

Sunstone Hotel Investors, Inc.  
Form 424B5  
June 24, 2014

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## CALCULATION OF REGISTRATION FEE

<b>Title of each Class of Securities to be Registered</b>	<b>Proposed Maximum Aggregate Offering Price</b>	<b>Amount of Registration Fee(1)</b>
Sunstone Hotel Investors, Inc. Common Stock, par value \$0.01 per share	\$302,220,000	\$38,925.94

(1) The registration fee is calculated in accordance with Rule 457(o) under the Securities Act of 1933, as amended, or the Securities Act, based on the proposed maximum aggregate offering price, and Rule 457(r) under the Securities Act. In accordance with Rules 456(b) and 457(r) under the Securities Act, the registrant initially deferred payment of all of the registration fee for Registration Statement No. 333-193311

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Filed pursuant to Rule 424(b)(5)  
Reg. Statement No. 333-193311

Prospectus supplement  
(To prospectus dated January 10, 2014)

***18,000,000 shares***

## **Sunstone Hotel Investors, Inc.**

### ***Common stock***

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We are offering 18,000,000 shares of our common stock.

Our common stock currently trades on the New York Stock Exchange, or the NYSE, under the symbol "SHO." On June 19, 2014, the last reported sale price of our common stock on the NYSE was \$14.87 per share. Shares of our common stock are subject to ownership and transfer limitations that must be applied to maintain our status as a real estate investment trust, or REIT.

**See "Risk Factors" on page S-6 of this prospectus supplement to obtain information about where to read certain factors you should consider before buying shares of our common stock.**

The underwriter has agreed to purchase shares of common stock from us at a price of \$14.60 per share which will result in approximately \$262.8 million of proceeds to us, before expenses. The underwriter may offer shares of common stock in transactions on the NYSE, in the over-the-counter market or through negotiated transactions at market prices or at negotiated prices. See "Underwriting."

Neither the Securities and Exchange Commission, or the SEC, nor any other state or federal regulatory body has approved or disapproved of these securities or passed upon the accuracy or adequacy of this prospectus supplement or the accompanying prospectus. Any representation to the contrary is a criminal offense.

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We have granted the underwriter a 30-day option to purchase up to 2,700,000 shares of common stock at a price of \$14.60.

The underwriter expects to deliver the shares in New York, New York on or about June 25, 2014.

*Sole Book-Running Manager*

**J.P. Morgan**

The date of this Prospectus Supplement is June 20, 2014.

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## About this prospectus supplement

You should read this prospectus supplement along with the accompanying prospectus, as well as the information incorporated by reference herein and therein, carefully before you invest in our common stock. These documents contain important information that you should consider before making your investment decision. This prospectus supplement and the accompanying prospectus contain the terms of this offering of common stock. The accompanying prospectus contains information about our securities generally, some of which does not apply to the common stock covered by this prospectus supplement. This prospectus supplement may add, update or change information contained in or incorporated by reference in the accompanying prospectus. If the information in this prospectus supplement is inconsistent with any information contained in or incorporated by reference in the accompanying prospectus, the information in this prospectus supplement will apply and will supersede the inconsistent information contained in or incorporated by reference in the accompanying prospectus.

It is important for you to read and consider all of the information contained in this prospectus supplement and the accompanying prospectus before making your investment decision. You should also read and consider the additional information incorporated by reference in this prospectus supplement and the accompanying prospectus before making your investment decision. See "Incorporation of Certain Information by Reference" in this prospectus supplement.

**You should rely only on the information contained in or incorporated by reference in this prospectus supplement, the accompanying prospectus and any related free writing prospectus required to be filed with the Securities and Exchange Commission, or the SEC. Neither we nor the underwriter has authorized any other person to provide you with additional or different information. If anyone provides you with additional or different information, you should not rely on it. Neither we nor the underwriter is making an offer to sell the common stock in any jurisdiction where the offer or sale is not permitted.**

You should assume that the information appearing in this prospectus supplement, the accompanying prospectus, any such free writing prospectus and the documents incorporated by reference herein and therein is accurate only as of their respective dates. Our business, financial condition, results of operations and prospects may have changed since those dates.

Unless this prospectus supplement otherwise indicates or the context otherwise requires, the terms "our," "us," "we" and the "Company" as used in this prospectus supplement refer to Sunstone Hotel Investors, Inc. and its consolidated subsidiaries. We also use the term "Operating Partnership" to specifically refer to Sunstone Hotel Partnership, LLC and its consolidated subsidiaries in cases where it is important to distinguish between us and the Operating Partnership. Unless otherwise expressly stated or the context otherwise requires, all information in this prospectus supplement assumes that the option granted to the underwriter is not exercised in whole or in part.

This prospectus supplement and the accompanying prospectus contain registered trademarks that are the exclusive property of their respective owners, which are companies other than us. None of the owners of these trademarks, their affiliates or any of their respective officers, directors, agents or employees, has or will have any responsibility or liability for any information contained in this prospectus or the accompanying prospectus supplement.

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## **Incorporation of certain information by reference**

The SEC's rules allow us to incorporate by reference information into this prospectus supplement and the accompanying prospectus. This means that we can disclose important information to you by referring you to another document. Any information referred to in this way is considered part of this prospectus supplement and the attached prospectus from the date we file that document. Any reports filed by us with the SEC after the date of this prospectus supplement and before the date that the offering of the securities by means of this prospectus supplement is terminated will automatically update and, where applicable, supersede any information contained, or incorporated by reference, in this prospectus supplement or in the accompanying prospectus.

We incorporate by reference into this prospectus supplement and the accompanying prospectus:

our Annual Report on Form 10-K for the fiscal year ended December 31, 2013, filed with the SEC on February 25, 2014 (including information specifically incorporated by reference therein from our Proxy Statement for our 2014 Annual Meeting filed with the SEC on March 25, 2014);

our Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2014, filed with the SEC on May 7, 2014;

our Current Reports on Form 8-K filed with the SEC on February 20, 2014 (but only with respect to Items 5.02, 8.01 and "filed" portions of 9.01) and May 5, 2014 (but only with respect to Items 5.02, 5.07 and "filed" portions of 9.01), and our Current Report on Form 8-K/A filed with the SEC on January 13, 2014;

the description of the common stock included in our registration statement on Form 8-A, filed with the SEC on October 7, 2004, together with any amendment or report filed with the SEC for the purpose of updating such description; and

all documents we file with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended, or the Exchange Act, on or after the date of this prospectus supplement and before the termination of this offering.

We are not, however, incorporating by reference any documents or portions thereof, whether specifically listed above or filed in the future, that are not deemed "filed" with the SEC. The documents incorporated by reference in this prospectus supplement and the accompanying prospectus and, in particular, our Annual Report on Form 10-K for the fiscal year ended December 31, 2013, filed with the SEC on February 25, 2014, contain important information about us.

You should read "Incorporation of Certain Information by Reference" in the accompanying prospectus for information about how to obtain the documents incorporated by reference.

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## Summary

*The information below is a summary of the more detailed information included elsewhere in, or incorporated by reference in, this prospectus supplement. You should read carefully the following summary in conjunction with the more detailed information contained in this prospectus supplement, the accompanying prospectus and the information incorporated by reference herein and therein. This summary is not complete and does not contain all of the information you should consider before purchasing shares of our common stock. You should carefully read the "Risk Factors" section on page S-6 of this prospectus supplement to determine whether an investment in our common stock is appropriate for you.*

### **Sunstone Hotel Investors, Inc.**

#### *Our Company*

We were incorporated in Maryland on June 28, 2004. We are a real estate investment trust, or REIT, under the Internal Revenue Code of 1986, as amended, or the Code. As of March 31, 2014, we had interests in 29 hotels held for investment, or the 29 hotels. The 29 hotels are comprised of 13,760 rooms, located in 12 states and in Washington, D.C.

Our primary business is to acquire, own, asset manage and renovate full-service hotel properties in the United States. As part of our ongoing portfolio management strategy, we may also sell certain hotel properties from time to time. All but one (the Boston Park Plaza) of the 29 hotels are operated under nationally recognized brands, such as Marriott, Hilton, Hyatt, Fairmont and Sheraton. Our portfolio primarily consists of upper upscale hotels in the United States. As of March 31, 2014, our 29 hotels included two luxury hotels and 27 upscale or upper upscale hotels. The classifications luxury, upper upscale and upscale are defined by Smith Travel Research, an independent provider of lodging industry statistical data. Smith Travel Research classifies hotel chains into the following segments: luxury; upper upscale; upscale; upper midscale; midscale; economy; and independent.

Our hotels are operated by third-party managers pursuant to long-term management agreements (or, in the case of the Hyatt Regency San Francisco, pursuant to an operating lease with economic arrangements that follow a typical management fee structure) with our subsidiary, Sunstone Hotel TRS Lessee, Inc., or its subsidiaries. As of March 31, 2014, our third-party managers included: subsidiaries of Marriott International, Inc. or Marriott Hotel Services, Inc., managers of 10 of the Company's 29 hotels; Interstate Hotels & Resorts, Inc., manager of six of the Company's 29 hotels; Highgate Hotels L.P. and an affiliate, manager of four of the Company's 29 hotels; Davidson Hotels & Resorts, Hilton Worldwide and Hyatt Corporation, each a manager of two of the Company's 29 hotels; and Crestline Hotels & Resorts, Dimension Development Company and Fairmont Hotels & Resorts (U.S.), each a manager of one of the Company's 29 hotels. In addition, we own BuyEfficient, LLC, an electronic purchasing platform that allows members to procure food, operating supplies, furniture, fixtures and equipment.

Our headquarters are located at 120 Vantis, Suite 350, Aliso Viejo, California 92656, and our telephone number is (949) 330-4000.

### **Recent developments**

#### *Acquisition of Wailea Beach Marriott Resort and Spa*

On June 19, 2014, we announced that we entered into a definitive agreement to acquire the 544-room Wailea Beach Marriott Resort and Spa located in Honouaulea, Hawaii for a net purchase price of approximately \$325.7 million, or approximately \$598,600 per key, inclusive of the hotel's furniture, fixtures

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and equipment reserve, which was included in the purchase price. The acquisition is expected to be funded with approximately \$270.0 million of cash and \$60.0 million of shares of our common stock, or "the stock consideration." The stock consideration will consist of 4,034,970 shares of our common stock, which was determined by dividing \$60.0 million by \$14.87, the last reported sale price of our common stock on the NYSE on June 19, 2014. We have agreed to register for resale the shares comprising the stock consideration under the Securities Act of 1933, as amended, or the Securities Act, and expect to file the prospectus supplement for such resale upon the closing of the acquisition. The acquisition is expected to close in the third quarter of 2014, subject to customary closing requirements and conditions. There can be no assurance that the acquisition will close, or if it does, when the closing will occur. We expect to use a portion of the net proceeds from this offering for this acquisition, however, the contemplated purchase is not dependent on this offering and we expect to consummate the offering whether or not we proceed with this acquisition. We will not incur or assume any debt in connection with the proposed acquisition.

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**The offering**

**Common stock offered by us** 18,000,000 shares

**Total shares of common stock  
outstanding immediately  
after this offering(1)** 201,396,659 shares

**Use of Proceeds** The estimated net proceeds of approximately \$262.3 million from this offering (or approximately \$301.7 million if the underwriter's option is exercised in full), after deducting underwriting discounts and commissions and estimated offering expenses, will be used (i) to finance a portion of the potential acquisition of the Wailea Beach Marriott Resort and Spa described under the caption " Recent Developments," (ii) for other potential future acquisitions and (iii) for general corporate purposes, including working capital and capital investment in our portfolio. See "Use of Proceeds."

**Distribution Policy** To maintain our qualification as a REIT, we intend to make distributions to our stockholders of at least 90% of our REIT taxable income (which excludes net capital gains and does not necessarily equal net income as calculated in accordance with generally accepted accounting principles). Our distributions may be comprised of cash, or a combination of cash and stock as permitted by the Code.

**New York Stock Exchange  
symbol** SHO

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(1) This number is based on 183,396,659 shares of our common stock outstanding at June 18, 2014, and does not include:

6,537,128 additional shares of our common stock available for future issuance under our 2004 long-term incentive plan, and 200,000 shares issuable in respect of stock options outstanding as of such date;

any shares that may be issued as part of the stock consideration described under the caption " Recent Developments"; or

any exercise of the underwriter's option.



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**Risk factors**

See the information under the heading "Risk Factors" beginning on page 11 of our Annual Report on Form 10-K for the fiscal year ended December 31, 2013, filed with the SEC on February 25, 2014, which information is incorporated by reference into this prospectus supplement, and other information included in this prospectus supplement, the accompanying prospectus and reports we file from time to time with the SEC that we incorporate by reference herein for a discussion of factors you should carefully consider before deciding to invest in shares of our common stock.

*There can be no assurance that the acquisition of the Wailea Beach Marriott Resort and Spa that we expect to finance in part using the net proceeds from this offering will close and, if the acquisition does not close, you will be unable to evaluate the economic merits of any other investments that we may make using the net proceeds from this offering.*

We have entered into a definitive agreement to purchase the Wailea Beach Marriott Resort and Spa that we expect to finance in part using the net proceeds from this offering. The definitive agreement is subject to customary closing requirements and conditions and there can be no assurance that such acquisition will close. If the acquisition is not consummated, we will have broad discretion with respect to the use of the net proceeds of this offering and cannot assure you that they will be used in a manner that is accretive to stockholders or the timing thereof.

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## **Use of proceeds**

We estimate that the net proceeds to us from this offering will be approximately \$262.3 million, after deducting underwriting discounts and commissions and estimated offering expenses (or approximately \$301.7 million if the underwriter's option is exercised in full, after deducting underwriting discounts and commissions and estimated offering expenses). The net proceeds from this offering will be contributed to the Operating Partnership in exchange for additional membership units of the Operating Partnership. The Operating Partnership will subsequently use the net proceeds from this offering (i) to finance a portion of the potential acquisition of the Wailea Beach Marriott Resort and Spa described under the caption "Summary Recent Developments," (ii) for other potential future acquisitions, and (iii) for general corporate purposes, including working capital and capital investment in our portfolio. Pending such uses, we will invest the net proceeds in money market funds or other investment securities.

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## Special note about forward-looking statements

This prospectus supplement contains certain forward-looking statements within the meaning of Section 27A of the Securities Act and Section 21E of the Exchange Act. The Company intends such forward-looking statements to be covered by the safe harbor provisions for forward-looking statements contained in the Private Securities Litigation Reform Act of 1995 and includes this statement for purposes of complying with these safe harbor provisions. Forward-looking statements, which are based on certain assumptions and describe the Company's future plans, strategies and expectations, are generally identifiable by use of the words "believe," "expect," "intend," "anticipate," "estimate," "project" or similar expressions. You should not rely on forward-looking statements because they involve known and unknown risks, uncertainties and other factors that are, in some cases, beyond the Company's control and which could materially affect actual results, performances or achievements. Factors that may cause actual results to differ materially from current expectations include, but are not limited to the risks outlined in detail under the heading "Risk Factors" in our Annual Report on Form 10-K, filed with the SEC on February 25, 2014, and under the caption "Risk Factors" on page S-6 of this prospectus supplement, and in the reports we file from time to time with the SEC and incorporated by reference herein, including, but not limited to, the following factors:

general economic and business conditions affecting the lodging and travel industry, internationally, nationally and locally, including a U.S. recession or global economic slowdown;

our need to operate as a REIT and comply with other applicable laws and regulations;

rising hotel operating expenses, including the impact of the Patient Protection and Affordable Care Act;

relationships with and requirements of franchisors and hotel brands;

relationships with and the performance of the managers of our hotels;

the ground, air or building leases for 10 of the 29 hotels held for investment as of March 31, 2014;

our ability to complete acquisitions and dispositions, including the acquisition of the Wailea Beach Marriott Resort and Spa;

deploying the net proceeds of this offering if we do not acquire the Wailea Beach Marriott Resort and Spa as contemplated;

competition for the acquisition of hotels;

performance of hotels after they are acquired;

competition from hotels not owned by us;

the need for renovations and other capital expenditures for our hotels;

the impact of renovations on hotel operations and delays in renovations or other developments;

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changes in our business strategy or acquisition or disposition plans;

our level of debt, including secured, unsecured, fixed and variable rate debt;

financial and other covenants in our debt and preferred stock;

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our hotels and related goodwill may become impaired, or our hotels and related goodwill which have previously become impaired may become further impaired, in the future, which may adversely affect our financial condition and results of operations;

volatility in the capital markets and the effect on lodging demand or our ability to obtain capital on favorable terms or at all;

potential adverse tax consequences in the event that our operating leases with our taxable REIT subsidiaries are not held to have been made on an arm's-length basis;

system security risks, data protection breaches, cyber-attacks and systems integration issues; and

other events beyond our control.

Except as otherwise required by the federal securities laws, the Company disclaims any obligations or undertaking to publicly release any updates or revisions to any forward-looking statement contained herein (or elsewhere) to reflect any change in the Company's expectations with regard thereto or any change in events, conditions or circumstances on which any such statement is based.

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## Underwriting

We and the underwriter named below have entered into an underwriting agreement with respect to the shares being offered. Subject to certain conditions, the underwriter has agreed to purchase all of the shares being offered. J.P. Morgan Securities LLC will be the underwriter.

The underwriter is committed to take and pay for all of the shares being offered, if any are taken, other than the shares covered by the option described below unless and until this option is exercised.

We have granted the underwriter a 30-day option to purchase up to 2,700,000 shares of common stock at a price of \$14.60.

The underwriter proposes to offer the shares of common stock offered hereby from time to time for sale in one or more transactions on the NYSE, in the over-the-counter market, through negotiated transactions or otherwise at market prices prevailing at the time of sale, at prices related to prevailing market prices or at negotiated prices, subject to receipt and acceptance by it and subject to its right to reject any order in whole or in part. The underwriter may effect such transactions by selling the shares of common stock to or through dealers and such dealers may receive compensation in the form of discounts, concessions or commissions from the underwriter and/or purchasers of shares of common stock for whom they may act as agents or to whom they may sell as principal. The difference between the price at which the underwriter purchases shares and the price at which the underwriter resells such shares may be deemed underwriting compensation.

We estimate that our portion of the total expenses of this offering, excluding underwriting discounts and commissions, will be approximately \$500,000.

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

For a period of 30 days after the date of this prospectus supplement, we have agreed that we will not, without the prior written consent of the underwriter, directly or indirectly, issue, offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase or otherwise transfer or dispose of any shares of our common stock or any securities convertible into or exercisable or exchangeable for our common stock or file any registration statement under the Securities Act (other than a registration statement on Form S-8) with respect to any of the foregoing, or enter into any swap or any other agreement or any transaction that transfers, in whole or in part, directly or indirectly, the economic consequence of ownership of our common stock.

The restrictions described in the preceding paragraph do not apply to:

the shares of our common stock to be sold in the offering described in this prospectus supplement;

any shares that may be issued as part of the stock consideration described under the caption "Summary Recent Developments" (including the filing of a prospectus supplement for the resale of such shares);

issuances of shares of our common stock or common units by the Operating Partnership in connection with the acquisition of hotels and related assets, provided that the recipient of such shares of our common stock or securities convertible into or exercisable or exchangeable for shares of our common

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stock shall be subject to the restrictions described above for a period expiring no earlier than 30 days after the date of this prospectus supplement; and

at any time 15 days after the date of this prospectus supplement, dispositions of shares of our common stock pursuant to the vesting of restricted stock awarded prior to the date of this prospectus supplement and, if applicable, previously reported on Form 4, solely to cover payment of the tax withholding payments due upon vesting with proceeds up to the amount of such tax withholding payments made in connection with such vesting.

For a period of 30 days after the date of this prospectus supplement, our officers and directors have agreed that they will not, without the prior written consent of the underwriter, directly or indirectly, offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant for the sale of or otherwise transfer or dispose of any shares of our common stock or any securities convertible into or exercisable or exchangeable for our common stock or file any registration statement under the Securities Act with respect to any of the foregoing, or enter into any swap or any other agreement or any transaction that transfers, in whole or in part, directly or indirectly, the economic consequence of ownership of our common stock.

The restrictions described in the preceding paragraph do not apply to:

transactions relating to shares of our common stock or other securities acquired in open market transactions after the completion of the offering described in this prospectus supplement, provided that no filing by any party under the Exchange Act shall be required or shall be voluntarily made in connection with subsequent sales of our common stock or other securities acquired in such open market transactions;

transfers of shares of our common stock or any security convertible into our common stock as a bona fide gift or gifts or distributions of shares of our common stock or any security convertible into our common stock to limited partners or stockholders of our officers and directors, provided that (i) each donee or distributee shall be subject to the restrictions described above and (ii) the transferor shall not be required to, and shall not voluntarily, file a report under Section 16(a) of the Exchange Act reporting a reduction in beneficial ownership of shares of our common stock during the restricted period referred to above; and

at any time 15 days after the date of this prospectus supplement, dispositions of shares of our common stock pursuant to the vesting of restricted stock awarded prior to the date of this prospectus supplement and, if applicable, previously reported on Form 4, solely to cover payment of the tax withholding payments due upon vesting with proceeds up to the amount of such tax withholding payments made in connection with such vesting.

In connection with this offering, the underwriter may purchase and sell shares of our common stock in the open market. These transactions may include short sales and stabilizing transactions. Short sales involve syndicate sales of common stock in excess of the number of shares to be purchased by the underwriter in this offering, which creates a syndicate short position. Stabilizing transactions consist of bids for or purchases of shares in the open market while this offering is in progress.

Any of these activities may have the effect of preventing or retarding a decline in the market price of the common stock. They may also cause the price of the common stock to be higher than the price that would otherwise exist in the open market in the absence of these transactions. The underwriter may conduct

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these transactions on the NYSE or in the over-the-counter market, or otherwise. If the underwriter commences any of these transactions, they may discontinue them at any time.

The underwriter and its affiliates are full service financial institutions engaged in various activities, which may include sales and trading, commercial and investment banking, advisory, investment management, investment research, principal investment, hedging, market making, brokerage and other financial and non-financial activities and services. The underwriter and its affiliates have provided, and may in the future provide, a variety of these services to the issuer and to persons and entities with relationships with the issuer, for which they received or will receive customary fees and expenses. An affiliate of the underwriter is the syndication agent under our credit facility and has provided an approximately \$38.3 million commitment thereunder.

In the ordinary course of their various business activities, the underwriter and its affiliates, officers, directors and employees may purchase, sell or hold a broad array of investments and actively trade securities, derivatives, loans, commodities, currencies, credit default swaps and other financial instruments for their own account and for the accounts of their customers, and such investment and trading activities may involve or relate to assets, securities and/or instruments of the issuer (directly, as collateral securing other obligations or otherwise) and/or persons and entities with relationships with the issuer. The underwriter and its affiliates may also communicate independent investment recommendations, market color or trading ideas and/or publish or express independent research views in respect of such assets, securities or instruments and may at any time hold, or recommend to clients that they should acquire, long and/or short positions in such assets, securities and instruments.

**Notice to Prospective Investors in the European Economic Area**

In relation to each member state of the European Economic Area that has implemented the Prospectus Directive (each, a relevant member state), with effect from and including the date on which the Prospectus Directive is implemented in that relevant member state (the relevant implementation date), an offer of shares described in this prospectus supplement may not be made to the public in that relevant member state prior to the publication of a prospectus in relation to the shares that has been approved by the competent authority in that relevant member state or, where appropriate, approved in another relevant member state and notified to the competent authority in that relevant member state, all in accordance with the Prospectus Directive, except that, with effect from and including the relevant implementation date, an offer of securities may be offered to the public in that relevant member state at any time:

to any legal entity that is authorized or regulated to operate in the financial markets or, if not so authorized or regulated, whose corporate purpose is solely to invest in securities;

to any legal entity that has two or more of (1) an average of at least 250 employees during the last financial year; (2) a total balance sheet of more than €43,000,000 and (3) an annual net turnover of more than €50,000,000, as shown in its last annual or consolidated accounts;

to fewer than 100 natural or legal persons (other than qualified investors as defined below) subject to obtaining the prior consent of the representatives for any such offer; or

in any other circumstances that do not require the publication of a prospectus pursuant to Article 3 of the Prospectus Directive.



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Each purchaser of shares described in this prospectus supplement located within a relevant member state will be deemed to have represented, acknowledged and agreed that it is a "qualified investor" within the meaning of Article 2(1)(e) of the Prospectus Directive.

For purposes of this provision, the expression an "offer to the public" in any relevant member state means the communication in any form and by any means of sufficient information on the terms of the offer and the securities to be offered so as to enable an investor to decide to purchase or subscribe the securities, as the expression may be varied in that member state by any measure implementing the Prospectus Directive in that member state, and the expression "Prospectus Directive" means Directive 2003/71/EC and includes any relevant implementing measure in each relevant member state.

The sellers of the shares have not authorized and do not authorize the making of any offer of shares through any financial intermediary on their behalf, other than offers made by the underwriter with a view to the final placement of the shares as contemplated in this prospectus supplement. Accordingly, no purchaser of the shares, other than the underwriter, is authorized to make any further offer of the shares on behalf of the sellers or the underwriter.

**Notice to Prospective Investors in the United Kingdom**

This prospectus supplement and the accompanying prospectus are only being distributed to, and are only directed at, persons in the United Kingdom that are qualified investors within the meaning of Article 2(1)(e) of the Prospectus Directive that are also (i) investment professionals falling within Article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005, or the Order, or (ii) high net worth entities, and other persons to whom it may lawfully be communicated, falling within Article 49(2)(a) to (d) of the Order (each such person being referred to as a "relevant person"). This prospectus supplement and its contents are confidential and should not be distributed, published or reproduced (in whole or in part) or disclosed by recipients to any other persons in the United Kingdom. Any person in the United Kingdom that is not a relevant person should not act or rely on this document or any of its contents.

**Notice to Prospective Investors in France**

Neither this prospectus supplement nor any other offering material relating to the shares described in this prospectus supplement has been submitted to the clearance procedures of the Autorité des Marchés Financiers or of the competent authority of another member state of the European Economic Area and notified to the Autorité des Marchés Financiers. The shares have not been offered or sold and will not be offered or sold, directly or indirectly, to the public in France. Neither this prospectus supplement nor any other offering material relating to the shares has been or will be:

released, issued, distributed or caused to be released, issued or distributed to the public in France; or

used in connection with any offer for subscription or sale of the shares to the public in France.

Such offers, sales and distributions will be made in France only:

to qualified investors (investisseurs qualifiés) and/or to a restricted circle of investors (cercle restreint d'investisseurs), in each case investing for their own account, all as defined in, and in accordance with articles L.411-2, D.411-1, D.411-2, D.734-1, D.744-1, D.754-1 and D.764-1 of the French Code monétaire et financier;

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to investment services providers authorized to engage in portfolio management on behalf of third parties; or

in a transaction that, in accordance with article L.411-2-II-1-or-2-or 3 of the French Code monétaire et financier and article 211-2 of the General Regulations (Règlement Général) of the Autorité des Marchés Financiers, does not constitute a public offer (appel public à l'épargne).

The shares may be resold directly or indirectly, only in compliance with articles L.411-1, L.411-2, L.412-1 and L.621-8 through L.621-8-3 of the French Code monétaire et financier.

### **Notice to Prospective Investors in Switzerland**

This prospectus supplement as well as any other material relating to the shares which are the subject of the offering contemplated by this prospectus supplement do not constitute an issue prospectus pursuant to Articles 652a and/or 1156 of the Swiss Code of Obligations. The shares will not be listed on the SIX Swiss Exchange and, therefore, the documents relating to the shares, including, but not limited to, this prospectus supplement, do not claim to comply with the disclosure standards of the listing rules of the SIX Swiss Exchange and corresponding prospectus schemes annexed to the listing rules of the SIX Swiss Exchange.

The shares are being offered in Switzerland by way of a private placement, i.e., to a small number of selected investors only, without any public offer and only to investors who do not purchase the shares with the intention to distribute them to the public. The investors will be individually approached by the issuer from time to time.

This prospectus supplement as well as any other material relating to the shares is personal and confidential and do not constitute an offer to any other person. This prospectus supplement may only be used by those investors to whom it has been handed out in connection with this offering described herein and may neither directly nor indirectly be distributed or made available to other persons without express consent of the issuer. It may not be used in connection with any other offer and shall in particular not be copied and/or distributed to the public in (or from) Switzerland.

### **Notice to Prospective Investors in the Dubai International Financial Centre**

This prospectus supplement relates to an exempt offer in accordance with the Offered Securities Rules of the Dubai Financial Services Authority, or the DFSA. This prospectus supplement is intended for distribution only to persons of a type specified in the Offered Securities Rules of the DFSA. It must not be delivered to, or relied on by, any other person. The DFSA has no responsibility for reviewing or verifying any documents in connection with exempt offers. The DFSA has not approved this prospectus supplement nor taken steps to verify the information set forth herein and has no responsibility for the prospectus supplement. The shares may be illiquid and/or subject to restrictions on their resale. Prospective purchasers of the shares offered should conduct their own due diligence on the shares. If you do not understand the contents of this prospectus supplement you should consult an authorized financial adviser.

### **Notice to Prospective Investors in Hong Kong**

The shares may not be offered or sold in Hong Kong by means of any document other than (i) in circumstances which do not constitute an offer to the public within the meaning of the Companies Ordinance (Cap. 32, Laws of Hong Kong), or (ii) to "professional investors" within the meaning of the Securities and Futures Ordinance (Cap. 571, Laws of Hong Kong) and any rules made thereunder, or (iii) in

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other circumstances which do not result in the document being a "prospectus" within the meaning of the Companies Ordinance (Cap. 32, Laws of Hong Kong) and no advertisement, invitation or document relating to the shares may be issued or may be in the possession of any person for the purpose of issue (in each case whether in Hong Kong or elsewhere), which is directed at, or the contents of which are likely to be accessed or read by, the public in Hong Kong (except if permitted to do so under the laws of Hong Kong) other than with respect to shares which are or are intended to be disposed of only to persons outside Hong Kong or only to "professional investors" within the meaning of the Securities and Futures Ordinance (Cap. 571, Laws of Hong Kong) and any rules made thereunder.

**Notice to Prospective Investors in Australia**

No prospectus or other disclosure document (as defined in the Corporations Act 2001 (Cth) of Australia, or the Corporations Act, in relation to the shares of common stock has been or will be lodged with the Australian Securities & Investments Commission, or the ASIC. This document has not been lodged with ASIC and is only directed to certain categories of exempt persons. Accordingly, if you receive this document in Australia:

(a) you confirm and warrant that you are either:

(i) a "sophisticated investor" under section 708(8)(a) or (b) of the Corporations Act;

(ii) a "sophisticated investor" under section 708(8)(c) or (d) of the Corporations Act and that you have provided an accountant's certificate to us which complies with the requirements of section 708(8)(c)(i) or (ii) of the Corporations Act and related regulations before the offer has been made;

(iii) a person associated with the company under section 708(12) of the Corporations Act; or

(iv) a "professional investor" within the meaning of section 708(11)(a) or (b) of the Corporations Act, and to the extent that you are unable to confirm or warrant that you are an exempt sophisticated investor, associated person or professional investor under the Corporations Act any offer made to you under this document is void and incapable of acceptance; and

(b) you warrant and agree that you will not offer any of the shares of common stock for resale in Australia within 12 months of that shares of common stock being issued unless any such resale offer is exempt from the requirement to issue a disclosure document under section 708 of the Corporations Act.

**Notice to Prospective Investors in Chile**

The shares are not registered in the Securities Registry (Registro de Valores) or subject to the control of the Chilean Securities and Exchange Commission (Superintendencia de Valores y Seguros de Chile). This prospectus supplement and other offering materials relating to the offer of the shares do not constitute a public offer of, or an invitation to subscribe for or purchase, the shares in the Republic of Chile, other than to individually identified purchasers pursuant to a private offering within the meaning of Article 4 of the Chilean Securities Market Act (Ley de Mercado de Valores) (an offer that is not "addressed to the public at large or to a certain sector or specific group of the public").

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## **Legal matters**

The validity of the shares of common stock offered hereby and certain other matters relating to Maryland law will be passed on by Venable LLP, Baltimore, Maryland. Latham & Watkins LLP, Los Angeles, California, is our counsel and O'Melveny & Myers LLP, San Francisco, California, is counsel to the underwriter.

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**Experts**

The consolidated financial statements of Sunstone Hotel Investors, Inc. appearing in Sunstone Hotel Investors, Inc.'s Annual Report (Form 10-K) for the year ended December 31, 2013 (including schedules appearing therein), and the effectiveness of Sunstone Hotel Investors, Inc.'s internal control over financial reporting as of December 31, 2013 have been audited by Ernst & Young LLP, independent registered public accounting firm, as set forth in their reports thereon included therein, and incorporated herein by reference. Such consolidated financial statements are incorporated herein by reference in reliance upon such reports given on the authority of such firm as experts in accounting and auditing.

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## **SUNSTONE HOTEL INVESTORS, INC.**

### **Common Stock Preferred Stock Depositary Shares**

Sunstone Hotel Investors, Inc., or the Company, from time to time may offer to sell common stock and preferred stock, either separately or represented by depositary shares, in one or more offerings. The preferred stock may be convertible into or exercisable or exchangeable for common or preferred stock or other securities of the Company or debt or equity securities of one or more other entities. The common stock of the Company is listed on the New York Stock Exchange, or NYSE, and trades under the ticker symbol "SHO." On January 9, 2014, the last reported sales price of our common stock on the NYSE was \$13.31 per share.

The Company may offer and sell any combination of these securities, in one or more offerings, to or through one or more underwriters, dealers and agents, or directly to purchasers, on a continuous or delayed basis. The securities also may be offered hereunder by securityholders, if so provided in a prospectus supplement hereto. We will provide specific information about any selling securityholders in one or more supplements to this prospectus.

This prospectus describes some of the general terms that may apply to certain of these securities. The specific terms of any securities to be offered will be described in a supplement to this prospectus.

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

**Prospectus dated January 10, 2014.**

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**ABOUT THIS PROSPECTUS**

This prospectus is part of a "shelf" registration statement that we filed with the United States Securities and Exchange Commission, or the SEC. By using a shelf registration statement, we may sell any combination of the securities described in this prospectus from time to time and in one or more offerings. This prospectus only provides you with a general description of the securities that we may offer. Each time we or any selling securityholders sell securities, we will provide a supplement to this prospectus that contains specific information about the terms of the securities. The supplement may also add, update or change information contained in this prospectus. Before purchasing any securities, you should carefully read both this prospectus and any supplement, together with the additional information described under the headings "Available Information" and "Incorporation of Certain Information by Reference."

This prospectus does not contain all of the information in the registration statement. The full registration statement may be obtained from the SEC or us, as indicated below under the section entitled "Available Information." Forms of the articles supplementary and other documents establishing the terms of our securities are filed as exhibits to the registration statement or documents incorporated by reference therein. Statements in this prospectus about these documents are summaries and each statement is qualified in all respects by reference to the document to which it refers. You should refer to the actual documents for a more complete description of the relevant matters.

You should rely only on the information contained or incorporated by reference in this prospectus and in any applicable supplement to this prospectus. We have not authorized any other person to provide you with different information. If anyone provides you with different or inconsistent information, you should not rely on it. We are not making an offer to sell these securities in any jurisdiction where the offer or sale is not permitted. You should assume that the information appearing in this prospectus and the supplement to this prospectus is accurate as of the dates on their covers. Our business, financial condition, results of operations and prospects may have changed since those dates.

Unless this prospectus otherwise indicates or the context otherwise requires, when we refer to "we," "our" and "us" in this prospectus, we mean Sunstone Hotel Investors, Inc. and its consolidated subsidiaries. When we refer to "you" or "yours," we mean the holders of the applicable series of securities.

**AVAILABLE INFORMATION**

We are required to file annual, quarterly and current reports, proxy statements and other information with the SEC. You may read and copy any documents filed by us at the SEC's public reference room at 100 F Street, N.E., Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information on the public reference room. Our filings with the SEC are also available to the public through the SEC's Internet site at <http://www.sec.gov> and through the New York Stock Exchange, 20 Broad Street, New York, New York 10005, on which our common stock is listed.

We have filed with the SEC a registration statement on Form S-3 relating to the securities covered by this prospectus. This prospectus is a part of the registration statement and does not contain all the information in the registration statement. Whenever a reference is made in this prospectus to a contract or other document of the Company, the reference is only a summary and you should refer to the exhibits that are a part of the registration statement for a copy of the contract or other document. You may review a copy of the registration statement at the SEC's public reference room in Washington, D.C., as well as through the SEC's Internet site.



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**INCORPORATION OF CERTAIN INFORMATION BY REFERENCE**

The SEC's rules allow us to incorporate by reference information into this prospectus. This means that we can disclose important information to you by referring you to another document. Any information referred to in this way is considered part of this prospectus from the date we file that document. Any reports filed by us with the SEC after the date of this prospectus and before the date that the offering of the securities by means of this prospectus is terminated will automatically update and, where applicable, supersede any information contained in this prospectus or incorporated by reference in this prospectus.

We incorporate by reference into this prospectus the following documents or information filed with the SEC (other than, in each case, documents or information deemed to have been furnished and not filed in accordance with SEC rules):

- (1) Annual Report on Form 10-K for the fiscal year ended December 31, 2012, filed with the SEC on February 25, 2013 (including information specifically incorporated by reference therein from our Proxy Statement for our 2013 Annual Meeting filed with the SEC on March 25, 2013);
- (2) Quarterly Reports on Form 10-Q for the quarterly periods ended March 31, 2013, June 30, 2013 and September 30, 2013, filed with the SEC on May 8, 2013, August 7, 2013 and November 12, 2013, respectively;
- (3) Current Reports on Form 8-K filed with the SEC on January 25, 2013 (but only with respect to Item 2.01), February 1, 2013, February 19, 2013 (but only with respect to Item 5.02), April 29, 2013, May 6, 2013 (but only with respect to Items 2.01, 5.02, 5.07 and 9.01), July 2, 2013, November 1, 2013 and December 2, 2013 and our Current Reports on Form 8-K/A filed with the SEC on July 15, 2013 and July 17, 2013;
- (4) The description of the common stock included in our registration statement on Form 8-A, filed with the SEC on October 7, 2004, together with any amendment or report filed with the SEC for the purpose of updating such description;
- (5) The description of our Series D Cumulative Redeemable Preferred Stock, par value \$0.01 per share, contained in the Registration Statement on Form 8-A filed with the SEC on April 6, 2011; and
- (6) All documents filed by the Company under Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended, or the Exchange Act, on or after the date of this prospectus and before the termination of the offering described in this prospectus and the applicable prospectus supplement.

We will provide without charge to each person, including any beneficial owner, to whom this prospectus is delivered, upon his or her written or oral request, a copy of any or all documents referred to above which have been or may be incorporated by reference into this prospectus excluding exhibits to those documents unless they are specifically incorporated by reference into those documents. You may request a copy of these filings at no cost, by writing or calling us at the following address or telephone number:

Sunstone Hotel Investors, Inc.  
Attn: Secretary  
120 Vantis, Suite 350  
Aliso Viejo, California 92656  
Telephone: (949) 330-4000

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**RISK FACTORS**

Investment in any securities offered pursuant to this prospectus involves risks. You should carefully consider the risk factors incorporated by reference to our most recent Annual Report on Form 10-K, our Quarterly Reports for the three months ended March 31, 2013, June 30, 2013 and September 30, 2013, any subsequent Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q or Current Reports on Form 8-K we file after the date of this prospectus, and all other information contained or incorporated by reference into this prospectus, as updated by our subsequent filings under the Exchange Act, and the risk factors and other information contained in the applicable prospectus supplement before acquiring any of such securities. The occurrence of any of these risks might cause you to lose all or part of your investment in the offered securities.

**USE OF PROCEEDS**

We intend to use the net proceeds from the sales of the securities as set forth in the applicable prospectus supplement. We will not receive any proceeds from sales of securities by selling securityholders, if any, pursuant to this prospectus.

Table of Contents**RATIO OF COMBINED FIXED CHARGES AND PREFERRED DIVIDENDS TO EARNINGS**

The following table shows the ratio of combined fixed charges and preferred dividends to earnings for us and our consolidated subsidiaries for the periods indicated. You should read these ratios of combined fixed charges and preferred dividends to earnings in connection with our consolidated financial statements, including the notes to those statements, incorporated by reference into this prospectus.

	Nine Months Ended September 30,		Year Ended December 31,				
	2013	2012	2012	2011	2010	2009	2008
Ratio of combined fixed charges and preferred dividends to earnings				1.12			1.03
Deficiency of earnings to combined fixed charges and preferred stock dividends (in thousands)	\$ (371)	\$ (30,434)	\$ (28,601)		\$ (50,996)	\$ (6,954)	

We have computed the ratio of combined fixed charges and preferred dividends to earnings by dividing income (loss) from continuing operations before equity in (earnings) losses of unconsolidated joint ventures, interest expense and the interest portion of rental expense by fixed charges and preferred dividends. Fixed charges consist of interest expense and the interest portion of rental expense, whether expensed or capitalized and whether from continuing or discontinued operations. Interest expense includes interest expense incurred on our outstanding debt and capital lease obligations, accretion of our operating partnership's 4.60% exchangeable senior notes prior to the repurchase and redemption of all such notes in January 2013, amortization of deferred financing fees, any write-offs of deferred financing fees, gains or losses on derivatives and any loan penalties and fees incurred on our debt.

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**DESCRIPTION OF SECURITIES WE MAY OFFER**

Rights of our stockholders are governed by the Maryland General Corporation Law, or MGCL, our charter and our bylaws. The following is a summary of the provisions of securities we may offer, from time to time, and describes certain provisions of our charter and bylaws. For information on how to obtain copies of our charter and bylaws, see "Available Information."

**COMMON STOCK**

Our charter provides that we are authorized to issue 500,000,000 shares of common stock, \$0.01 par value per share. Our board of directors, with the approval of a majority of the entire board and without any action by our stockholders, may amend our charter to increase or decrease the aggregate number of shares of stock or the number of shares of stock of any class or series that we have authority to issue.

The following summary description of our common stock is based on the provisions of our charter, bylaws and the applicable provisions of the MGCL. This information may not be complete in all respects and is qualified in its entirety by reference to the provisions of our charter, bylaws and the MGCL.

As of January 10, 2014, there were 182,868,111 shares of our common stock issued and outstanding. Our common stock is listed on the NYSE under the symbol "SHO."

**Distributions.** Subject to provisions of law and the preferential rights of any other class or series of stock and the restrictions on transfer of stock as provided in our charter, the holders of our common stock are entitled to receive distributions when, as and if authorized by our board of directors and declared by us out of assets legally available therefor. We will pay those distributions either in cash or otherwise in the amounts and on the date or dates designated by our board of directors.

**Liquidation Preference.** Upon the occurrence of any liquidation, dissolution or winding up of our affairs, whether voluntary or involuntary, and subject to the liquidation preferences of any outstanding class or series of stock, the holders of our common stock are entitled to receive their proportionate share of all assets available for distribution.

**Voting Rights.** Subject to the restrictions on transfer of stock in our charter and the separate voting rights of any other class or series of stock, holders of our common stock are entitled to one vote for each share of our common stock held on every matter submitted to a vote of stockholders. Except as otherwise required by the terms of any outstanding class or series of stock, the holders of our common stock have sole voting power. Holders of our common stock do not have cumulative voting rights in the election of directors, which means that the holders entitled to cast a majority of the votes entitled to be cast in the election of directors may elect all of the directors and the holders of the remaining shares of our common stock are not able to elect any directors.

**No Other Rights.** Holders of shares of our common stock have no conversion, sinking fund, redemption, exchange or appraisal rights and have no preemptive rights to subscribe for any of our securities.

**Transfer Agent.** The transfer agent and registrar for our common stock is American Stock Transfer & Trust Company, LLC.

**Restrictions on Ownership and Transfer.** To qualify as a real estate investment trust, or REIT, our charter contains certain restrictions as to ownership and transfer of our stock. For a summary of these restrictions, see "Description of Our Capital Stock Restrictions on Ownership and Transfer" below.

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**PREFERRED STOCK**

This section describes the general terms and provisions of the preferred stock we may offer. This information may not be complete in all respects and is qualified entirely by reference to our charter, bylaws and the applicable provisions of the MGCL. The specific terms of any series of preferred stock will be described in a prospectus supplement. Those terms may differ from the terms discussed below. Any series of preferred stock we issue will be governed by our charter, including the articles supplementary relating to that series, and our bylaws. We will file the articles supplementary with the SEC and incorporate them by reference as an exhibit to our registration statement at or before the time we issue any preferred stock of that series.

**Authorized Preferred Stock.** Our charter provides that we are authorized to issue 100,000,000 shares of preferred stock, \$0.01 par value per share. Our charter also authorizes our board of directors to classify any unissued shares of preferred stock and to reclassify any previously classified but unissued shares of any series. Prior to issuance of shares of each series, our board of directors is required by the MGCL and our charter to set the terms, preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications and terms or conditions of redemption for each such series. Thus, our board of directors could authorize the issuance of shares of preferred stock with terms and conditions which could have the effect of delaying, deferring or preventing a transaction or a change of control of our company that might involve a premium price for holders of our common stock or otherwise be in their best interest.

Upon issuance of a particular series of preferred stock, our board of directors is authorized to specify:

the number of shares to be included in the series;

the annual dividend rate for the series and any restrictions or conditions on the payment of dividends or other distributions;

the redemption price, if any, and the qualifications and terms and conditions of redemption;

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

if the series is convertible, the terms and conditions of conversion;

the amounts payable to holders upon our liquidation, dissolution or winding up; and

any other rights, preferences, voting powers, restrictions and limitations relating to the series.

The board of directors' ability to authorize, without stockholder approval, the issuance of preferred stock with conversion and other rights may adversely affect the rights of holders of our common stock or other series of preferred stock that may be outstanding.

For a description of our issued and outstanding preferred stock, see "Description of Our Capital Stock Preferred Stock."

**Specific Terms of a Series of Preferred Stock.** The preferred stock we may offer will be issued in one or more series. Shares of preferred stock, when issued against full payment of its purchase price, will be fully paid and non-assessable. Their par value or liquidation preference, however, will not be indicative of the price at which they will actually trade after their issuance. If necessary, the applicable prospectus supplement will provide a description of U.S. Federal income tax consequences relating to the purchase and ownership of the series of preferred stock offered by that prospectus supplement.

The preferred stock will have the dividend, liquidation, redemption, voting, conversion and other rights discussed below, unless otherwise described in a prospectus supplement relating to a particular



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series. The applicable prospectus supplement will discuss the following features of the series of preferred stock to which it relates:

the designation and par value per share;

the number of shares offered;

the amount of liquidation preference per share;

the initial public offering price at which the preferred stock will be issued;

the dividend rate, the method of its calculation, the dates on which dividends would be paid and the dates, if any, from which dividends would cumulate;

any redemption or sinking fund provisions;

any conversion or exchange rights; and

any additional voting, dividend, liquidation, redemption, sinking fund and other rights, preferences, privileges, limitations and restrictions.

**Rank.** Unless otherwise stated in the applicable prospectus supplement and our charter, the preferred stock will have priority over our common stock with respect to dividends and distribution of assets, but will rank junior to all our outstanding indebtedness for borrowed money. Any series of preferred stock could rank senior, equal or junior to our other capital stock, as may be described in a prospectus supplement, as long as our charter so permits.

**Dividends.** Holders of each series of preferred stock shall be entitled to receive cash dividends to the extent described in the applicable prospectus supplement when, as and if authorized by our board of directors as declared by us, from funds legally available for the payment of dividends. The rates and dates of payment of dividends of each series of preferred stock will be stated in the applicable prospectus supplement. Dividends will be payable to the holders of record of preferred stock as they appear on our books on the record dates fixed by our board of directors. Dividends on any series of preferred stock may be cumulative or non-cumulative, as discussed in the applicable prospectus supplement.

**Convertibility.** Shares of a series of preferred stock may be exchangeable or convertible into shares of our common stock, another series of preferred stock or other securities or property. The conversion or exchange may be mandatory or optional. The applicable prospectus supplement will specify whether the preferred stock being offered has any conversion or exchange features, and will describe all the related terms and conditions.

**Redemption.** The terms, if any, on which shares of preferred stock of a series may be redeemed will be discussed in the applicable prospectus supplement.

**Liquidation.** Upon any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Company, holders of each series of preferred stock will be entitled to receive distributions upon liquidation in the amount described in the related prospectus supplement plus an amount equal to any accrued and unpaid dividends for the then-current dividend period (including any accumulation in respect of unpaid dividends for prior dividend periods, if dividends on that series of preferred stock are cumulative). These distributions will be made before any distribution is made on any securities ranking junior to the preferred stock with respect to liquidation, including our common stock. If the liquidation amounts payable relating to the preferred stock of any series and any other securities ranking on parity regarding liquidation rights are not paid in full, the holders of the preferred stock of that series will share ratably in proportion to the full liquidation preferences of each security. Holders of our preferred stock will not be entitled to any other amounts from us after they have received their full liquidation preference.





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**Voting Rights.** The holders of shares of preferred stock will have no voting rights, except:

as otherwise stated in the applicable prospectus supplement; or

as otherwise stated in the articles supplementary relating to the series of preferred stock.

**No Other Rights.** The shares of a series of preferred stock will not have any preferences, voting powers or relative, participating, optional or other special rights except:

as discussed above or in the applicable prospectus supplement;

as provided in our charter (including any articles supplementary); and

as otherwise required by law.

**Transfer Agent.** The transfer agent for each series of preferred stock will be named and described in the prospectus supplement for that series.

**Restrictions on Ownership and Transfer.** To assist us in qualifying as a REIT, among other purposes, our charter contains certain restrictions as to ownership and transfer of our stock. For a summary of these restrictions, see "Description of Our Capital Stock Restrictions on Ownership and Transfer" below.

## DEPOSITARY SHARES

This section outlines some of the provisions of the deposit agreement to govern any depositary shares, the depositary shares themselves and the depositary receipts. This information may not be complete in all respects and is qualified entirely by reference to the relevant deposit agreement and depositary receipts with respect to the depositary shares relating to any particular series of preferred stock. The specific terms of any series of depositary shares will be described in the applicable prospectus supplement. If so described in the applicable prospectus supplement, the terms of that series of depositary shares may differ from the general description of terms presented below.

**Fractional Shares of Preferred Stock.** We may elect to offer fractional interests in shares of our preferred stock instead of whole shares of preferred stock. If we elect to do so, we will allow a depositary to issue to the public depositary shares, each of which will represent a fractional interest of a share of preferred stock as described in the applicable prospectus supplement.

**Deposit Agreement.** The shares of the preferred stock underlying any depositary shares will be deposited under a separate deposit agreement between us and a bank or trust company acting as depositary with respect to those shares of preferred stock. The depositary will have its principal office in the United States and have a combined capital and surplus of at least \$50,000,000. The prospectus supplement relating to a series of depositary shares will specify the name and address of the depositary. Under the deposit agreement, each owner of a depositary share will be entitled, in proportion to its fractional interest in a share of the preferred stock underlying that depositary share, to all the rights and preferences of that preferred stock, including dividend, voting, redemption, conversion, exchange and liquidation rights.

Depositary shares will be evidenced by one or more depositary receipts issued under the deposit agreement.

**Dividends and Other Distributions.** The depositary will distribute all cash dividends or other cash distributions in respect of the preferred stock underlying the depositary shares to each record depositary holder based on the number of the depositary shares owned by that holder on the relevant record date. The depositary will distribute only that amount which can be distributed without attributing to any depositary holders a fraction of one cent, and any balance not so distributed will be

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added to and treated as part of the next sum received by the depositary for distribution to record depositary holders.

If there is a distribution other than in cash, the depositary will distribute property to the entitled record depositary holders, unless the depositary determines that it is not feasible to make that distribution. In that case the depositary may, with our approval, adopt the method it deems equitable and practicable for making that distribution, including any sale of property and the distribution of the net proceeds from this sale to the concerned holders.

Each deposit agreement will also contain provisions relating to the manner in which any subscription or similar rights we offer to holders of the relevant series of preferred stock will be made available to depositary holders.

***Withdrawal of Stock.*** Upon surrender of depositary receipts at the depositary's office, the holder of the relevant depositary shares will be entitled to the number of whole shares of the related series of preferred stock and any money or other property those depositary shares represent. Depositary holders will be entitled to receive whole shares of the related series of preferred stock on the basis described in the applicable prospectus supplement, but holders of those whole preferred stock shares will not afterwards be entitled to receive depositary shares in exchange for their shares. If the depositary receipts the holder delivers evidence a depositary share number exceeding the whole share number of the related series of preferred stock to be withdrawn, the depositary will deliver to that holder a new depositary receipt evidencing the excess number of depositary shares.

***Redemption and Liquidation.*** The terms on which the depositary shares relating to the preferred stock of any series may be redeemed, and any amounts distributable upon our liquidation, dissolution or winding up, will be described in the applicable prospectus supplement.

***Voting.*** Upon receiving notice of any meeting at which preferred stockholders of any series are entitled to vote, the depositary will mail the information contained in that notice to the record depositary holders relating to those series of preferred stock. Each depositary holder on the record date will be entitled to instruct the depositary on how to vote the shares of preferred stock underlying that holder's depositary shares. The depositary will vote the shares of preferred stock underlying those depositary shares according to those instructions, and we will take reasonably necessary actions to enable the depositary to do so. If the depositary does not receive specific instructions from the depositary holders relating to that preferred stock, it will abstain from voting those shares of preferred stock, unless otherwise discussed in the applicable prospectus supplement.

***Amendment and Termination of Deposit Agreement.*** We and the depositary will be permitted to amend the depositary receipt form evidencing the depositary shares and the related deposit agreement. However, except as set forth in the applicable prospectus supplement, any amendment that significantly affects the rights of the depositary holders will not be effective unless a majority of the outstanding depositary holders approve that amendment. We or the depositary may terminate a deposit agreement only if:

we redeemed or reacquired all outstanding depositary shares relating to the deposit agreement;

all preferred stock of the relevant series has been withdrawn; or

there has been a final distribution in respect of the preferred stock of any series in connection with our liquidation, dissolution or winding up and such distribution has been made to the related depositary holders.

***Charges of Depositary.*** We will pay all charges of each depositary in connection with the initial deposit and any redemption of the preferred stock. Depositary holders will be required to pay any

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other transfer and other taxes and governmental charges and any other charges expressly provided in the deposit agreement to be for their accounts.

**Miscellaneous.** Each depositary will forward to the relevant depositary holders all our reports and communications that we are required to furnish to preferred stockholders of any series.

Neither the depositary nor the Company will be liable if it is prevented or delayed by law or any circumstance beyond its control in performing its obligations under any deposit agreement. The obligations of the Company and each depositary under any deposit agreement will be limited to performance in good faith of their duties under that agreement, and they will not be obligated to prosecute or defend any legal proceeding in respect of any depositary shares or preferred stock unless they are provided with satisfactory indemnity.

**Title.** The Company, each depositary and any of their agents may treat the registered owner of any depositary share as the absolute owner of that share, whether or not any payment in respect of that depositary share is overdue and despite any notice to the contrary, for any purpose. See "Legal Ownership and Book-Entry Issuance."

**Resignation and Removal of Depositary.** A depositary may resign at any time by issuing us a notice of resignation, and we may remove any depositary at any time by issuing it a notice of removal. Resignation or removal will take effect upon the appointment of a successor depositary and its acceptance of appointment. That successor depositary must:

be a bank or trust company having its principal office in the United States; and

have a combined capital and surplus of at least \$50,000,000.

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**DESCRIPTION OF OUR CAPITAL STOCK**

**COMMON STOCK**

For a description of our common stock, see "Description of Securities We May Offer Common Stock."

**PREFERRED STOCK**

**Series D Cumulative Redeemable Preferred Stock**

As of January 10, 2014, there were 4,600,000 shares of our 8.0% Series D Cumulative Redeemable Preferred Stock, par value \$0.01 per share, or our series D preferred, authorized, issued and outstanding.

**Rank.** The series D preferred ranks, with respect to dividend rights and rights upon voluntary or involuntary liquidation, dissolution or winding-up of our affairs, senior to all classes or series of our common stock and to any other class or series of our capital stock expressly designated as ranking junior to the series D preferred, on parity with any class or our capital stock expressly designated as ranking on parity with the series D preferred and junior to any class or series of our capital stock expressly designated as ranking senior to the series D preferred. Any future authorization or issuance of a class or series of our capital stock expressly designated as ranking senior to the series D preferred would require the affirmative vote of the holders of at least two-thirds of the outstanding shares of series D preferred.

**Dividends.** Subject to the preferential rights of any security senior to the series D preferred as to dividends, the holders of series D preferred are entitled to receive, when, as and if authorized by our board of directors and declared by us out of funds legally available for the payment of dividends, cumulative cash dividends at the rate of 8.0% per annum of the \$25.00 liquidation preference per share of the series D preferred (equivalent to an annual rate of \$2.00 per share of the series D preferred). Dividends will be payable quarterly in arrears on the 15th day of each January, April, July and October of each year (or if not a business day, on the next succeeding business day). Dividends payable on the series D preferred for any partial period will be computed on the basis of a 360-day year consisting of twelve 30-day months. Accrued but unpaid dividends on the series D preferred will accumulate as of the dividend payment date on which they first became payable. Dividends on the series D preferred will accrue whether or not:

we have earnings;

there are funds legally available for payment of those dividends; or

those dividends are authorized or declared.

Except as described in the next paragraph, unless full cumulative dividends on the series D preferred for all past dividend periods shall have been, or contemporaneously are, declared and paid in cash or declared and a sum sufficient for the payment thereof in cash is set aside for payment, we will not:

declare or pay or set aside for payment of dividends, and we will not declare or make any distribution of cash or other property, directly or indirectly, on or with respect to any shares of our common stock or any other class or series of stock ranking as to dividends on parity with or junior to the series D preferred for any period; or

redeem, purchase or otherwise acquire for any consideration, or make any other distribution of cash or other property, directly or indirectly, on or with respect to, or pay or make available any monies for a sinking fund for the redemption of, any common stock, or any other class or series

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of stock ranking, with respect to dividends and upon liquidation, on parity with or junior to our series D preferred.

The foregoing sentence, however, will not prohibit

dividends payable solely in capital stock ranking junior to the series D preferred;

the conversion into or exchange for other shares or series of capital stock ranking junior to the series D preferred; and

our purchase of shares of series D preferred, preferred stock ranking on parity with the series D preferred as to payment of dividends or capital stock or equity securities ranking junior to the series D preferred pursuant to our charter to the extent necessary to preserve our status as a REIT.

**Liquidation Preference.** Upon any voluntary or involuntary liquidation, dissolution or winding-up of our affairs, and before any distribution or payment shall be made to holders of our common stock or any other class or series of our stock ranking, as to rights upon any voluntary or involuntary liquidation, dissolution or winding-up of our affairs, junior to the series D preferred, the holders of shares of series D preferred are entitled to be paid out of our assets legally available for distribution to our stockholders, after payment or provision for our debts and other liabilities, a liquidation preference of \$25.00 per share of series D preferred, plus an amount equal to any accrued and unpaid dividends (whether or not earned or declared) up to, but not including, the date of payment. The rights of holders of series D preferred to receive their liquidation preference will be subject to the proportionate rights of any other class or series of our capital stock ranking senior or on parity with the series D preferred as to liquidation. After payment of the full amount of the liquidating distributions to which they are entitled, the holders of series D preferred will have no right or claim to any of our remaining assets. Our consolidation or merger with or into any other corporation, trust or other entity, or the voluntary sale, lease, transfer or conveyance of all or substantially all of our property or business, will not be deemed to constitute a liquidation, dissolution or winding-up of our affairs.

**Optional Redemption.** We may not redeem the series D preferred prior to April 6, 2016, except as described below under " Special Optional Redemption" and " Restrictions on Ownership and Transfer." On and after April 6, 2016, we may, at our option, upon not less than 30 nor more than 60 days' written notice, redeem the series D preferred, in whole or in part, at any time or from time to time, for cash at a redemption price of \$25.00 per share, plus all accrued and unpaid dividends (whether or not declared) up to, but not including, the date fixed for redemption, without interest, to the extent we have funds legally available for that purpose. Unless full cumulative dividends on all outstanding shares of series D preferred shall have been or contemporaneously are authorized, declared and paid in cash or declared and a sufficient sum set aside for payment of all past dividend periods and the then-current dividend period, no shares of series D preferred shall be redeemed unless all outstanding shares of series D preferred are simultaneously redeemed. All shares of the series D preferred that we redeem or repurchase will be retired and restored to the status of authorized but unissued shares of preferred stock, without designation as to series or class.

If (i) we have given a notice of redemption, (ii) have set aside sufficient funds for the redemption in trust for the benefit of the holders of the series D preferred called for redemption and (iii) irrevocable instructions have been given to pay the redemption price and all accrued and unpaid dividends, then from and after the redemption date, those series D preferred will be treated as no longer being outstanding, no further dividends will accrue and all other rights of the holders of those series D preferred will terminate, except the right to receive the redemption price plus any accrued and unpaid dividends payable upon such redemption, without interest. The holders of those series D preferred will retain their right to receive the redemption price for their shares and any accrued and unpaid dividends payable upon such redemption, without interest.

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The holders of series D preferred at the close of business on a dividend record date will be entitled to receive the dividend payable with respect to the series D preferred on the corresponding payment date notwithstanding the redemption of the series D preferred between such record date and the corresponding payment date. Except as provided above, we will make no payment or allowance for unpaid dividends, whether or not in arrears, on series D preferred to be redeemed.

**Special Optional Redemption.** Upon the occurrence of a Change of Control, we may, at our option, redeem the series D preferred, in whole or in part and within 120 days after the first date on which such Change of Control occurred, by paying \$25.00 per share, plus any accrued and unpaid dividends to, but not including, the date of redemption. If, prior to the Change of Control Conversion Date (as defined below), we have provided or provide notice of redemption with respect to the series D preferred (whether pursuant to our optional redemption right or our special optional redemption right), holders will not have the conversion right described below under " Conversion Rights." If we redeem fewer than all of the outstanding shares of series D preferred, the notice of redemption mailed to each stockholder will also specify the number of shares of series D preferred that we will redeem from each stockholder. In this case, we will determine the number of outstanding shares of series D preferred to be redeemed on a pro rata basis, by lot or by any other equitable method we may choose.

If (i) we have given a notice of redemption, (ii) have set aside sufficient funds for the redemption in trust for the benefit of the holders of the series D preferred called for redemption and (iii) irrevocable instructions have been given to pay the redemption price and all accrued and unpaid dividends, then from and after the redemption date, those series D preferred will be treated as no longer being outstanding, no further dividends will accrue and all other rights of the holders of those series D preferred will terminate, except the right to receive the redemption price plus any accrued and unpaid dividends payable upon such redemption, without interest. The holders of those series D preferred will retain their right to receive the redemption price for their shares and any accrued and unpaid dividends payable upon such redemption, without interest.

The holders of series D preferred at the close of business on a dividend record date will be entitled to receive the dividend payable with respect to the series D preferred on the corresponding payment date notwithstanding the redemption of the series D preferred between such record date and the corresponding payment date. Except as provided above, we will make no payment or allowance for unpaid dividends, whether or not in arrears, on series D preferred to be redeemed.

A "Change of Control" is when, after the original issuance of the series D preferred, the following have occurred and are continuing:

the acquisition by any person, including any syndicate or group deemed to be a "person" under Section 13(d)(3) of the Exchange Act of beneficial ownership, directly or indirectly, through a purchase, merger or other acquisition transaction or series of purchases, mergers or other acquisition transactions of stock of our company entitling that person to exercise more than 50% of the total voting power of all stock of our company entitled to vote generally in elections of directors (except that such person will be deemed to have beneficial ownership of all securities that such person has the right to acquire, whether such right is currently exercisable or is exercisable only upon the occurrence of a subsequent condition); and

following the closing of any transaction referred to in the bullet above, neither we nor the acquiring or surviving entity has a class of common securities (or ADRs representing such securities) listed on the NYSE, the NYSE Amex or NASDAQ, or listed or quoted on an exchange or quotation system that is a successor to the NYSE, NYSE Amex or NASDAQ.

**Conversion Rights.** Upon the occurrence of a Change of Control, each holder of series D preferred will have the right, unless, prior to the Change of Control Conversion Date, we have provided or provide notice of our election to redeem the series D preferred as described under

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" Optional Redemption" or " Special Optional Redemption," to convert some or all of the shares of series D preferred held by such holder (the "Change of Control Conversion Right") on the Change of Control Conversion Date into a number of shares of common stock per series D preferred (the "Common Share Conversion Consideration") equal to the lesser of:

the quotient obtained by dividing (i) the sum of the \$25.00 liquidation preference per share of series D preferred to be converted plus the amount of any accrued and unpaid dividends to, but not including, the Change of Control Conversion Date (unless the Change of Control Conversion Date is after a record date for a series D preferred dividend payment and prior to the corresponding series D preferred dividend payment date, in which case no additional amount for such accrued and unpaid dividend will be included in this sum) by (ii) the Common Stock Price (as defined below) (such quotient, the "Conversion Rate"); and

4.9068, or the Share Cap.

The Share Cap is subject to pro rata adjustments for any share splits (including those effected pursuant to a common stock dividend), subdivisions or combinations (in each case, a "Share Split") with respect to shares of our common stock as follows: the adjusted Share Cap as the result of a Share Split will be the number of shares of our common stock that is equivalent to the product of (i) the Share Cap in effect immediately prior to such Share Split multiplied by (ii) a fraction, the numerator of which is the number of shares of our common stock outstanding after giving effect to such Share Split and the denominator of which is the number of shares of our common stock outstanding immediately prior to such Share Split.

For the avoidance of doubt, subject to the immediately succeeding sentence, the aggregate number of shares of our common stock (or equivalent Alternative Conversion Consideration (as defined below), as applicable) issuable in connection with the exercise of the Change of Control Conversion Right will not exceed 22,571,280 shares of common stock in total (or equivalent Alternative Conversion Consideration, as applicable) (the "Exchange Cap"). The Exchange Cap is subject to pro rata adjustments for any Share Splits on the same basis as the corresponding adjustment to the Share Cap.

In the case of a Change of Control pursuant to which shares of our common stock will be converted into cash, securities or other property or assets (including any combination thereof) (the "Alternative Form Consideration"), a holder of shares of series D preferred will receive upon conversion of such series D preferred the kind and amount of Alternative Form Consideration which such holder would have owned or been entitled to receive upon the Change of Control had such holder held a number of shares of our common stock equal to the Common Share Conversion Consideration immediately prior to the effective time of the Change of Control (the "Alternative Conversion Consideration," and the Common Share Conversion Consideration or the Alternative Conversion Consideration, as may be applicable to a Change of Control, is referred to as the "Conversion Consideration").

If the holders of shares of our common stock have the opportunity to elect the form of consideration to be received in the Change of Control, the consideration that the holders of the series D preferred will receive will be the form of consideration elected by the holders of the shares of common stock who participate in the determination (based on the weighted average of elections) and will be subject to any limitations to which all holders of shares of common stock are subject, including, without limitation, pro rata reductions applicable to any portion of the consideration payable in the Change of Control.

Series D preferred as to which the Change of Control Conversion Right has been properly exercised and for which the conversion notice has not been properly withdrawn will be converted into the applicable Conversion Consideration in accordance with the Change of Control Conversion Right on the Change of Control Conversion Date, unless prior to the Change of Control Conversion Date we

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have provided or provide notice of our election to redeem such shares of series D preferred, whether pursuant to our optional redemption right or our special optional redemption right. If we elect to redeem shares of series D preferred that would otherwise be converted into the applicable Conversion Consideration on a Change of Control Conversion Date, such shares of series D preferred will not be so converted and the holders of such shares will be entitled to receive on the applicable redemption date \$25.00 per share, plus any accrued and unpaid dividend thereon to, but not including, the redemption date.

In connection with the exercise of any Change of Control Conversion Right, we will comply with all U.S. federal and state securities laws and stock exchange rules in connection with any conversion of shares of series D preferred into shares of common stock. Notwithstanding any other provision of our series D preferred, no holder of our series D preferred will be entitled to convert such series D preferred for shares of our common stock to the extent that receipt of such shares of common stock would cause such holder (or any other person) to exceed the share ownership limits contained in our charter, including the articles supplementary setting forth the terms of the series D preferred. See "Description of Our Capital Stock Restrictions on Ownership and Transfer."

"Change of Control Conversion Date" means a business day set forth in our notice of Change of Control that is between 20 and 35 days after the date we provide such notice. "Common Stock Price" means (i) the amount of cash consideration per share of common stock, if the consideration to be received in the Change of Control by holders of our common stock is solely cash, and (ii) the average closing price per share of our common stock on the NYSE for the ten consecutive trading days immediately preceding the effective date of the Change of Control, if the consideration to be received in the Change of Control by holders of our common stock is other than solely cash.

Except as provided above in connection with a Change of Control, the series D preferred are not convertible into or exchangeable for any other securities or property.

**No Maturity, Sinking Fund or Mandatory Redemption.** The series D preferred has no maturity date and we are not required to redeem the series D preferred at any time. Accordingly, the series D preferred will remain outstanding indefinitely, unless we decide, at our option, to exercise our redemption right or under circumstances where the holders of shares of series D preferred have a conversion right, the holders of shares of series D preferred decide to convert them. The series D preferred is not subject to any sinking fund.

**Limited Voting Rights.** Holders of the series D preferred generally do not have any voting rights, except as set forth below.

If dividends on the series D preferred are in arrears for six or more quarterly periods, whether or not consecutive, holders of the shares of series D preferred (voting together as a single class with all other classes or series of parity preferred stock upon which like voting rights have been conferred and are exercisable) will be entitled to vote at a special meeting or at our next annual meeting of stockholders and each subsequent annual meeting of stockholders, for the election of two additional directors to serve on our board of directors (which we refer to as a preferred stock director), until all unpaid dividends and the dividend for the then current period with respect to the series D preferred and any other class or series of parity preferred stock have been fully paid or declared and a sum sufficient for the payment thereof set aside for payment. In such a case, the number of directors serving on the board of directors will be increased by two members. The preferred stock directors will be elected by a plurality of the votes cast in the election to serve until our next annual meeting and until their successors are duly elected and qualified or until such directors' right to hold the office terminates pursuant to the Termination Event (as defined below), whichever occurs earlier.

If and when all accumulated dividends and the dividend for the current dividend period on the series D preferred and for all classes and series of preferred stock ranking on parity with series D



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preferred and upon which similar voting rights have been conferred and are exercisable shall have been paid in full or a sum sufficient for such payment is irrevocably deposited in trust for payment, the holders of the series D preferred shall be immediately divested of the voting rights set forth above (subject to revesting in the event of each and every preferred dividend default) and, if all dividends in arrears and the dividends for the current dividend period have been paid in full or set aside for payment in full on all other classes or series of parity preferred stock, the term and office of such preferred stock directors so elected will terminate immediately and the entire board of directors will be reduced accordingly (the "Termination Event").

In addition, so long as any shares of series D preferred remain outstanding, we will not, without the consent or the affirmative vote of the holders of at least two-thirds of the outstanding shares of series D preferred and each other class or series of preferred stock ranking on parity with the series D preferred with respect to the payment of dividends or the distribution of assets upon our liquidation, dissolution or winding-up upon which similar voting rights have been conferred, voting as a single class, given in person or by proxy, either in writing or at a meeting:

authorize, create or issue, or increase the authorized or issued amount of, any class or series of stock ranking senior to such series D preferred with respect to payment of dividends, or the distribution of assets upon the liquidation, dissolution or winding-up of our affairs, or reclassify any of our authorized stock into any such stock, or create, authorize or issue any obligation or security convertible into or evidencing the right to purchase any such stock; or

amend, alter or repeal the provisions of our charter or the terms of the series D preferred, whether by merger, consolidation, transfer or conveyance of all or substantially all of its assets or otherwise, so as to materially and adversely affect any right, preference, privilege or voting power of the series D preferred;

except that with respect to the occurrence of any of the events described in the second bullet point immediately above, so long as the series D preferred remains outstanding with the terms of the series D preferred materially unchanged or the holders of shares of series D preferred receive stock of the successor with substantially identical rights, taking into account that, upon the occurrence of an event described in the second bullet point above, we may not be the surviving entity, the occurrence of such event will not be deemed to materially and adversely affect the rights, preferences, privileges or voting power of holders of series D preferred, and in such case such holders shall not have any voting rights with respect to the events described in the second bullet point immediately above.

Furthermore, if the holders of the series D preferred receive the greater of the full trading price of the series D preferred on the date of an event described in the second bullet point immediately above or the \$25.00 liquidation preference per share of series D preferred pursuant to the occurrence of any of the events described in the second bullet point immediately above, then such holders shall not have any voting rights with respect to the events described in the second bullet point immediately above.

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**RESTRICTIONS ON OWNERSHIP AND TRANSFER**

To qualify as a REIT under Sections 856 through 859 of the Internal Revenue Code of 1986, as amended, or the Code, we must meet certain requirements concerning the ownership of our outstanding shares of equity stock. Specifically, not more than 50% in value of our outstanding shares of capital stock may be owned, directly or indirectly, by five or fewer individuals (as defined in the Code to include certain entities such as private foundations) at any time during the last half of a taxable year. Additionally, shares of our stock must be beneficially owned by 100 or more persons during at least 335 days of a taxable year of 12 months or during a proportionate part of a shorter taxable year.

Our charter contains restrictions on the ownership and transfer of our stock that are intended, among other purposes, to assist us in complying with these requirements and continuing to qualify as a REIT. The relevant sections of our charter provide that, subject to the exceptions described below, no person or entity may actually or beneficially own, or be deemed to own by virtue of the applicable constructive ownership provisions of the Code, more than 9.8% (in value or in number of shares, whichever is more restrictive) of the outstanding shares of our common stock, 9.8% (in value or number of shares, whichever is more restrictive) of the outstanding shares of series D preferred or 9.8% in value of the aggregate of the outstanding shares of all classes and series of our stock. We refer to each of these restrictions as an "ownership limit" and collectively as the "ownership limits." A person or entity that would have acquired actual, beneficial or constructive ownership of our stock but for the application of the ownership limits or any of the other restrictions on ownership and transfer of our stock discussed below is referred to as a "prohibited owner."

The constructive ownership rules under the Code are complex and may cause stock owned actually or constructively by a group of related individuals and/or entities to be owned constructively by one individual or entity. As a result, the acquisition of less than 9.8% of our capital stock (or the acquisition of an interest in an entity that owns, actually or constructively, our capital stock) by an individual or entity, could, nevertheless cause that individual or entity, or another individual or entity, to own constructively in excess of 9.8% of our outstanding capital stock and thereby violate the applicable ownership limit.

Our board of directors, in its sole and absolute discretion, prospectively or retroactively, may exempt a person from any or all of the ownership limits if our board of directors determines that:

such waiver will not result in us being "closely held" within the meaning of Section 856(h) of the Code (without regard to whether the ownership interest is held during the last half of a taxable year), or otherwise failing to qualify as a REIT; and

subject to certain exceptions, the person does not and will not own, actually or constructively, an interest in a tenant of ours (or a tenant of any entity owned in whole or in part by us) that would cause us to own, actually or constructively, more than a 9.9% interest (as set forth in Section 856(d)(2)(B) of the Code) in such tenant.

As a condition of the exception, our board of directors may require an opinion of counsel or IRS ruling, in either case in form and substance satisfactory to our board of directors, in its sole and absolute discretion, in order to determine or ensure our status as a REIT and such representations and undertakings as are reasonably necessary to make the determinations above. Our board of directors may impose such conditions or restrictions as it deems appropriate in connection with such an exception.

In connection with a waiver of an ownership limit or at any other time, our board of directors may, in its sole and absolute discretion, increase or decrease any or all of the ownership limits for one or more persons, except that a decreased ownership limit will not be effective for any person whose actual, beneficial or constructive ownership of our stock exceeds the decreased ownership limit at the

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time of the decrease until the person's actual, beneficial or constructive ownership of our stock equals or falls below the decreased ownership limit, although any further acquisition of our stock will violate the decreased ownership limit. Our board of directors may not increase or decrease any ownership limit if, among other limitations, the new ownership limit would allow five or fewer persons to actually or beneficially own more than 49.9% in value of our outstanding stock or could otherwise cause us to fail to qualify as a REIT.

Our charter further prohibits:

any person from actually, beneficially or constructively owning shares of our stock that could result in us being "closely held" under Section 856(h) of the Code (without regard to whether the ownership interest is held during the last half of a taxable year) or otherwise cause us to fail to qualify as a REIT (including, but not limited to, actual, beneficial or constructive ownership of shares of our stock that could result in us owning (actually or constructively) an interest in a tenant that is described in Section 856(d)(2)(B) of the Code if the income we derive from such tenant, taking into account our other income that would not qualify under the gross income requirements of Section 856(c) of the Code, would cause us to fail to satisfy any the gross income requirements imposed on REITs or that would result in us owning more than a 35% interest in any person which manages properties we own); and

any person from transferring shares of our stock if such transfer would result in shares of our stock being beneficially owned by fewer than 100 persons (determined without reference to any rules of attribution).

Any person who acquires or attempts or intends to acquire actual, beneficial or constructive ownership of shares of our stock that will or may violate the ownership limits or any of the other restrictions on ownership and transfer of our stock described above must give written notice immediately to us or, in the case of a proposed or attempted transaction, provide us at least 15 days prior written notice, and provide us with such other information as we may request in order to determine the effect of such transfer on our status as a REIT.

The ownership limits and other restrictions on ownership and transfer of our stock described above will not apply if our board of directors determines that it is no longer in our best interests to attempt to qualify, or to continue to qualify, as a REIT or that compliance is no longer required in order for us to qualify as a REIT.

Pursuant to our charter, if any purported transfer of our stock or any other event would otherwise result in any person violating the ownership limits or such other limit established by our board of directors, or could result in us being "closely held" within the meaning of Section 856(h) of the Code (without regard to whether the ownership interest is held during the last half of a taxable year) or otherwise failing to qualify as a REIT, then that number of shares causing the violation (rounded up to the nearest whole share) will be automatically transferred to, and held by, a trust for the exclusive benefit of one or more charitable organizations selected by us. The prohibited owner will have no rights in shares of our stock held by the trustee. The automatic transfer will be effective as of the close of business on the business day prior to the date of the violative transfer or other event that results in the transfer to the trust. Any dividend or other distribution paid to the prohibited owner prior to our discovery that the shares had been automatically transferred to a trust as described above must be repaid to the trustee upon demand. If the transfer to the trust as described above is not automatically effective, for any reason, to prevent violation of the applicable restriction on ownership and transfer of our stock, then that transfer of the number of shares that otherwise would cause any person to violate the above restrictions will be void. If any transfer of our stock would result in shares of our stock being beneficially owned by fewer than 100 persons (determined without reference to any rules of attribution), then any such purported transfer will be void and of no force or effect and the intended transferee will acquire no rights in the shares.

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Shares of our stock transferred to the trustee are deemed offered for sale to us, or our designee, at a price per share equal to the lesser of (1) the price per share in the transaction that resulted in the transfer of the shares to the trust (or, in the event of a gift or devise, the market price (as defined in our charter) on the day of the transfer or other event that resulted in the transfer of such shares to the trust) and (2) the market price on the date we accept, or our designee accepts, such offer. We may reduce the amount payable to the prohibited owner by the amount of dividends and distributions paid to the prohibited owner and owed by the prohibited owner to the trustee and pay the amount of such reduction to the trustee for the benefit of the charitable beneficiary. We have the right to accept such offer until the trustee has sold the shares of our stock held in the trust. Upon a sale to us, the interest of the charitable beneficiary in the shares sold terminates and the trustee must distribute the net proceeds of the sale to the prohibited owner and any dividends or other distributions held by the trustee with respect to such stock will be paid to the charitable beneficiary.

If we do not buy the shares, the trustee must, within 20 days of receiving notice from us of the transfer of shares to the trust, sell the shares to a person or persons designated by the trustee who could own the shares without violating the ownership limits or other restrictions on ownership and transfer of our stock. Upon such sale, the trustee must distribute to the prohibited owner an amount equal to the lesser of (1) the price paid by the prohibited owner for the shares (or, if the prohibited owner did not give value (or, in the case of the series D preferred, purchase the shares at market price) in connection with the transfer or other event that resulted in the transfer to the trust (e.g., a gift, devise or other such transaction), the market price on the day of the transfer or other event that resulted in the transfer of such shares to the trust) and (2) the sales proceeds (net of commissions and other expenses of sale) received by the trustee for the shares. The trustee may reduce the amount payable to the prohibited owner by the amount of dividends and other distributions paid to the prohibited owner and owed by the prohibited owner to the trustee. Any net sales proceeds in excess of the amount payable to the prohibited owner will be immediately paid to the charitable beneficiary, together with any dividends or other distributions thereon. In addition, if prior to discovery by us that shares of our stock have been transferred to the trustee, such shares of stock are sold by a prohibited owner, then such shares shall be deemed to have been sold on behalf of the trust and, to the extent that the prohibited owner received an amount for or in respect of such shares that exceeds the amount that such prohibited owner was entitled to receive, such excess amount shall be paid to the trustee upon demand.

The trustee will be designated by us and will be unaffiliated with us and with any prohibited owner. Prior to the sale of any shares by the trust, the trustee will receive, in trust for the charitable beneficiary, all dividends and other distributions paid by us with respect to such shares, and may exercise all voting rights with respect to such shares for the exclusive benefit of the charitable beneficiary.

Subject to Maryland law, effective as of the date that the shares have been transferred to the trust, the trustee may, at the trustee's sole discretion:

rescind as void any vote cast by a prohibited owner prior to our discovery that the shares have been transferred to the trust;  
and

recast the vote in accordance with the desires of the trustee acting for the benefit of the beneficiary of the trust.

However, if we have already taken irreversible corporate action, then the trustee may not rescind and recast the vote.

If our board of directors or a committee thereof determines in good faith that a proposed transfer or other event has taken place that violates the restrictions on ownership and transfer of our stock set forth in our charter, our board of directors or such committee may take such action as it deems

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advisable in its sole discretion to refuse to give effect to or to prevent such transfer, including, but not limited to, causing us to redeem shares of stock, refusing to give effect to the transfer on our books or instituting proceedings to enjoin the transfer.

Every owner of 5% or more (or such lower percentage as required by the Code or the Treasury Regulations promulgated thereunder) of the outstanding shares of our stock, within 30 days after the end of each taxable year, must give written notice to us stating the name and address of such owner, the number of shares of each class and series of our stock that the owner beneficially owns and a description of the manner in which the shares are held. Each such owner also must provide us with any additional information that we request in order to determine the effect, if any, of the person's actual or beneficial ownership on our status as a REIT and to ensure compliance with the ownership limits. In addition, any person that is an actual owner, beneficial owner or constructive owner of shares of our stock and any person (including the stockholder of record) who is holding shares of our stock for an actual owner, beneficial owner or constructive owner must, on request by us, disclose to us such information as we may request in good faith in order to determine our status as a REIT and comply with requirements of any taxing authority or governmental authority or to determine such compliance.

Any certificates representing shares of our stock will bear a legend referring to the restrictions on ownership and transfer of our stock described above. If we issue depositary shares at a future time, those depositary shares will be subject to the same ownership limitations and transfer restrictions with respect to the underlying preferred stock, and will also count toward the overall ownership limitations to the extent of the underlying preferred stock.

These restrictions on ownership and transfer could delay, defer or prevent a transaction or a change of control of our company that might involve a premium price for our common stock that our stockholders believe to be in their best interest.

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**CERTAIN PROVISIONS OF MARYLAND LAW AND OF OUR CHARTER AND BYLAWS**

The following is a summary of the provisions of Maryland law applicable to us and of our charter and bylaws. For more detail, we refer you to Maryland law, including the MGCL, our charter and our bylaws.

**Amendment of Charter and Bylaws**

Under Maryland law, a Maryland corporation generally cannot amend its charter, unless declared advisable by its board of directors and approved by the affirmative vote of stockholders entitled to cast at least two-thirds of the votes entitled to be cast on the matter. However, a Maryland corporation may provide in its charter for approval of amendments by a lesser percentage of the shares entitled to vote on the matter, but not less than a majority of all of the votes entitled to be cast on the matter. Our charter provides for approval of amendments to our charter by a majority of the votes entitled to be cast on the matter. Our board of directors has the exclusive power to adopt, alter or repeal any provisions of our bylaws and make new bylaws, except with respect to amendments to the provisions of our bylaws regarding our opt out of the Maryland business combination and control share acquisition statutes.

**Power to Reclassify Shares of Our Stock**

Our charter authorizes our board of directors to classify and reclassify any unissued shares of our common stock and preferred stock into other classes or series of stock. Prior to issuance of shares of each class or series, our board of directors is required by Maryland law and by our charter to set, subject to our charter restrictions on transfer of our stock, the terms, preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications and terms or conditions of redemption for each class or series. Thus, our board of directors could authorize the issuance of shares of common stock or preferred stock with terms and conditions which could have the effect of delaying, deferring or preventing a transaction or a change in control that might involve a premium price for holders of our common stock or otherwise be in their best interest.

**Power to Authorize and Issue Additional Shares of Common Stock and Preferred Stock**

Our board of directors, with the approval of a majority of the entire board of directors and without stockholder approval, has the authority to amend our charter to increase or decrease the aggregate number of shares of stock or the number of shares of stock of any class or series that we have the authority to issue. Our board of directors can cause us to issue additional shares without stockholder approval, unless stockholder approval is required by applicable law or the rules of any stock exchange or automated quotation system on which our securities may be listed or traded. Although we have no present intention of doing so, we could issue a class or series of stock that could delay, defer or prevent a transaction or a change in control of the Company that might involve a premium price for holders of common stock or otherwise be in their best interest.

**Meetings of Stockholders**

Under our bylaws, annual meetings of stockholders are to be held each year at a date and time during the month of May as determined by our board of directors. Special meetings of stockholders may be called only by our board of directors, our Chairman, our Chief Executive Officer or our President and must be called by our Secretary upon the written request of the stockholders entitled to cast not less than a majority of all the votes entitled to be cast at a meeting. The date, time and place of any special meetings will be set by our board of directors or our Chairman, Chief Executive Officer or President as provided in our bylaws, whoever has called the meeting. Our bylaws provide that with

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respect to special meetings of our stockholders, only the business specified in our notice of meeting may be brought before the meeting.

**Advance Notice Provisions for Stockholder Nominations and Stockholder Proposals**

Our bylaws provide that, with respect to an annual meeting of stockholders, nominations of individuals for election to our board of directors and the proposal of other business to be considered by stockholders may be made only (1) pursuant to our notice of the meeting, (2) by or at the direction of our board of directors or (3) by a stockholder who is a stockholder of record both at the time of giving of notice by the stockholder as required by the bylaws and at the time of the meeting and who is entitled to vote at the meeting and who has complied with the advance notice procedures of our bylaws. With respect to special meetings of stockholders, only the business specified in our notice of the meeting may be brought before the meeting. Nominations of individuals for election to our board of directors at a special meeting may be made only (x) pursuant to our notice of the meeting, (y) by or at the direction of our board of directors or (z) provided that the board of directors has determined that directors will be elected at the meeting, by a stockholder who is a stockholder of record both at the time of giving notice by the stockholder as required by the bylaws and at the time of the meeting, who is entitled to vote at the meeting and who has complied with the advance notice provisions of our bylaws.

The purpose of requiring stockholders to give advance notice of nominations and other proposals is to afford our board of directors the opportunity to consider the qualifications of the proposed nominees or the advisability of the other proposals and, to the extent considered necessary by our board of directors, to inform stockholders and make recommendations regarding the nominations or other proposals. The advance notice procedures also permit a more orderly procedure for conducting our stockholder meetings. Although our bylaws do not give our board of directors the power to disapprove timely stockholder nominations and proposals, they may have the effect of precluding a contest for the election of directors or proposals for other action if the proper procedures are not followed, and of discouraging or deterring a third party from conducting a solicitation of proxies to elect its own slate of directors to our board of directors or to approve its own proposal.

**Board of Directors**

Our board of directors currently consists of eight directors. Under our bylaws, the number of directors may be established by our board of directors from time to time but may not be fewer than the minimum number required by the MGCL (which currently is one) or more than fifteen. Under our charter and bylaws, we have elected to be subject to certain provisions of Maryland law which vest in our board of directors the exclusive right to determine the number of directors and the exclusive right, by the affirmative vote of a majority of the remaining directors, to fill vacancies on the board of directors even if the remaining directors do not constitute a quorum.

Our directors each serve until the next annual meeting and until their successors are elected and qualify and thus are subject to election annually. Directors will be elected by the vote of a majority of the votes cast in an uncontested election, and by a plurality of the votes cast in a contested election. Holders of shares of our common stock do not have the right to cumulative voting in the election of directors. Consequently, at each annual meeting of stockholders, the holders entitled to cast a majority of the votes entitled to be cast in the election of directors will be able to elect all of the directors.

Any vacancy will be filled, including any vacancy created by an increase in the number of directors, at any regular meeting or at any special meeting called for the purpose, by a majority of the remaining directors in office, even if the remaining directors do not constitute a quorum. Any director appointed to fill a vacancy shall hold office for the remainder of the full term of the directorship in which such vacancy occurred.

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**Removal of Directors**

Our charter provides that a director may be removed, with or without cause, upon the affirmative vote of a majority of the votes entitled to be cast in the election of directors. Absent removal of all of our directors, this provision, when coupled with the provisions in our charter and bylaws authorizing our board of directors to fill vacant directorships, precludes stockholders from removing incumbent directors, except upon an affirmative majority vote, and filling the vacancies created by such removal with their own nominees.

**Extraordinary Transactions**

Under Maryland law, a Maryland corporation generally cannot dissolve, merge, sell all or substantially all of its assets, engage in a share exchange or engage in similar transactions outside the ordinary course of business unless declared advisable by its board of directors and approved by the affirmative vote of stockholders entitled to cast at least two-thirds of the votes entitled to be cast on the matter. However, a Maryland corporation may provide in its charter for approval of these matters by a lesser percentage of the shares entitled to vote on the matter, but not less than a majority of all of the votes entitled to be cast on the matter. Our charter provides for approval of these matters by a majority of the votes entitled to be cast on the matter. Maryland law permits a corporation to transfer all or substantially all of its assets without the approval of the stockholders of the corporation to one or more persons if all of the equity interests of the person or persons are owned, directly or indirectly, by the corporation. Maryland law also does not require approval of the stockholders of a parent corporation to merge or sell all or substantially all of the assets of a subsidiary entity. Because operating assets may be held by a corporation's subsidiaries, as in our situation, this may mean that a subsidiary may be able to merge or sell all or substantially all of its assets without a vote of the corporation's stockholders. Maryland law also permits the merger of a 90% or more owned subsidiary with or into its parent corporation without stockholder approval if (1) the charter of the successor in the merger is not amended other than to change its name, the name or other designation or the par value of any class or series of its stock or the aggregate par value of its stock and (2) the contract rights of any stock of the successor issued in the merger in exchange for stock of the other corporation participating in the merger are identical to the contract rights of the stock for which it is exchanged.

**Business Combinations**

Maryland law prohibits "business combinations" between us and an interested stockholder or an affiliate of an interested stockholder for five years after the most recent date on which the interested stockholder becomes an interested stockholder. These business combinations include a merger, consolidation, share exchange or, in circumstances specified in the statute, an asset transfer or issuance or reclassification of equity securities. Maryland law defines an interested stockholder as:

any person who beneficially owns 10% or more of the voting power of our stock; or

an affiliate or associate of ours 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 our then outstanding voting stock.

A person is not an interested stockholder if our board of directors approved in advance the transaction by which the person otherwise would have become an interested stockholder. However, in approving a transaction, our board of directors may provide that its approval is subject to compliance, at or after the time of approval, with any terms and conditions determined by our board of directors.



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After the five-year prohibition, any business combination between us and an interested stockholder generally must be recommended by our board of directors and approved by the affirmative vote of at least:

80% of the votes entitled to be cast by holders of our then outstanding shares of voting stock; and

two-thirds of the votes entitled to be cast by holders of our voting stock other than stock held by the interested stockholder with whom or with whose affiliate the business combination is to be effected or stock held by an affiliate or associate of the interested stockholder.

These super-majority vote requirements do not apply if our common stockholders receive a minimum price, as defined under Maryland law, for their stock in the form of cash or other consideration in the same form as previously paid by the interested stockholder for its stock.

The statute permits various exemptions from its provisions, including business combinations that are exempted by the board of directors before the time that the interested stockholder becomes an interested stockholder. We have opted out of the business combination provisions of the MGCL by resolution of our board of directors and our bylaws contain a provision providing that we may not opt in without approval of our stockholders.

**Control Share Acquisitions**

With certain exceptions, the MGCL provides that "control shares" of a Maryland corporation 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, excluding shares owned by the acquiring person or by our officers or directors who are our employees. Control shares are voting shares which, if aggregated with all other shares owned or voted by the acquiror, would entitle the acquiror to exercise voting power in electing directors within one of the following ranges of voting power: (1) one-tenth or more but less than one-third, (2) one-third or more but less than a majority or (3) a majority or more of all voting power. Control shares do not include shares the acquiror is then entitled to vote as a result of having previously obtained stockholder approval. A control share acquisition means, subject to certain exceptions, the acquisition by any person of ownership or voting power of issued and outstanding control shares. A person who has made or proposes to make a control share acquisition, upon satisfaction of certain conditions, including an undertaking to pay expenses, may compel our board of directors to call a special meeting of stockholders to be held within 50 days of demand to consider the voting rights of the control shares in question. If no request for a meeting is made, we may present the issue at any stockholders' meeting.

If voting rights are not approved at the stockholders' meeting or if the acquiring person does not deliver the statement required by Maryland law, then, subject to certain conditions and limitations, the corporation may redeem any or all of the control shares, except those for which voting rights have previously been approved, for fair value. 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 or of any meeting of stockholders at which the voting rights of the shares were considered and not approved. If voting rights for control shares are approved at a stockholders' meeting and the acquiror may then vote a majority of the shares entitled to vote, then all other stockholders may exercise appraisal rights. The fair value of the shares for purposes of these 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 does not apply to shares acquired in a merger, consolidation or share exchange if the corporation is a party to the transaction, nor does it apply to acquisitions approved or exempted by the corporation's charter or bylaws.

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Our bylaws contain a provision exempting any and all acquisitions of our stock from the control share provisions of Maryland law. We may not repeal this provision without approval of our stockholders.

**Maryland Unsolicited Takeover Act**

The MGCL permits a Maryland corporation with a class of equity securities registered under the Exchange Act and at least three independent directors to elect to be subject, by provision in its charter or bylaws or a resolution of its board of directors and notwithstanding any contrary provision in the charter or bylaws, to any or all of the following provisions:

a classified board of directors;

a two-thirds vote requirement for removing a director;

a requirement that the number of directors be fixed only by vote of the directors;

a requirement that a vacancy on the board of directors be filled only by the remaining directors and for the remainder of the full term of the class of directors in which the vacancy occurred; or

a majority requirement for the calling of a special meeting of stockholders.

Our charter and bylaws (1) vest in our board of directors the exclusive power to fix the number of directorships and (2) require, unless called by our Chairman, Chief Executive Officer, President or board of directors, the request of holders entitled to cast not less than a majority of the votes entitled to be cast at a meeting to call a special meeting. We also have elected to be subject to the provisions of Subtitle 8 of the MGCL relating to the filling of vacancies on our board of directors. We do not have a classified board of directors or require a two-thirds vote for removal of any director from our board of directors. Pursuant to Subtitle 8, our board of directors has adopted a resolution prohibiting us from electing to be subject to the provision of Subtitle 8 regarding a classified board of directors unless such election is first approved by the affirmative vote of a majority of the votes cast on the matter by stockholders entitled to vote generally in the election of directors.

**Limitation of Liability and Indemnification**

Maryland law permits us to include in our charter a provision limiting the liability of our directors and officers to us and our stockholders for money damages, except for liability resulting from (1) actual receipt of an improper benefit or profit in money, property or series or (2) active and deliberate dishonesty established by a final judgment as being material to the cause of action. Our charter contains a provision which eliminates directors' and officers' liability to the maximum extent permitted by Maryland law.

Our charter also authorizes us, to the maximum extent permitted by Maryland law, to obligate us to indemnify (1) any present or former director or officer or (2) any individual who, while a director or officer and, at our request, serves or has served another corporation, real estate investment trust, partnership, joint venture, trust, employee benefit plan or other enterprise as a director, officer, partner or trustee of another corporation, real estate investment trust, partnership, joint venture, trust, employee benefit plan or any other enterprise from and against any claim or liability arising from service in any such capacity and to pay or reimburse their reasonable expenses in advance of final disposition of a proceeding. Our bylaws obligate us to provide such indemnification and advance of expenses. Our charter and bylaws also permit us to indemnify and advance expenses to any individual who served our predecessor in any of the capacities described above and any employee or agent of us or our predecessor.

Maryland law requires us (unless our charter provides otherwise, which our charter does not) to indemnify a director or officer who has been successful, on the merits or otherwise, against reasonable

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expenses incurred in the defense of any proceeding to which he or she is made, or threatened to be made, a party by reason of his or her service in that capacity. Maryland law permits us to indemnify our present and former directors and officers, among others, against judgments, penalties, fines, settlements and reasonable expenses actually incurred by them in connection with any proceeding to which they may be made, or threatened to be made, a party by reason of their service in those or other capacities unless it is established that:

the act or omission of the director or officer was material to the matter giving rise to the proceeding and (1) was committed in bad faith or (2) was the result of active and deliberate dishonesty;

the director or officer actually received an improper personal benefit