 2006.

**AVAILABLE INFORMATION**

We are subject to the informational requirements of the Exchange Act, and in accordance with those requirements, we file reports and other information with the SEC. The reports and other information can be inspected and copied at the public reference facilities maintained by the SEC at Room 1580, 100 F Street, N.E., Washington, D.C. 20549. Copies of this material can be obtained by mail from the Public Reference Section of the SEC at Room 1580, 100 F Street, N.E., Washington, D.C. 20549 at prescribed rates. The public may obtain information on the operation of the public reference room by calling the SEC at 1-800-SEC-0330. The SEC maintains an Internet website (<http://www.sec.gov>) that contains reports, proxy and information statements and other materials that are filed through the SEC Electronic Data Gathering Analysis and Retrieval (EDGAR) system. In addition, our common shares, Series A Preferred Shares, Series B Preferred Shares and Series C Preferred Shares are listed on the New York Stock Exchange and we are required to file reports, proxy and information statements and other information with the New York Stock Exchange. These documents can be inspected at the principal office of the New York Stock Exchange, 20 Broad Street, New York, New York 10005.

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

**Table of Contents**

*3,000,000 Shares*

**Entertainment Properties Trust**

**9.00% Series E cumulative convertible preferred shares  
liquidation preference \$25.00 per share**

**Prospectus Supplement**

**March 27, 2008**

**JP Morgan**

**Morgan Stanley**

**RBC Capital Markets**