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Important Information

In connection with its proposed acquisition of Arcelor S.A., Mittal Steel Company will file important documents with the United States Securities and Exchange Commission (SEC), including a registration statement on Form F-4, a prospectus for the exchange offer and related documents. **Investors and Arcelor securities holders are urged to carefully read all such documents when they become available because they will contain important information.** Investors and Arcelor securities holders may obtain copies of the documents, when available, free of charge on the SEC s website at www.sec.gov, as well as from Mittal Steel on its website at www.mittalsteel.com.

Forward-Looking Statements

This communication contains forward-looking information and statements about Mittal Steel Company N.V., Arcelor S.A. and their combined businesses after completion of the proposed acquisition. Forward-looking statements are statements that are not historical facts. These statements include financial projections and estimates and their underlying assumptions, statements regarding plans, objectives and expectations with respect to future operations, products and services, and statements regarding future performance. Forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995 are generally identified by the words "believe," "expect," "anticipate," "target" or similar expressions. Although Mittal Steel s management believes that the expectations reflected in such forward-looking statements are reasonable, investors and holders of Arcelor s securities are cautioned that forward-looking information and statements are subject to various risks and uncertainties, many of which are difficult to predict and generally beyond the control of Mittal Steel, that could cause actual results and developments to differ materially from those expressed in, or implied or projected by, the forward-looking information and statements. These risks and uncertainties include those discussed or identified in the public filings with the SEC made by Mittal Steel, including on Form 20-F and on the Form F-4 that Mittal Steel will file with the SEC. Mittal Steel undertakes no obligation to publicly update its forward-looking statements, whether as a result of new information, future events, or otherwise.

FINAL TRANSCRIPT

Jan. 27. 2006 / 2:00PM, MT - Mittal Steel announces offer for Arcelor Conference Call

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PRESENTATION

NO OFFER

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IMPORTANT INFORMATION

IN CONNECTION WITH ITS PROPOSED ACQUISITION OF ARCELOR S.A., MITTAL STEEL COMPANY WILL FILE IMPORTANT DOCUMENTS WITH THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION (SEC), INCLUDING SCHEDULE TO, A REGISTRATION STATEMENT ON FORM F-4, A PROSPECTUS FOR THE EXCHANGE OFFER AND RELATED DOCUMENTS. INVESTORS AND ARCELOR SECURITIES HOLDERS ARE URGED TO CAREFULLY READ ALL SUCH DOCUMENTS WHEN THEY BECOME AVAILABLE BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION. INVESTORS AND ARCELOR SECURITIES HOLDERS MAY OBTAIN COPIES OF THE DOCUMENTS, WHEN AVAILABLE, FREE OF CHARGE ON THE SEC'S WEBSITE AT WWW.SEC.GOV, AS WELL AS FROM MITTAL STEEL ON ITS WEBSITE AT WWW.MITTALSTEEL.COM.

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FORWARD-LOOKING STATEMENTS

THIS COMMUNICATION CONTAINS FORWARD-LOOKING INFORMATION AND STATEMENTS ABOUT MITTAL STEEL COMPANY N.V., ARCELOR S.A. AND THEIR COMBINED BUSINESSES AFTER COMPLETION OF THE PROPOSED ACQUISITION. FORWARD-LOOKING STATEMENTS ARE STATEMENTS THAT ARE NOT HISTORICAL FACTS. THESE STATEMENTS INCLUDE FINANCIAL PROJECTIONS AND ESTIMATES AND THEIR UNDERLYING ASSUMPTIONS, STATEMENTS REGARDING PLANS, OBJECTIVES AND EXPECTATIONS WITH RESPECT TO FUTURE OPERATIONS, PRODUCTS AND SERVICES, AND STATEMENTS REGARDING FUTURE PERFORMANCE. FORWARD-LOOKING STATEMENTS WITHIN THE MEANING OF THE PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995 ARE GENERALLY IDENTIFIED BY THE WORDS "BELIEVE," "EXPECT," "ANTICIPATE," "TARGET" OR SIMILAR EXPRESSIONS. ALTHOUGH MITTAL STEEL'S MANAGEMENT BELIEVES THAT THE EXPECTATIONS REFLECTED IN SUCH FORWARD-LOOKING STATEMENTS ARE REASONABLE, INVESTORS AND HOLDERS OF ARCELOR'S SECURITIES ARE CAUTIONED THAT FORWARD-LOOKING INFORMATION AND STATEMENTS ARE SUBJECT TO VARIOUS RISKS AND UNCERTAINTIES, MANY OF WHICH ARE DIFFICULT TO PREDICT AND GENERALLY BEYOND THE CONTROL OF MITTAL STEEL, THAT COULD CAUSE ACTUAL RESULTS AND DEVELOPMENTS TO DIFFER MATERIALLY FROM THOSE EXPRESSED IN, OR IMPLIED OR PROJECTED BY, THE FORWARD-LOOKING INFORMATION AND STATEMENTS. THESE RISKS AND UNCERTAINTIES INCLUDE THOSE DISCUSSED OR IDENTIFIED IN THE PUBLIC FILINGS WITH THE SEC MADE BY MITTAL STEEL, INCLUDING ON FORM 20-F AND ON THE FORM F-4 THAT MITTAL STEEL WILL FILE WITH THE SEC. MITTAL STEEL UNDERTAKES NO OBLIGATION TO PUBLICLY UPDATE ITS FORWARD-LOOKING STATEMENTS, WHETHER AS A RESULT OF NEW INFORMATION, FUTURE EVENTS, OR OTHERWISE.

Operator

Good day, ladies and gentlemen, and welcome to the "Mittal Steel Announces Offer for Arcelor" conference call. At this time, all participants are in a listen-only mode. We will be facilitating a question-and-answer session towards the end of today's presentation. (Operator Instructions). As a reminder, this conference is being recorded for replay purposes.

I would now like to turn the presentation over to your host for today's call, Mr. Julien Onillon, Director of Investor Relations.

Julien Onillon *- Mittal Steel - Director - IR*

Good afternoon and good morning, everyone. Today's presentation will be given by Lakshmi Mittal, Chairman and Chief Executive of Mittal Steel, and Aditya Mittal, President and CFO of Mittal Steel.

This contains forward-looking statements that involve a number of risks and uncertainties. Those statements are based on current expectations, whereas actual results may differ. Among the factors that could cause actual results to differ are the risk factors listed in Mittal's most recent SEC filing. I will now turn the call over to Mr. Lakshmi Mittal.

Lakshmi Mittal ***- Mittal Steel - Chairman, CEO***

Thank you, Julien, and good morning and good day to all of you. And we are sorry for the delay in starting this conference call. And thank you to all of the participants for joining this call.

The purpose of this call is to announce an important and defining transaction for the steel industry. This morning, Mittal Steel made an offer to the shareholders of Arcelor to join forces with Mittal Steel to create the world's first 100 million ton steel producer. We have prepared a presentation that provides some of the key highlights of our proposal. We will then open the lines to have questions from participants.

Let me begin with an overview of the proposed transaction. Mittal Steel is making a tender offer for 100% of the outstanding shares of Arcelor at a price of EUR28.2, which represents a 31% premium on one-month weighted average price, and 55% premium on 12-month weighted average price. It also represents 27% of premium on yesterday's close, which is the highest -- all-time high for Arcelor stock.

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The offer consists for 75% stock and 25% in cash. The main offer is to exchange four Mittal shares and EUR35.25 for five Arcelor shares. Subject to having an aggregate allocation of 25% cash and 75% stock in this transaction, Arcelor shareholders can receive cash or shares in whatever proportion they elect. Assuming 100% acceptance, the aggregate consideration will consist of EUR4.6 billion in cash and 525 million Class A Mittal Steel shares, making a total price of EUR18.6 billion.

The offer is subject to only three conditions -- tender of more than 50% of Arcelor shares; approval of the Mittal Steel shareholders to issue the new Mittal Steel shares; the Mittal Steel families undertaking to vote in favor of this, of course. No change in the [substance] of Arcelor during the offer.

There are a number of important other components in our proposal, but in connection with this transaction, we have entered into an agreement with ThyssenKrupp for sale of the Dofasco to them upon successful completion of our offer for Arcelor. The price wholesale is the equivalent of 68 Canadian dollars per share.

Second, which is very important, as a part of this transaction, the Mittal family has committed to vote an amendment to the bylaws of the Company to reduce its voting control of the company. The Class B shares held by the family which currently carry 10 votes will be modified to carry two votes each. As a result of this change and following the transaction, the Mittal family will hold approximately 51% of the total shares outstanding and 64% of the voting rights.

Lastly, as part of this transaction, Mittal Steel will comply with Brazilian law with respect to Brazilian [subsidies]. And we expect to close this transaction in Q2 2006.

This transaction will really redefine the global steel industry. Let me give you some of the highlights. The combination unites the world's two largest steel companies. There is a limited overlap, and they are complementary [efforts] and skills across all areas. This resulting group will have unprecedented skill and diversification to many [facility], stabilized earnings, and increased shareholder return. We estimate that there could be in U.S. dollars -- there would be US$1 billion of annual synergies which we hope to achieve by 2009.

We believe that this transaction will be accretive to the shareholders. In short, the combined company will be strengthened in all areas, and be a powerful force in the industry for years to come.

Consolidation has always been the source of great value creation in the steel industry over the last few years, and we at Mittal Steel and Arcelor [as a steel] company have always been proponents of the consolidation of the steel industry. And we all the time have outlined our vision to create a 100 million ton steel company. And this dream comes true with this merger and both entities will have a capacity exceeding 100 million tons.

And by combining these two, like I said, this transaction accelerates the consolidation of industry and takes it to a new level. We believe we have a unique opportunity to take this giant step.

As I said, the combination of these companies will take us to more than 100 million tons, and it will be three times larger than the next largest competition. Obviously, scale is critical in the steel industry [and] the competitive [advantage]. The great complementarity between Mittal Steel and Arcelor means that with this scale will also come diversification. And with the scale and diversification come a broad range of benefits from which we will extract shareholder value.

We will enjoy greater operational productivity and reduced earnings volatility. Scale and diversification will give us better access to grow the [positive] and will allow us to work with the best customers and suppliers. Lastly, the larger scale will allow us to enhance product development and third [hand] development specifically.

One of the key attractions for this combination is that the complementarity in the geographic footprints of the two groups is virtually perfect. There is limited overlap and when you put the two footprints together you have unequal global coverage. Mittal Steel has leading positions in North America, Eastern Europe, and in some of the emerging markets like South Africa and Kazakhstan, Algeria. Arcelor has a leadership position in Western Europe and a strong presence in South America, plus attractive opportunities to grow in China and India. Together, the group will operate 61 plants across the world in 27 countries, and will benefit from numerous joint ventures. All in all, the new group will have leadership positions in five out of nine major markets.

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There is also a very strong fit between the Company's product offerings. Mittal Steel has the number one position in North America [auto mill] products compared to Arcelor's number one position in Western Europe. The broader range of product provides a number of additional benefits, including greater efficiency in serving our customer base and enhanced R&D and technological leadership.

Mittal Steel has among the strongest levels of raw materials integration in the steel industry. Combining with Arcelor will allow us to deploy these specific effects of the large production base. We are expanding as I have said before in my earlier conferences our mining efforts to ensure that we remain cost-competitive given the increasing purchase cost for iron ore and coal. By comparison, Arcelor has limited access to captive sources of raw materials supply.

With this merger, we will adopt the best practices to maintain excellence. And this will take the sustainability of this steel industry, as well as for this combined group to a new dimension. We will have [240,000] people employed. We will capitalize on the [skillset] on a large group. And we will employ best practices across the organizations.

At the same time, we will have the best practices on health and safety. We will work on improving the [environment]. And we will continue to remain very conscious about our [social] responsibilities.

On this, I would also like to say that we will open ourselves to engage in a dialogue with the Arcelor management. We have a lot of respect for their management, for Arcelor management, what they have done. And we have an ample space for the top management of Arcelor to participate in the joint company along with Mittal Steel. And I think this joint group will really create enormous shareholder value.

We estimate the US$1 billion annual synergies with minimal implementation costs. This is very important here. We believe that implementation cost to achieve $1 billion synergies will be very, very minimal. We estimate $600 million synergies in purchasing. And in first year -- synergies will come out of three things -- purchasing, marketing and trading, and manufacturing process optimization. In first year, we estimate about $600 million of synergies; second year, 900; and year three, we believe $1 billion synergies.

Now with this, I will ask Aditya to explain us further synergy potential and discuss the details about the transaction.

Aditya Mittal *- Mittal Steel - President, CFO*

Thank you very much. The $1 billion is the quantified synergy potential. And as our Chairman earlier indicated, it comes with minimal cost. Later on in the presentation, I can quantify and get into a greater detail on how we calculate the 1 billion, and how we believe it is easily achievable.

We also have identified synergies which have not been quantified in the $1 billion number. If I break them down between cost and revenue, in terms of cost synergies, we clearly see an impact in terms of consolidation. This is across the organization in various parts. Product and process innovation -- we can combine our research capabilities, what we're doing in terms of research -- work in terms of our process innovation.

In terms of CapEx and working capital requirements, we see scale advantages, as well as better management of raw materials [as with] finished goods inventories, to bring down the overall working capital requirement of the Company.

Bidding synergies is another cost synergy. This year we competed with Arcelor on two situations, one which was Ukraine -- Kryvorizhstal, the other, Erdemir in Turkey. Clearly, we could have gotten Kryvorizhstal for perhaps less if we were one joint company.

Lastly, financial synergies -- we had better access to the capital markets, better debt profile, etc., etc., which enables us to continue to save costs.

In terms of revenue synergies -- a lot of this is self-explanatory, but let me just go through the main highlights. Clearly, the most important highlight in terms of revenue synergies is consolidation impact as well, which can be seen at different levels in terms of the revenue line item. Specifically, it also helps our global customer franchise. Everyone has been talking about global customer accounts, but there has not been a leading producer in North America as well as in Western Europe. In this transaction, we are number one in North America, Arcelor is number one in Western Europe, which provides the true creation of proper global customer accounts and a global customer franchise.

Clearly, we can further advanced our product development. And as a result of that, we can get additional revenue from our global customer base.

Lastly, Arcelor has a very strong distribution arm in Europe, [eight to yes], and as we are jointly present in 27 countries, we can leverage that distribution arm on a global basis, which again will create revenue synergies, as we have more direct access to our customer group.

There are other additional synergies which have also not been quantified, but these are the key highlights that I'd like to talk about.

In terms of -- well, what does all of this mean? We're creating a unique platform for further growth and value creation. We continue to realize through this merger the full potential of our asset base through continuous improvement and sharing of best practices. This gets an [added trust]. We can pursue international expansion opportunities. As I mentioned earlier, we can leverage our R&D capability and global presence to become partner of choice for growth in new areas. And we can continue to see value-enhancing acquisitions.

This platform provides us with significant strategic flexibility in the global steel industry, and clearly provides us with more opportunities to create value.

Let me now talk about the transaction benefits. My first slide here for those of you who are not on the Web is a win-win strategic proposition. And we'll talk about the benefits to Arcelor shareholders, and the benefits to Mittal shareholders. And the reason why this is important is because Mittal shareholders will have a significant stake in the combined entity. And so will Arcelor shareholders in the combined entity.

In terms of the Arcelor shareholders, it provides the opportunity to integrate Arcelor's strength into a stronger global network -- for example, a number one position in North America. It provides accelerated growth because of access to new markets in China, India, Eastern Europe, Africa, and Central Asia, where Mittal Steel is present or is getting stronger.

It provides improvement in margins and control cost for mining integration. We are significantly integrated at Mittal Steel in terms of our mining operation. It provides the opportunity to partner with the most successful entrepreneur of the industry. And lastly, the realization of 1 billion in synergies.

In terms of the Mittal Steel shareholders, it provides Mittal Steel with the opportunity to globalize its North America and [added value] leadership in West Europe. It reinforces our low-cost leadership position with the addition of Brazil in South America. Both Arcelor and Mittal are both technological and product development leaders. This provides us the opportunity to become undisputed technological and product development leaders.

It provides us with reduced volatility in terms of our earnings base, as we will have -- we could enter into more long-term contracts and geographical diversification. And again, it provides us the ability to realize 1 billion in synergies.

In terms of the synergies, I break it down on this page -- $600 million in purchasing synergies implies 1.25% of cost of goods sold for the combined entity. In terms of examples -- we have already achieved at ISG, which was a very large facility which we acquired six months ago, almost 1.2% of COGS in six months. Inland, over a two-year period, we achieved 225 million of purchasing synergies, which is 7.5% of COGS.

The reason why we feel we are confident on 1.25% on the combined entity is because we will have improved purchasing power, we can optimize material flow through these [landed] costs. And as we are present in 27 countries, we can access nontraditional suppliers. For example, we have a joint venture in northern China which produces refractories. We can leverage on that, and I'm sure Arcelor has similar nontraditional suppliers that we are not accessing.

In terms of marketing and trading opportunities, $200 million is our forecast. We achieved this through savings and distribution costs by integrating distribution channels. We can add additional quantities to be available to the Arcelor distribution network in Europe and cross-product flows. Today, for example, in Europe, Arcelor is shipping tons into Poland, in terms of structural steel. They do not have to do that. We're shipping steel in to Germany -- we can stop all of that.

We estimate cross-product flows of about 2 to 4 million tons. And you have, depending on what freight rates you use in Europe, significant synergy there. We believe that to the extent that we can increase the distribution network by, let's say, 18 million tons and in Europe, that's about 10 to $15 a ton that you could save on costs.

In terms of manufacturing process optimizations, a third key synergy leg -- we forecast another $200 million. Two key drivers. First, optimize capacity utilization. What does that mean? That means the right product at the right mill -- i.e., dedicate certain facilities for automotive, for appliance, for construction, within Europe as well as on a global basis. We can also specialize facilities. So this allows us to have larger order size [per] facility.

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In terms of examples, the Inland/ISG capacity utilization saving we have forecast at $2.50 per ton. And in six months, we will realize synergies of about 13 million on that front. [If you were to] drastically improved yield in Europe, it gives us capacity utilization and specialization of facilities, a 1% yield improvement translates into about $150 million on 60 million tons of shipment.

Underlying all of these synergies, we have perhaps one of the best track records in realizing the synergy targets that we have laid in terms of -- laid at the outset.

Let me just quickly walk through the financial benefits for Arcelor shareholders. Clearly, there's a substantial upfront premium. We talk about it earlier, 55% on the 12-month weighted average; 25% cash in the offer, continued ownership in the undisputed industry leader, which translates into 43%. And further upside potential of re-rating of the combined group.

If I just talk briefly on the benefits to Mittal Steel shareholders, this transaction is accretive on an EPS basis based on IBES estimates for 2006 as well as 2007, pre-synergies. And to the extent that we have synergies, it becomes even more accretive.

We believe there's further upside through the potential of re-rating of the combined group. This dramatically enhances our share liquidity, which again, is a very strong positive.

We are increasing our dividend payout, assuming this transaction closes, to 25% payout over the cycle. This is slightly higher than what Arcelor has been paying historically, but it's significantly higher than what we have been paying historically, and is another statement of confidence -- or [demonstration] of our confidence in the health of the steel industry in the medium to long run.

We have 57% ownership in the combined group. And we have made a dramatic improvement in terms of our corporate governance, [as] modification of supervoting rights, which we covered.

I'm very quickly going to walk you through the pro forma financial numbers. Now, there are a lot of caveats in these pro forma numbers. First of all, these are IBES estimates, as we or Arcelor have not released fourth quarter financials.

Number two, Arcelor has a different GAAP -- they have IFRS, we are U.S. GAAP based. And this is just a simple addition -- it includes purchase accounting adjustments, FX, and other things when we would do historicals and [actuals].

20 billion in revenue, $12.6 billion in terms of EBITDA, 18% EBITDA margin, net profit of $7.4 billion, free cash flow estimates of about 6.2. Net debt of 16 billion. This calculation kind of excludes the fourth quarter earnings and the free cash flow in the fourth quarter, translating into a debt to EBITDA ratio of 1.3 -- clearly strong, and clearly provides us a basis of maintaining an investment-grade rating.

If I just quickly talk about the details of the offer, I think we have covered a lot of these points. The key point here is that we intend to list in Paris, NYSE, Luxembourg, Amsterdam, Brussels, and Madrid.

Let me just address this whole Dofasco rationale. Dofasco is about one-fourth the size of Mittal USA. It is a number-five position in terms of North American market, number four in automotive. We are -- Mittal Steel USA is the number one producer, number one producer in automotive. Mittal Steel USA has its own growth plans it announced [to] galvanizing the [opportunity] expansions at the beginning of this year itself.

That's why Dofasco is redundant, and subscale compared to Mittal Steel USA. We intend to sell it to ThyssenKrupp upon completion of this transaction for aggregate consideration of EUR2.8 billion. It's a [Euro-equivalent] contract. The intermediate earnings of Dofasco would accrue to the combined group. And to the extent that the breakup fee is injected into Dofasco by Arcelor, that would be reimbursed.

We have talked about corporate governance. I'll just walk through some of the key highlights. We are examining pending discussions with authorities relocating our global headquarters to Luxembourg. Our Board composition, as you know, has a majority of independent directors. And this Board would be enlarged with new independent directors to reflect increased European exposure.

Our management team -- Mr. Mittal made comments earlier on on the respect we have for Arcelor and for Arcelor's management team, and clearly, there's ample room for the management of Arcelor.

Let me conclude by just saying that clearly on a financial basis, strategic basis, and otherwise the financial -- this deal makes a lot of sense. And with that, I hand it over to the Chairman.

Lakshmi Mittal *- Mittal Steel - Chairman, CEO*

Thank you, Aditya. I would just like to conclude (technical difficulty) transaction represents a [steep] change in the steel industry consolidation. At the [Mittal] Steel Company, all of us have been talking a lot about industry consolidation. But this transaction clearly represents the true consolidation step in the steel industry. And creating the global steel company will have a lot of benefits here. And there are significantly different than any global steel company would have.

This combination is not creating a competition here. This combination is complementary to each other in terms of assets and skills and customers. This combination offers a great opportunity for the shareholders of the company for value creation.

There are synergy potentials which we have outlined. $1 billion we have quantified, but there are a lot of other benefits which we have not identified which will come -- arising out of such a merger.

We have also -- as Aditya had just mentioned about the financial strength of the balance sheet, financial strength of the combined entity, which is really important to show the future of the company, future of the business to all the stakeholders, to the employees, to the customers, to the suppliers.

Definitely combining these two entities gives us a very strong research and development platform, and we would participate in very closely with all the customers in product development. And we are 100 -- confident that we will better serve the customers this way.

Mittal Steel shareholders have always complained about the liquidity. Definitely with this merger, liquidity will improve to a great extent. With the voting rights change, we have also created -- we have unfolded the value of the Company which was trapped, because some of the shareholders mentioned to me a couple of times during my visit that -- why don't we [re-think] about the voting rights structure, can reduce some supervoting rights? And we have taken [right steps] in this direction.

So we believe that this merger is a unique opportunity for the shareholders of both the companies to participate. And we can see clearly a very strong value creation for the shareholders of Arcelor. And we are hoping -- and we are confident that Arcelor shareholders will approve this transaction. And we are looking forward for that day. Thank you very much. And we are now open with questions.

QUESTION AND ANSWER

Operator

(Operator Instructions) David Martin, Deutsche Bank.

David Martin *- Deutsche Bank - Analyst*

Can you comment on what to expect on what to expect Arcelor's response to be, or if you already have a response, what it's been? Have you talked to them this morning, I guess, first of all?

Aditya Mittal *- Mittal Steel - President, CFO*

Perhaps we could just walk through the history of our discussions with Arcelor. We first floated the idea to them on the 14th of January. They were noncommittal. We then had a meeting set up Tuesday of this week which they had to postpone, because they had to fly to Canada, at which point in time we decided to move forward. Last night, we called Arcelor and we told them -- we talked about what we're going to do and it was a very short conversation. And that's about it.

David Martin *- Deutsche Bank - Analyst*

Okay. And then secondly, just thinking about priorities for the Company -- coming back to -- I think it's slide 11, the puzzle, which is kind of interesting -- what does this transaction -- what's the implications regarding some of the other things are working on, whether it be your greenfield project in India, some of your growth priorities in China? As a result of this transaction, are you now to a point where you think your hands are full, and you need to spend some time kind of digesting assets, or when do you get to that point?

Lakshmi Mittal *- Mittal Steel - Chairman, CEO*

Our [bond filing] transaction is already behind us. And we are working on other project in [Bauthaus] deal, which we have announced. Arcelor was also -- had been also interested in participating in the growth of India, and has been looking at opportunity to set up a greenfield project. So our vision is combined together the same. And I think we will continue to pursue our vision to have a presence in Asia.

Operator

Wayne Atwell, Morgan Stanley.

Wayne Atwell *- Morgan Stanley - Analyst*

I must say you seem to be hitting 100 million tons faster than I expected. If you're successful in acquiring Arcelor, any chance you might go to 200 million tons?

Lakshmi Mittal *- Mittal Steel - Chairman, CEO*

Step by step, Wayne. Well, they think that our vision was [120 and 20] million tons. And I am very happy that we have been able to put a proposal on the table to the steel community and to the stakeholders of creating such a Company. I think this [itself] is a great milestone, not only for the Mittal Steel and Arcelor shareholders, but also for the steel industry.

And the task for us is to integrate this milestone, integrate these two companies together as soon as possible. And perhaps this kind of success will enable other companies to also think towards accelerating the steel industry consolidation.

Wayne Atwell *- Morgan Stanley - Analyst*

So how should we handicap the future? Does that mean you think you'll be done with your M&A, or will that just mean it's going to slow you down?

Lakshmi Mittal *- Mittal Steel - Chairman, CEO*

We are now focusing on getting this transaction done.

Wayne Atwell *- Morgan Stanley - Analyst*

Okay. And then second question -- could you give us your integration in iron ore and coal once you -- assuming that you complete the acquisition, what percentage would you be self-sufficient in those two commodities?

Aditya Mittal *- Mittal Steel - President, CFO*

We are about 40 to 50% self-sufficient today. We have certain growth plans, which is basically expansion of Liberia, expansion of our facilities in Ukraine and existing mining projects in various parts of the world, including Mexico and Kazakhstan.

With that, we would achieve a much higher self-sufficiency in 2010, [where] if you were to combined that with Arcelor in a limited self-sufficiency, you get to a number of 40 to 50% as well. (multiple speakers) In five years, we should be back to where we are today.

Operator

Charles Spencer, Morgan Stanley.

Charles Spencer ***- Morgan Stanley - Analyst***

I just had a question about the obligation of [loans] you take over for the Arcelor Brazil stake. Can you just going to what that means and what sort of obligation that could be in terms of cash, please?

Aditya Mittal ***- Mittal Steel - President, CFO***

Sure. In terms of Brazil, we have a requirement to launch an offer for the minorities. And that would apply to two companies, Arcelor Brazil and Acesita, and I'll treat them differently.

This obligation becomes effective once we close on the Arcelor transaction. And we have to discuss with the regulators what is the appropriate premium for the minorities. The market cap of Arcelor Brazil is about 7 billion. Arcelor has about two-thirds of it. That's an approximately $2.1 billion minority stake, plus whatever premium is required.

In terms of Acesita, its different because you have pref shares, which have no voting, and you have voting shares. And Arcelor has quite a lot of voting shares, but not that many pref shares. And if I give a value to Acesita, then I'm implying some sort of value for the voting, which is not traded, which I don't want to do. But you can probably go to Acesita and make your own assumptions. It's clearly much smaller than Arcelor Brazil's market cap and cash requirement.

Operator

Daniel Altman, Bear Stearns.

Daniel Altman *- Bear Stearns - Analyst*

First of all, congratulations. In terms of the European Union, I'm just wondering -- I know you talked that there's not much overlap. But are you looking into any issues with your European assets, including Eastern European assets being considered altogether with the Western European assets and perhaps being over the limit in terms of European concentration?

Lakshmi Mittal *- Mittal Steel - Chairman, CEO*

I think EU will consider -- [a large] EU, which [will] 25 states. And Romania will be part of EU in 2007. And I believe that EU will consider the capacity overall within all these 25 countries.

Aditya Mittal *- Mittal Steel - President, CFO*

I would just add that when Arcelor did its merger, it was just the EU. We have added capacity in Central Europe, and that's expanding. So we are comfortable in terms of the combined environment. And that is why we have not made it as a condition to the merger. But we do expect to get into discussions with the European Commission, and ensure that they also agree with the analysis that we have done.

Daniel Altman *- Bear Stearns - Analyst*

Okay, thanks. And the second question is in terms of the sale of sellback to Thyssen, did you consider keeping the QCM assets and just selling back the steel assets to Thyssen?

Aditya Mittal *- Mittal Steel - President, CFO*

I think Thyssen was keen on QCM as well. And from our point of view, we have other mining opportunities and other low-cost jurisdictions like Liberia and others which are expanding. So QCM was perhaps not strategically among the highest priorities that we had.

Operator

Paul McTaggart, HSBC Investment Bank.

Paul McTaggart *- HSBC Investment Bank - Analyst*

Two quick questions. Firstly, on Arcelor, and regarding the longer-term plans within Europe, you would know that the long-term view for us was to shut some of the Inland plants, expand the coastal plants. So I want to get a sense of whether that was still the view your group, or whether you might have a changed view.

And secondly, on Kryvorizhstal, in part of the synergies -- I certainly note that Kryvorizhstal sold much the same product as Arcelor into some of the key markets at much lower prices. And in the synergies, do you basically -- are you incorporating the lift in value that you think you'll be able to achieve in terms of pricing out of Kryvorizhstal, or is that on top of the synergies that you quoted?

Aditya Mittal *- Mittal Steel - President, CFO*

On Kryvorizhstal synergies, we captured that when we made the acquisition of Kryvorizhstal. So we announced some synergies for Kryvorizhstal, about 200 million, back in the fourth quarter '05 and that captured this lift up, because we saw the same phenomenon vis-a-vis our product. So there's no quantification on that anywhere. That's point number one.

Point number two in terms of this asset base -- we intend to maintain Arcelor's current operating philosophy in terms of what they believe they need to shut down. We do not see overlaps in terms of our facilities, so there would be no additional shutdowns in what they have announced or what they are intending to do.

Lakshmi Mittal *- Mittal Steel - Chairman, CEO*

We announced that we will honor all the commitments what Arcelor has made in terms of growth and investment.

Operator

Hermann Reith, [BHS] Bank.

Hermann Reith *- [BHS] Bank - Analyst*

Yes, [I know] Arcelor's management is very [self-confident]. The Company has about 4 billion cash, and perhaps there will be at the year end no leverage of equity.

We've got now just that the information that the Arcelor management sees your offer as hostile, as a hostile bid, and the supervisory board will meet shortly. So under Luxembourg law -- and I think you would know that better than me, what will be the possibilities of the Arcelor management to protect the Company from your bid?

Aditya Mittal *- Mittal Steel - President, CFO*

In terms of the end (technical difficulty) offer is sent to the shareholders of Arcelor. There's an exchange process. Clearly, we have put a lot of value on the table. And I think the shareholders of Arcelor have spoken this morning that they do like the value that we have placed on the table, and they're reacting extremely positively.

We will be having a tender offer. And the shareholders of Arcelor agreed to tender their shares in. And our minimum acceptance ratio is 50.1%, so we do expect a successful approach to the shareholders of Arcelor.

Hermann Reith *- [BHS] Bank - Analyst*

If I may, I have a follow-up question. I ask what would be the measures under the existing law of Luxembourg for the management of Arcelor to increase, say, not the value, but make an extra payment or an extra dividend -- sell assets or buy back shares. Is this possible under Luxembourg law, after there's an offer implemented in the market as yours?

Aditya Mittal *- Mittal Steel - President, CFO*

We feel that the Arcelor management will respect shareholder value as we have. We still believe that we can do a friendly transaction. We have a lot of respect and admiration for the Arcelor management team, and would like to try and turn this transaction into a friendly one, if Arcelor also agrees. At the end of the day, we hope that both companies, specifically Arcelor, will respect what the shareholders want to do.

Hermann Reith *- [BHS] Bank - Analyst*

[And that in fact] we got the information that the Arcelor management sees your offer as a hostile one.

Lakshmi Mittal *- Mittal Steel - Chairman, CEO*

Yes, but -- [this bid is] hostile. We have said that we are open for discussions with Arcelor management. And we hope that they will like to have a discussion and open dialogue with us so that we can turn the feeling what -- if Arcelor has of hostility to a very friendly and successful transaction.

Operator

[Thomas Mienbar], Lehman Brothers.

Thomas Mienbar *- Lehman Brothers - Analyst*

Quick question on the regulatory side. You said the offer is not conditional on any regulatory approval. Would that mean that you can close and settle the shares before you get [HSR] and EC approval, in particular?

Aditya Mittal *- Mittal Steel - President, CFO*

The transaction is not conditional on any antitrust approval. In terms of closing, we will need to respect the regulatory authorities. The EU does allow you to close a transaction without competition approval, as long as you [place] the Company or shares in trust.

Thomas Mienbar *- Lehman Brothers - Analyst*

And on the HSR side?

Aditya Mittal *- Mittal Steel - President, CFO*

On the U.S. side, they do not, but we do not expect any significant issues in the U.S.

Thomas Mienbar *- Lehman Brothers - Analyst*

So you don't expect any timing issue from either regulator?

Aditya Mittal *- Mittal Steel - President, CFO*

Yes, we did not forecast any timing issues. And that is why we indicated that we expect this transaction to close in the second quarter of 2006.

Operator

Michelle Applebaum, Applebaum Research.

Michelle Applebaum *- Applebaum Research - Analyst*

Good morning, and congratulations. I remember when you bought Inland Steel eight years ago, and we chatted then, and you talked about building a global company. And your vision, particularly on the automotive side, I thought was incredible, and incredibly ambitious at the time. And it's remarkable to see so many years later that you're actually executing so incredibly well. So I just wanted to congratulate.

Lakshmi Mittal *- Mittal Steel - Chairman, CEO*

Thank you, Michelle.

Michelle Applebaum *- Applebaum Research - Analyst*

Do we start at some point wondering -- I know China has been a place where you have had significant interest. You've been aggressive, you've moved very intelligently in that market. What about Japan?

Lakshmi Mittal *- Mittal Steel - Chairman, CEO*

Michelle, we believe that [Japanese still invest -- he has consulted very well. But if you] have a really strong Japanese player, and they are very technologically very strong. And we are very fortunate to have an excellent relations with Nippon Steel. We are partners with them in [other] states in iron [stake] and iron core. And we believe that they are doing right things in Japan.

Aditya Mittal *- Mittal Steel - President, CFO*

So from our perspective, we're focused on China and India.

Michelle Applebaum *- Applebaum Research - Analyst*

Okay. So you're saying there isn't the opportunity for perhaps operational synergies that you've been able to --

Aditya Mittal *- Mittal Steel - President, CFO*

It's very difficult for us to get specific in terms of countries, because nowadays there could be few targets, and it creates market speculation. So I would just say that as we have indicated in our presentation, the focus area for us is China and India.

Michelle Applebaum *- Applebaum Research - Analyst*

Okay. I would imagine you'll be hearing if you haven't already from customers, particularly in the more value added end of the spectrum. Have you heard from automotive appliance, some of the global customers? Have you gotten feedback already from that, and what do you anticipate hearing?

Lakshmi Mittal *- Mittal Steel - Chairman, CEO*

I'm sure that global customers would be happy to meet a global supplier. They have been really thinking very zealously how to source from a global supplier, and now they see an opportunity here. And we also see a global supplier partnering with the global customers. And this will accelerate the process of globalization.

Michelle Applebaum *- Applebaum Research - Analyst*

Excellent, excellent. Well, thank you so much.

Operator

Michael Gambardella, JPMorgan.

Michael Gambardella *- JPMorgan - Analyst*

I just want to say congratulations on your vision of bringing this Company from Indonesia small plant all the way to the global leadership it has today. It's just phenomenal to see the transformation and the vision you've had in this industry. So congratulations on that.

Lakshmi Mittal *- Mittal Steel - Chairman, CEO*

Thank you, Michael.

Michael Gambardella *- JPMorgan - Analyst*

I wanted to ask you -- first of all, how is the Ukraine business and the integration progressing, and does this transaction change any of your expansion plans in India or China?

Lakshmi Mittal *- Mittal Steel - Chairman, CEO*

First of all, Mike, the Ukraine transaction is doing very well. And we have improved the results in the first month of our acquisition. And I am very happy about this acquisition. And we can see the opportunities. And we can see a lot of synergies which we are have already started working on.

This does not change our strategy for India and China. On the contrary, this joint company will really accelerate the process of looking at China and India in a serious way.

Michael Gambardella *- JPMorgan - Analyst*

And when you look at your synergies on purchasing, how much of that is, do you estimate, off of raw material purchases?

Aditya Mittal I would say almost half of it. When you say raw materials, I am not specifically talking about iron ore or coal, but other [consumables], such as refractories, [electrodes]. And a lot of this is just creating a better supply network with the supplier as well. So it is not

necessarily only price reduction at the supplier end, but ensuring that inventory management, supply management logistics is better managed to reduce cost for both parties. (multiple speakers) and then the other half is -- I'm sorry?

Michael Gambardella *- JPMorgan - Analyst*

I was just going to say, most of the synergies you are expecting on purchasing, on raw materials will not be from iron ore or coal, right?

Aditya Mittal *- Mittal Steel - President, CFO*

Yes. I would say that there is limited synergy in terms of iron ore and coal negotiation by the combination of these two companies. The main thrust is other consumables, [MRO items], better efficiencies, logistics management, etc.

Michael Gambardella *- JPMorgan - Analyst*

Okay, last question -- we have been talking a lot in our reports about the benefits of globalization and limiting or eliminating disruptive steel trade flows because -- you know, producers like yourself have an interest in the Ukraine -- also have an interest in North America and elsewhere. And therefore, these disruptive trade flows that we have seen -- really originate from the nationalistic roots of this industry, are really evaporating. Are you seeing the trade flows really -- the disruptive ones going down now with globalization?

Lakshmi Mittal *- Mittal Steel - Chairman, CEO*

You can see an example here in the [U.S.], that while there is a very differential price between Asia in the U.S., the [opportunity], of course, has not increased.

Michael Gambardella *- JPMorgan - Analyst*

Very good. And again, congratulations on your vision and your accomplishments.

Operator

Aldo Mazzaferro, Goldman Sachs.

Aldo Mazzaferro *- Goldman Sachs - Analyst*

Congratulations also on an industry-transforming transaction. I had a question on your flatrolled operations throughout Europe. If you look from the west to the east, I know [ISOR's] business in flatrolled is extremely different than yours, and focused on different customer bases. And your eastern European is different as well.

Do you see these remaining as fairly separate entities, or do you think there is going to be a lot of crossflow and material from Eastern Europe into Western?

Aditya Mittal *- Mittal Steel - President, CFO*

We want to eliminate this cross-tradeflow, because there is a growing market in Eastern Europe. I do agree with you -- today, there is a difference in terms of product quality, and perhaps the customers. But we are embarking on a big investment program in Central Europe, to improve its automotive franchise. And therefore, we feel it is getting harmonized in due course. And clearly, this combination would give a dramatic added trust to that improvement in quality, etc., and to our capability in growing in our Central European activities and operations.

Aldo Mazzaferro *- Goldman Sachs - Analyst*

FINAL TRANSCRIPT

Jan. 27. 2006 / 2:00PM, MT - Mittal Steel announces offer for Arcelor Conference Call

Okay. So this doesn't alter your plans at all to upgrade facilities throughout Eastern Europe, then?

Aditya Mittal *- Mittal Steel - President, CFO*

There could be some CapEx savings and stuff like that. But there is significant growth potential in Central Europe. And we would just like to -- and therefore, we do not expect this to change that.

Aldo Mazzaferro

Our articles of incorporation and the Series B articles of amendment contain restrictions upon ownership and transfer of the Series B Preferred Stock, which may impair the ability of holders to convert Series B Preferred Stock into our common stock upon a Change of Control.

Our articles of incorporation and the Series B articles of amendment contain restrictions on ownership and transfer of our capital stock, including the Series B Preferred Stock, intended to assist us in maintaining our qualification as a REIT for federal income tax purposes, in preserving the tax status of one or more REMICs in which we have or plan to have an interest, and avoiding the imposition of a direct or indirect penalty tax on us. For example, to assist us in qualifying as a REIT, our articles of incorporation prohibit anyone from acquiring or holding, beneficially or constructively, ownership of a number of shares of our capital stock in excess of 9.8% of the outstanding shares of our capital stock. For this purpose the term ownership is deemed to include shares constructively owned by a person under the provisions of Section 544 of the Code, as modified in Section 856(h) of the Code, and shares beneficially owned under the provisions of Rule 13d-3 or any successor rule under the Exchange Act. In addition, our articles of incorporation and the Series B articles of amendment provide that an acquisition of shares of our capital stock that could or would endanger the tax status of one or more REMICs in which we have or plan to have an interest or result in the imposition of a direct or indirect penalty tax on us will be void. See Description of the Series B Preferred Stock Restrictions on Ownership and Transfer in this prospectus supplement. You should consider these ownership limitations prior to your purchase of the Series B Preferred Stock. In addition, the Series B articles of amendment provide that, notwithstanding any other provision of the Series B Preferred Stock, no holder of Series B Preferred Stock will be entitled to convert such stock into our common stock to the extent that receipt of our common stock would cause the holder to exceed the ownership limitations contained in our articles of incorporation, endanger the tax status of one or more REMICs in which we have or plan to have an interest, or result in the imposition of a direct or indirect penalty tax on us, which may limit your ability to convert the Series B Preferred Stock into our common stock upon a Change of Control. The restrictions could also have anti-takeover effects and could reduce the possibility that a third party will attempt to acquire control of us, which could adversely affect the market price of the Series B Preferred Stock.

The Series B Preferred Stock has not been rated.

We have not sought to obtain a rating for the Series B Preferred Stock, and the Series B Preferred Stock may never be rated. It is possible, however, that one or more rating agencies might independently determine to assign

a rating to the Series B Preferred Stock or that we may elect to obtain a rating of our Series B Preferred Stock in the future. Furthermore, we may elect to issue other securities for which we may seek to obtain a rating. If any ratings are assigned to the Series B Preferred Stock in the future or if we issue other securities with a rating, such ratings, if they are lower than market expectations or are subsequently lowered or withdrawn, could adversely affect the market for or the market value of the Series B Preferred Stock.

Ratings only reflect the views of the issuing rating agency or agencies and such ratings could at any time be revised downward or withdrawn entirely at the discretion of the issuing rating agency. Further, a rating is not a recommendation to purchase, sell or hold any particular security, including the Series B Preferred Stock. In addition, ratings do not reflect market prices or suitability of a security for a particular investor and any future rating of the Series B Preferred Stock may not reflect all risks related to us and our business, or the structure or market value of the Series B Preferred Stock.

Our ability to pay dividends is limited by the requirements of Virginia law and our articles of incorporation.

Our ability to pay dividends on our Series B Preferred Stock is limited by the laws of Virginia and our articles of incorporation. Under applicable Virginia law, a Virginia corporation may not make a distribution if, after giving effect to the distribution, the corporation would not be able to pay its debts as the debts become due in the usual course of business, or the corporation s total assets would be less than the sum of its total liabilities plus (unless the corporation s articles provide otherwise) the amount that would be needed, if the corporation were dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of shareholders whose preferential rights are superior to those receiving the distribution. Accordingly, we may not make a distribution on our Series B Preferred Stock if, after giving effect to the distribution, we would not be able to pay our debts as they become due in the usual course of business or our total assets would be less than the sum of our total liabilities plus the amount that would be needed to satisfy the preferential rights upon dissolution of the holders of shares of any series of preferred stock then outstanding, if any, with preferences senior to those of our Series B Preferred Stock.

We cannot assure you that we will be able to pay dividends regularly.

Future distributions on our common stock and preferred stock, including the Series B Preferred Stock offered pursuant to this prospectus supplement, will be at the discretion of our board of directors and will depend on, among other things, our results of operations, cash flow from operations, financial condition and capital requirements, the annual distribution requirements under the REIT provisions of the Code and our ability to use our tax net operating loss carryforward, any debt service requirements and any other factors our board of directors deems relevant. Accordingly, we cannot guarantee that we will be able to make cash distributions on our Series B Preferred Stock on a regular quarterly basis in the future or what the actual distributions will be for any future period.

We may not be able to use the money we raise to acquire investments at favorable prices.

We intend to seek to raise additional capital from time to time if we determine that it is in our best interests and the best interests of our shareholders, including through public offerings of our capital stock. The net proceeds of any offering could represent a significant increase in our equity. Depending on the amount of leverage that we use, the full investment of the net proceeds of any offering might result in a substantial increase in our total assets. There can be no assurance that we will be able to invest all of such additional funds in mortgage-related assets at favorable prices. We may not be able to acquire enough mortgage-related assets to become fully invested after an offering, or we may have to pay more for MBS than we have historically. In either case, the return that we earn on shareholders equity may be reduced.

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USE OF PROCEEDS

We expect to receive approximately $ in net proceeds from the sale of the shares of our Series B Preferred Stock in this offering (approximately $ if the underwriters option to purchase additional shares is exercised in full), after deducting underwriting discounts and the estimated expenses of this offering payable by us.

We intend to use the net proceeds from this offering to acquire additional investments, consistent with our investment strategy, and for general corporate purposes, which may include, among other things, repayment of maturing obligations, capital expenditures and working capital.

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RATIOS OF EARNINGS TO COMBINED FIXED CHARGES AND PREFERRED STOCK DIVIDENDS

	Years Ended December 31,				
	2012	2011	2010	2009	2008
Ratio of earnings to combined fixed charges and preferred stock dividends (1)	2.94x	2.65x	2.52x	1.60x	1.73x

(1) The ratios of earnings to combined fixed charges and preferred stock dividends were computed by dividing earnings by the sum of fixed charges and preferred stock dividends. For these purposes, earnings consist of income from continuing operations before income taxes, plus fixed charges, and fixed charges consist of interest expense. Preferred dividends consist of pre-tax earnings required to pay dividends in respect of our formerly outstanding Series D Preferred Stock, which was converted to common stock in 2010, and our Series A Preferred Stock, which was issued on August 1, 2012.

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DESCRIPTION OF THE SERIES B PREFERRED STOCK

This description of certain terms of the Series B Preferred Stock supplements, and, to the extent inconsistent therewith, replaces, the description of the general terms and provisions of our preferred stock set forth in the accompanying prospectus, to which description reference is hereby made. The description of certain terms of the Series B Preferred Stock in this prospectus supplement does not purport to be complete and is in all respects subject to, and qualified in its entirety by references to the relevant provisions of our articles of incorporation, the Series B articles of amendment, our bylaws and Virginia law. Copies of our articles of incorporation, the Series B articles of amendment, and our bylaws are available from us upon request. As used under this caption Description of the Series B Preferred Stock, references to us, our and we mean Dynex Capital, Inc. excluding its subsidiaries, unless otherwise expressly stated or the context otherwise requires.

General

Our articles of incorporation provide us the authority to issue up to 100,000,000 shares of common stock, par value $0.01 per share, and 50,000,000 shares of preferred stock, par value $0.01 per share. We may issue preferred stock from time to time in one or more classes or series, with such distinctive designations, rights and preferences as our board of directors may fix in the resolutions providing for the issuance of such class or series. As of the date of this prospectus supplement, 8,000,000 shares of preferred stock are designated as Series A Preferred Stock, 2,300,000 of which are outstanding.

Before we issue any of the Series B Preferred Stock, we will file with the Virginia State Corporation Commission articles of amendment creating and establishing the terms of the Series B Preferred Stock. The articles of amendment will authorize the issuance of up to 7,000,000 shares of Series B Preferred Stock, which means that we may issue additional shares of Series B Preferred Stock ranking equally and ratably with the Series B Preferred Stock offered by this prospectus supplement and accompanying prospectus in all respects. Any additional shares of Series B Preferred Stock would form a single series with the Series B Preferred Stock offered by this prospectus supplement and accompanying prospectus and will have the same terms.

We intend to apply to list the shares of the Series B Preferred Stock on the NYSE under the symbol DXPrB. If the application is approved, we expect trading to commence within 30 days after the initial issuance of the shares of Series B Preferred Stock.

The registrar, transfer agent and dividend and redemption price disbursing agent in respect of the Series B Preferred Stock will be Computershare. The principal business address for Computershare is 480 Washington Boulevard, 29th Floor, Jersey City, New Jersey 07310 and its telephone number is (201) 680-4000. The Series B articles of amendment will provide that we will maintain an office or agency where shares of Series B Preferred Stock may be surrendered for payment (including redemption), registration of transfer or exchange.

Maturity

The Series B Preferred Stock has no stated maturity and will not be subject to any sinking fund or mandatory redemption. Shares of the Series B Preferred Stock will remain outstanding indefinitely unless we decide to redeem or repurchase them or they become convertible and are converted as described below under Conversion Rights. We are not required to set aside funds to redeem the Series B Preferred Stock.

Ranking

The Series B Preferred Stock will rank, with respect to rights to the payment of dividends and the distribution of assets upon our liquidation, dissolution or winding up:

(1) senior to all classes or series of our common stock and to all other equity securities issued by us other than equity securities referred to in clauses (2) and (3) below;

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(2) on a parity with our Series A Preferred Stock and all equity securities issued by us with terms specifically providing that those equity securities rank on a parity with the Series B Preferred Stock with respect to rights to the payment of dividends and the distribution of assets upon our liquidation, dissolution or winding up;

(3) junior to all equity securities issued by us with terms specifically providing that those equity securities rank senior to the Series B Preferred Stock with respect to rights to the payment of dividends and the distribution of assets upon our liquidation, dissolution or winding up (please see the section entitled Voting Rights below); and

(4) junior to all of our existing and future indebtedness (including indebtedness convertible to our common stock or preferred stock), including under our repurchase agreements, and effectively junior to the indebtedness of our existing subsidiaries and any future subsidiaries.

As of February 28, 2013, our total consolidated liabilities were approximately $3.7 billion, all of which ranks either senior or effectively senior to the Series B Preferred Stock, and we had outstanding 2,300,000 shares of our Series A Preferred Stock ranking on a parity with the Series B Preferred Stock.

Dividends

Holders of shares of the Series B Preferred Stock are entitled to receive, when, as and if declared by our board of directors, out of funds legally available for the payment of dividends, cumulative cash dividends at the rate of % of the $25.00 per share liquidation preference per year (equivalent to $ per year per share). Dividends on the Series B Preferred Stock shall accrue daily and be cumulative from, and including, the date of original issue and shall be payable quarterly in arrears on January 15, April 15, July 15 and October 15 of each year (each, a dividend payment date); provided that if any dividend payment date is not a business day, as defined in the Series B articles of amendment, then the dividend which would otherwise have been payable on that dividend payment date may be paid on the next succeeding business day and no interest, additional dividends or other sums will accrue on the amount so payable for the period from and after that dividend payment date to that next succeeding business day. The first dividend on the Series B Preferred Stock is scheduled to be paid on July 15, 2013 in the amount of $ per share, and that dividend will be paid to the persons who are the holders of record of the Series B Preferred Stock at the close of business on the corresponding record date, which will be July 1, 2013. Any dividend payable on the Series B Preferred Stock, including dividends payable for any partial dividend period, will be computed on the basis of a 360-day year consisting of twelve 30-day months. Dividends will be payable to holders of record as they appear in our stock records for the Series B Preferred Stock at the close of business on the applicable record date, which shall be the first day of the calendar month, whether or not a business day, in which the applicable dividend payment date falls (each, a dividend record date).

No dividends on shares of Series B Preferred Stock shall be authorized by our board of directors or paid or set apart for payment by us at any time when the terms and provisions of any agreement of ours, including any agreement relating to our indebtedness, prohibit the authorization, payment or setting apart for payment thereof or provide that the authorization, payment or setting apart for payment thereof would constitute a breach of the agreement or a default under the agreement, or if the authorization, payment or setting apart for payment shall be restricted or prohibited by law. You should review the information appearing above under Risk Factors Our ability to pay dividends is limited by the requirements of Virginia law and our articles of incorporation for information as to, among other things, other circumstances under which we may be unable to pay dividends on the Series B Preferred Stock.

Notwithstanding the foregoing, dividends on the Series B Preferred Stock will accrue whether or not we have earnings, whether or not there are funds legally available for the payment of those dividends and whether or not those dividends are declared. No interest, or sum in lieu of interest, will be payable in respect of any dividend payment or payments on the Series B Preferred Stock which may be in arrears, and holders of the Series B Preferred Stock will not be entitled to any dividends in excess of full cumulative dividends described above. Any

dividend payment made on the Series B Preferred Stock shall first be credited against the earliest accumulated but unpaid dividend due with respect to those shares.

Future distributions on our common stock and preferred stock, including the Series B Preferred Stock offered pursuant to this prospectus supplement, will be at the discretion of our board of directors and will depend on, among other things, our results of operations, cash flow from operations, financial condition and capital requirements, the annual distribution requirements under the REIT provisions of the Code and our ability to use our tax net operating loss carryforward, any debt service requirements and any other factors our board of directors deems relevant. Accordingly, we cannot guarantee that we will be able to make cash distributions on our preferred stock or what the actual distributions will be for any future period.

Unless full cumulative dividends on the Series B Preferred Stock have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof is set apart for payment for all past dividend periods, no dividends (other than in shares of common stock or in shares of any series of preferred stock that we may issue ranking junior to the Series B Preferred Stock as to dividends and upon liquidation) shall be declared or paid or set aside for payment upon shares of our common stock or preferred stock that we may issue ranking junior to or on a parity with the Series B Preferred Stock (including our Series A Preferred Stock) as to dividends or upon liquidation. Nor shall any other distribution be declared or made upon shares of our common stock or preferred stock that we may issue ranking junior to or on a parity with the Series B Preferred Stock (including our Series A Preferred Stock) as to dividends or upon liquidation. In addition, any shares of our common stock or preferred stock that we may issue ranking junior to or on a parity with the Series B Preferred Stock (including our Series A Preferred Stock) as to dividends or upon liquidation shall not be redeemed, purchased or otherwise acquired for any consideration (or any moneys be paid to or made available for a sinking fund for the redemption of any such shares) by us (except by conversion into or exchange for our other capital stock that we may issue ranking junior to the Series B Preferred Stock as to dividends and upon liquidation, for the surrender of shares of our common stock to us to satisfy tax withholding or similar obligations in connection with restricted stock granted under an equity compensation or incentive plan and for transfers made pursuant to the provisions of our articles of incorporation relating to restrictions on ownership and transfers of our capital stock).

When dividends are not paid in full (or a sum sufficient for such full payment is not so set apart) upon the Series B Preferred Stock, Series A Preferred Stock and the shares of any other series of preferred stock that we may issue ranking on a parity as to dividends with the Series B Preferred Stock, all dividends declared upon the Series B Preferred Stock and any other series of preferred stock that we may issue ranking on a parity as to dividends (including our Series A Preferred Stock) with the Series B Preferred Stock shall be declared pro rata so that the amount of dividends declared per share of Series B Preferred Stock and such other series of preferred stock that we may issue shall in all cases bear to each other the same ratio that accumulated dividends per share on the Series B Preferred Stock and such other series of preferred stock that we may issue (which shall not include any accrual in respect of unpaid dividends for prior dividend periods if such preferred stock does not have a cumulative dividend) bear to each other. No interest, or sum of money in lieu of interest, shall be payable in respect of any dividend payment or payments on the Series B Preferred Stock which may be in arrears.

Liquidation Preference

In the event of our voluntary or involuntary liquidation, dissolution or winding up, the holders of shares of Series B Preferred Stock will be entitled to be paid out of the assets we have legally available for distribution to our shareholders, subject to the preferential rights of the holders of any class or series of our stock we may issue ranking senior to the Series B Preferred Stock with respect to the distribution of assets upon liquidation, dissolution or winding up, a liquidation preference of $25.00 per share, plus an amount equal to any accumulated and unpaid dividends thereon to, but not including, the date of payment, before any distribution of assets is made to holders of our common stock or any other class or series of our stock we may issue that ranks junior to the Series B Preferred Stock as to liquidation rights.

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In the event that, upon any such voluntary or involuntary liquidation, dissolution or winding up, our available assets are insufficient to pay the amount of the liquidating distributions on all outstanding shares of the Series B Preferred Stock, the Series A Preferred Stock and the corresponding amounts payable on all shares of other classes or series of our capital stock that we may issue ranking on a parity with the Series B Preferred Stock in the distribution of assets, then the holders of the Series B Preferred Stock, the Series A Preferred Stock and all other such classes or series of capital stock shall share ratably in any such distribution of assets in proportion to the full liquidating distributions to which they would otherwise be respectively entitled.

Holders of Series B Preferred Stock will be entitled to written notice of any such liquidation no fewer than 30 days and no more than 60 days prior to the payment date. After payment of the full amount of the liquidating distributions to which they are entitled, the holders of Series B Preferred Stock will have no right or claim to any of our remaining assets. The consolidation or merger of us with or into any other corporation, trust or entity or of any other entity with or into us, or the sale, lease, transfer or conveyance of all or substantially all of our property or business, shall not be deemed to constitute a liquidation, dissolution or winding up of us (although such events may give rise to the special optional redemption and contingent conversion rights described below).

Redemption

The Series B Preferred Stock is not redeemable by us prior to April 30, 2018, except as described below under Special Optional Redemption and except that, as provided in the Series B articles of amendment, we may purchase or redeem shares of the Series B Preferred Stock prior to that date in order to preserve our qualification as a REIT, or, in accordance with our articles of incorporation, to avoid the direct or indirect imposition of a penalty tax in respect of, or protect the tax status of, any of our REMIC interests. Please see the section entitled Description of Our Capital Stock Restrictions on Ownership and Transfer in the accompanying prospectus.

Optional Redemption. On and after April 30, 2018, we may, at our option, upon not less than 30 nor more than 60 days written notice, redeem the Series B Preferred Stock, 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 any accumulated and unpaid dividends thereon to, but not including, the redemption date. If we elect to redeem any shares of Series B Preferred Stock as described in this paragraph, we may use any available cash to pay the redemption price, and we will not be required to pay the redemption price only out of the proceeds from the issuance of other equity securities or any other specific source.

Special Optional Redemption. Upon the occurrence of a Change of Control, we may, at our option, upon not less than 30 nor more than 60 days written notice, redeem the Series B Preferred Stock, in whole or in part, within 120 days after the first date on which such Change of Control occurred, for cash at a redemption price of $25.00 per share, plus any accumulated and unpaid dividends thereon to, but not including, the redemption date. If, prior to the Change of Control Conversion Date, we have provided notice of our election to redeem some or all of the shares of Series B Preferred Stock (whether pursuant to our optional redemption right described above under Optional Redemption or this special optional redemption right), the holders of Series B Preferred Stock will not have the Change of Control Conversion Right (as defined below) described below under Conversion Rights with respect to the shares called for redemption. If we elect to redeem any shares of the Series B Preferred Stock as described in this paragraph, we may use any available cash to pay the redemption price, and we will not be required to pay the redemption price only out of the proceeds from the issuance of other equity securities or any other specific source.

A Change of Control is deemed to occur when, after the original issuance of the Series B Preferred Stock, 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

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purchase, merger or other acquisition transaction or series of purchases, mergers or other acquisition transactions of our stock entitling that person to exercise more than 50% of the total voting power of all our stock entitled to vote generally in the election of our 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 point above, neither we nor the acquiring or surviving entity has a class of common securities (or American Depositary Receipts 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, the NYSE Amex or Nasdaq.

Redemption Procedures. In the event we elect to redeem Series B Preferred Stock, the notice of redemption will be mailed to each holder of record of Series B Preferred Stock called for redemption at such holder s address as it appears on our stock transfer records and will state the following:

the redemption date;

the number of shares of Series B Preferred Stock to be redeemed;

the redemption price;

the place or places where certificates (if any) for the Series B Preferred Stock are to be surrendered for payment of the redemption price;

that dividends on the shares to be redeemed will cease to accumulate on the redemption date;

whether such redemption is being made pursuant to the provisions described above under Optional Redemption or Special Optional Redemption ;

if applicable, that such redemption is being made in connection with a Change of Control and, in that case, a brief description of the transaction or transactions constituting such Change of Control; and

if such redemption is being made in connection with a Change of Control, that the holders of the shares of Series B Preferred Stock being so called for redemption will not be able to tender such shares of Series B Preferred Stock for conversion in connection with the Change of Control and that each share of Series B Preferred Stock tendered for conversion that is called, prior to the Change of Control Conversion Date, for redemption will be redeemed on the related date of redemption instead of converted on the Change of Control Conversion Date.

If less than all of the Series B Preferred Stock held by any holder is to be redeemed, the notice mailed to such holder shall also specify the number of shares of Series B Preferred Stock held by such holder to be redeemed. No failure to give such notice or any defect thereto or in the mailing thereof shall affect the validity of the proceedings for the redemption of any shares of Series B Preferred Stock except as to the holder to whom notice was defective or not given.

Holders of Series B Preferred Stock to be redeemed shall surrender the Series B Preferred Stock at the place designated in the notice of redemption and shall be entitled to the redemption price and any accumulated and unpaid dividends payable upon the redemption following the surrender. If notice of redemption of any shares of Series B Preferred Stock has been given and if we have irrevocably set aside the funds necessary for redemption in trust for the benefit of the holders of the shares of Series B Preferred Stock so called for redemption, then from and after the redemption date (unless we default in providing for the payment of the redemption price plus accumulated and unpaid dividends, if

any), dividends will cease to accrue on those shares of Series B Preferred Stock, those shares of Series B Preferred Stock shall no longer be deemed outstanding and all rights of the holders of those shares will terminate, except the right to receive the redemption price plus accumulated and unpaid dividends, if any, payable upon redemption. If any redemption date is not a business day, then the

redemption price and accumulated and unpaid dividends thereon, if any, payable upon redemption may be paid on the next business day and no interest, additional dividends or other sums will accrue on the amount payable for the period from and after that redemption date to that next business day. If less than all of the outstanding Series B Preferred Stock is to be redeemed, the Series B Preferred Stock to be redeemed shall be selected pro rata (as nearly as may be practicable without creating fractional shares).

Immediately prior to any redemption of Series B Preferred Stock, we shall pay, in cash, any accumulated and unpaid dividends through and including the redemption date, unless a redemption date falls after a dividend record date and prior to the corresponding dividend payment date, in which case each holder of Series B Preferred Stock at the close of business on such dividend record date shall be entitled to the dividend payable on such shares on the corresponding dividend payment date notwithstanding the redemption of such shares before such dividend payment date. Except as provided above, we will make no payment or allowance for unpaid dividends, whether or not in arrears, on shares of the Series B Preferred Stock to be redeemed.

Unless full cumulative dividends on all shares of Series B Preferred Stock shall have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof has been or contemporaneously is set apart for payment for all past dividend periods, no shares of Series B Preferred Stock shall be redeemed unless all outstanding shares of Series B Preferred Stock are simultaneously redeemed and we shall not purchase or otherwise acquire directly or indirectly any shares of Series B Preferred Stock (except by exchanging it for our capital stock ranking junior to the Series B Preferred Stock as to dividends and upon liquidation); provided, however, that the foregoing shall not prevent the purchase, redemption or acquisition by us of shares of Series B Preferred Stock to preserve our REIT status or, in accordance with our articles of incorporation, avoid the direct or indirect imposition of a penalty tax in respect of, or protect the tax status of, any of our REMIC interests or pursuant to a purchase or exchange offer made on the same terms to holders of all outstanding shares of Series B Preferred Stock.

Subject to applicable law, we may purchase shares of Series B Preferred Stock in the open market, by tender or by private agreement. Any shares of Series B Preferred Stock that we acquire may be retired and re-classified as authorized but unissued shares of preferred stock, without designation as to class or series, and may thereafter be reissued as any class or series of preferred stock.

Conversion Rights

Upon the occurrence of a Change of Control, each holder of Series B Preferred Stock will have the right (unless, prior to the Change of Control Conversion Date, we have provided notice of our election to redeem some or all of the shares of Series B Preferred Stock held by such holder as described above under Redemption Optional Redemption or Redemption Special Optional Redemption, in which case such holder will have the right only with respect to shares of Series B Preferred Stock that are not called for redemption) to convert some or all of the Series B Preferred Stock held by such holder (the Change of Control Conversion Right) on the Change of Control Conversion Date into a number of shares of our common stock per share of Series B Preferred Stock (the Common Stock 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 B Preferred Stock plus the amount of any accumulated and unpaid dividends thereon to, but not including, the Change of Control Conversion Date (unless the Change of Control Conversion Date is after a dividend record date and prior to the corresponding dividend payment date for the Series B Preferred Stock, in which case no additional amount for such accumulated and unpaid dividends will be included in this sum) by (ii) the Common Stock Price, as defined below (such quotient, the Conversion Rate); and

(the Share Cap), subject to certain adjustments as described below.

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Anything in the Series B articles of amendment to the contrary notwithstanding and except as otherwise required by law, the persons who are the holders of record of shares of Series B Preferred Stock at the close of business on a dividend record date will be entitled to receive the dividend payable on the corresponding dividend payment date notwithstanding the conversion of those shares after such dividend record date and on or prior to such dividend payment date and, in such case, the full amount of such dividend shall be paid on such dividend payment date to the persons who were the holders of record at the close of business on such dividend record date. Except as provided above, we will make no allowance for unpaid dividends that are not in arrears on the shares of Series B Preferred Stock to be converted.

The Share Cap is subject to pro rata adjustments for any share splits (including those effected pursuant to a distribution of our common stock to existing holders of our common stock), subdivisions or combinations (in each case, a Share Split) with respect to 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 obtained by multiplying (i) the Share Cap in effect immediately prior to such Share Split by (ii) a fraction, the numerator of which is the number of shares of our common stock outstanding immediately 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 or deliverable, as applicable, in connection with the exercise of the Change of Control Conversion Right will not exceed shares of our common stock (or equivalent Alternative Conversion Consideration, as applicable), subject to proportionate increase to the extent the underwriters over-allotment option to purchase additional shares of Series B Preferred Stock is exercised, not to exceed shares of our 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 our common stock is or will be converted into cash, securities or other property or assets (including any combination thereof) (the Alternative Form Consideration), a holder of Series B Preferred Stock will receive upon conversion of such Series B Preferred Stock 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 Stock Conversion Consideration immediately prior to the effective time of the Change of Control (the Alternative Conversion Consideration ; the Common Stock Conversion Consideration or the Alternative Conversion Consideration, whichever shall be applicable to a Change of Control, is referred to as the Conversion Consideration).

If the holders of our common stock have the opportunity to elect the form of consideration to be received in the Change of Control, the Conversion Consideration in respect of such Change of Control will be deemed to be the kind and amount of consideration actually received by holders of a majority of the outstanding shares of our common stock that made or voted for such an election (if electing between two types of consideration) or holders of a plurality of the outstanding shares of our common stock that made or voted for such an election (if electing between more than two types of consideration), as the case may be, and will be subject to any limitations to which all holders of our common stock are subject, including, without limitation, pro rata reductions applicable to any portion of the consideration payable in such Change of Control.

We will not issue fractional shares of our common stock upon the conversion of the Series B Preferred Stock in connection with a Change of Control. Instead, we will make a cash payment equal to the value of such fractional shares based upon the Common Stock Price used in determining the Common Stock Conversion Consideration for such Change of Control.

Within 15 days following the occurrence of a Change of Control, provided that we have not then exercised our right to redeem all shares of Series B Preferred Stock pursuant to the redemption provisions described above,

we will provide to holders of Series B Preferred Stock a notice of occurrence of the Change of Control that describes the resulting Change of Control Conversion Right. This notice will state the following:

- the events constituting the Change of Control;
- the date of the Change of Control;
- the last date on which the holders of Series B Preferred Stock may exercise their Change of Control Conversion Right;
- the method and period for calculating the Common Stock Price;
- the Change of Control Conversion Date;
- that if, prior to the Change of Control Conversion Date, we have provided notice of our election to redeem all or any shares of Series B Preferred Stock, holders will not be able to convert the shares of Series B Preferred Stock called for redemption and such shares will be redeemed on the related redemption date, even if such shares have already been tendered for conversion pursuant to the Change of Control Conversion Right;
- if applicable, the type and amount of Alternative Conversion Consideration entitled to be received per share of Series B Preferred Stock;
- the name and address of the paying agent, transfer agent and conversion agent for the Series B Preferred Stock;
- the procedures that the holders of Series B Preferred Stock must follow to exercise the Change of Control Conversion Right (including procedures for surrendering shares for conversion through the facilities of a Depositary (as defined below)), including the form of conversion notice to be delivered by such holders as described below; and
- the last date on which holders of Series B Preferred Stock may withdraw shares surrendered for conversion and the procedures that such holders must follow to effect such a withdrawal.

Under such circumstances, we will also issue a press release containing such notice for publication on Dow Jones & Company, Inc., Business Wire, PR Newswire or Bloomberg Business News (or, if these organizations are not in existence at the time of issuance of the press release, such other news or press organization as is reasonably calculated to broadly disseminate the relevant information to the public), and post a notice on our website, in any event prior to the opening of business on the first business day following any date on which we provide the notice described above to the holders of Series B Preferred Stock.

To exercise the Change of Control Conversion Right, the holders of Series B Preferred Stock will be required to deliver, on or before the close of business on the Change of Control Conversion Date, the certificates (if any) representing the shares of Series B Preferred Stock to be converted, duly endorsed for transfer (or, in the case of any shares of Series B Preferred Stock held in book-entry form through a Depositary, to deliver, on or before the close of business on the Change of Control Conversion Date, the shares of Series B Preferred Stock to be converted through the facilities of such Depositary), together with a written conversion notice in the form provided by us, duly completed, to our transfer agent. The conversion notice must state:

- the relevant Change of Control Conversion Date;
- the number of shares of Series B Preferred Stock to be converted; and
- that the Series B Preferred Stock is to be converted pursuant to the applicable provisions of the Series B Preferred Stock.

The Change of Control Conversion Date is the date the Series B Preferred Stock is to be converted, which will be a business day selected by us that is no fewer than 20 days nor more than 35 days after the date on which we provide the notice described above to the holders of Series B Preferred Stock.

The Common Stock Price is (i) if the consideration to be received in the Change of Control by the holders of our common stock is solely cash, the amount of cash consideration per share of our common stock or (ii) if the consideration to be received in the Change of Control by holders of our common stock is other than solely cash (x) the average of the closing sale prices per share of our common stock (or, if no closing sale price is reported, the average of the closing bid and ask prices per share or, if more than one in either case, the average of the average closing bid and the average closing ask prices per share) for the ten consecutive trading days immediately preceding, but not including, the date on which such Change of Control occurred as reported on the principal United States securities exchange on which our common stock is then traded, or (y) the average of the last quoted bid prices for our common stock in the over-the-counter market as reported by Pink OTC Markets Inc. or similar organization for the ten consecutive trading days immediately preceding, but not including, the date on which such Change of Control occurred, if our common stock is not then listed for trading on a United States securities exchange.

Holders of Series B Preferred Stock may withdraw any notice of exercise of a Change of Control Conversion Right (in whole or in part) by a written notice of withdrawal delivered to our transfer agent prior to the close of business on the business day prior to the Change of Control Conversion Date. The notice of withdrawal delivered by any holder must state:

- the number of withdrawn shares of Series B Preferred Stock;
- if certificated Series B Preferred Stock has been surrendered for conversion, the certificate numbers of the withdrawn shares of Series B Preferred Stock; and
- the number of shares of Series B Preferred Stock, if any, which remain subject to the holder s conversion notice.

Notwithstanding the foregoing, if any shares of Series B Preferred Stock are held in book-entry form through the DTC or a similar depositary (each, a Depositary), the conversion notice and/or the notice of withdrawal, as applicable, must comply with applicable procedures, if any, of the applicable Depositary.

Series B Preferred Stock 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 have provided notice of our election to redeem some or all of the shares of Series B Preferred Stock, as described above under Redemption Optional Redemption or Redemption Special Optional Redemption, in which case only the shares of Series B Preferred Stock properly surrendered for conversion and not properly withdrawn that are not called for redemption will be converted as aforesaid. If we elect to redeem shares of Series B Preferred Stock that would otherwise be converted into the applicable Conversion Consideration on a Change of Control Conversion Date, such shares of Series B Preferred Stock will not be so converted and the holders of such shares will be entitled to receive on the applicable redemption date the redemption price described above under Redemption Optional Redemption or Redemption Special Optional Redemption, as applicable.

We will deliver all securities, cash and any other property owing upon conversion no later than the third business day following the Change of Control Conversion Date. Notwithstanding the foregoing, the persons entitled to receive any shares of our common stock or other securities delivered on conversion will be deemed to have become the holders of record thereof as of the Change of Control Conversion Date.

In connection with the exercise of any Change of Control Conversion Right, we will comply with all federal and state securities laws and stock exchange rules in connection with any conversion of Series B Preferred Stock into shares of our common stock or other property. Notwithstanding any other provision of the Series B Preferred Stock, no holder of Series B Preferred Stock will be entitled to convert such Series B Preferred Stock into shares

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of our common stock to the extent that receipt of such common stock would cause such holder (or any other person) to exceed the applicable share ownership limitations contained in our articles of incorporation and the Series B articles of amendment, unless we provide an exemption from this limitation to such holder. Please see the section entitled Restrictions on Ownership and Transfer below and Description of Our Capital Stock Restrictions On Ownership and Transfer in the accompanying prospectus.

The Change of Control conversion feature may make it more difficult for a third party to acquire us or discourage a party from acquiring us. See Risk Factors You may not be able to exercise conversion rights upon a Change of Control and, if exercisable, the change of control conversion rights described in this prospectus supplement may not adequately compensate you and Risk Factors Our articles of incorporation and the Series B articles of amendment will contain restrictions upon ownership and transfer of the Series B Preferred Stock, which may impair the ability of holders to convert Series B Preferred Stock into our common stock upon a Change of Control.

Except as provided above in connection with a Change of Control, the Series B Preferred Stock is not convertible into or exchangeable for any other securities or property.

Voting Rights

Holders of the Series B Preferred Stock will not have any voting rights, except as set forth below or as otherwise required by law.

Whenever dividends on any shares of Series B Preferred Stock are in arrears for six or more quarterly dividend periods, whether or not consecutive, the number of directors constituting our board of directors will be automatically increased by two (if not already increased by two by reason of the election of directors by the holders of the Series A Preferred Stock or the holders of any other class or series of our preferred stock we may issue upon which similar voting rights have been conferred and are exercisable and with which the Series B Preferred Stock is entitled to vote as a class with respect to the election of those two directors) and the holders of Series B Preferred Stock (voting separately as a class with all other classes or series of preferred stock we may issue upon which similar voting rights have been conferred and are exercisable (including holders of our Series A Preferred Stock, if applicable) and which are entitled to vote as a class with the Series B Preferred Stock in the election of those two directors) will be entitled to vote for the election of those two additional directors at a special meeting called by us at the request of the holders of record of at least 25% of the outstanding shares of Series A Preferred Stock, Series B Preferred Stock or by the holders of any other class or series of preferred stock upon which similar voting rights have been conferred and are exercisable and which are entitled to vote as a class with the Series B Preferred Stock in the election of those two directors (unless the request is received less than 90 days before the date fixed for the next annual or special meeting of shareholders, in which case, such vote will be held at the earlier of the next annual or special meeting of shareholders), and at each subsequent annual meeting until all dividends accumulated on the Series B Preferred Stock for all past dividend periods and the then current dividend period shall have been fully paid or declared and a sum sufficient for the payment thereof set aside for payment. In that case, the right of holders of the Series B Preferred Stock to elect any directors will cease and, unless there are other classes or series of our preferred stock upon which similar voting rights have been conferred and are exercisable, any directors elected by holders of the Series B Preferred Stock shall immediately resign and the number of directors constituting the board of directors shall be reduced accordingly. For the avoidance of doubt, in no event shall the total number of directors elected by holders of the Series B Preferred Stock (voting separately as a class with all other classes or series of preferred stock we may issue upon which similar voting rights have been conferred and are exercisable and which are entitled to vote as a class with the Series B Preferred Stock in the election of such directors) pursuant to these voting rights exceed two.

If a special meeting is not called by us within 30 days after request from the holders of Series B Preferred Stock as described above, then the holders of record of at least 25% of the outstanding Series B Preferred Stock may designate a holder to call the meeting at our expense.

On each matter on which holders of Series B Preferred Stock are entitled to vote, each share of Series B Preferred Stock will be entitled to one vote, except that when shares of any other class or series of our preferred stock have the right to vote with the Series B Preferred Stock as a single class on any matter, the Series B Preferred Stock and the shares of each such other class or series will have one vote for each $25.00 of liquidation preference (excluding accumulated dividends).

So long as any shares of Series B Preferred Stock remain outstanding, we will not, without the affirmative vote or consent of the holders of at least two-thirds of the shares of the Series B Preferred Stock outstanding at the time, given in person or by proxy, either in writing or at a meeting (voting together as a class with the holders of the Series A Preferred Stock and all series of parity preferred stock that we may issue upon which similar voting rights have been conferred and are exercisable), (a) authorize or create, or increase the authorized or issued amount of, any class or series of capital stock ranking senior to the Series B Preferred Stock with respect to payment of dividends or the distribution of assets upon liquidation, dissolution or winding up or reclassify any of our authorized capital stock into such shares, or create, authorize or issue any obligation or security convertible into or evidencing the right to purchase any such shares; or (b) amend, alter or repeal the provisions of our articles of incorporation, whether by merger, consolidation or otherwise, so as to materially and adversely affect any right, preference, privilege or voting power of the Series B Preferred Stock (each, an Event); provided, however, with respect to the occurrence of any Event set forth in (b) above, so long as the Series B Preferred Stock remains outstanding with the terms thereof materially unchanged, taking into account that, upon an occurrence of an Event, we may not be the surviving entity, the occurrence of any such Event shall not be deemed to materially and adversely affect such rights, preferences, privileges or voting power of holders of the Series B Preferred Stock; provided, further that if an Event set forth in (b) above affects materially and adversely any right, preference, privilege or voting power of the Series B Preferred Stock but not all of the series of our preferred stock that we may issue upon which similar voting rights have been conferred and are exercisable (excluding our Series A Preferred Stock), the vote or consent that is required will be the vote or consent of the holders of at least two-thirds of the outstanding shares of the Series B Preferred Stock and all such other series so affected; and, provided further, that any increase in the amount of the authorized preferred stock, including the Series B Preferred Stock, or the creation or issuance of any additional shares of common stock, Series A Preferred Stock, Series B Preferred Stock or other series of preferred stock that we may issue, or any increase in the amount of authorized shares of such series, in each case ranking on a parity with or junior to the Series B Preferred Stock that we may issue with respect to payment of dividends or the distribution of assets upon liquidation, dissolution or winding up, shall not be deemed to materially and adversely affect such rights, preferences, privileges or voting powers.

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

Except as expressly stated in the Series B articles of amendment or as may be required by applicable law, the Series B Preferred Stock will not have any relative, participating, optional or other special voting rights or powers and the consent of the holders thereof shall not be required for the taking of any corporate action.

Information Rights

During any period in which we are not subject to Section 13 or 15(d) of the Exchange Act and any shares of Series B Preferred Stock are outstanding, we will use our best efforts to (i) transmit by mail (or other permissible means under the Exchange Act) to all holders of Series B Preferred Stock, as their names and addresses appear on our record books and without cost to such holders, copies of the annual reports on Form 10-K and quarterly reports on Form 10-Q that we would have been required to file with the SEC pursuant to Section 13 or 15(d) of the Exchange Act if we were subject thereto (other than any exhibits that would have been required) and (ii) promptly, upon request, supply copies of such reports to any holders or prospective holder of Series B

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Preferred Stock. We will use our best efforts to mail (or otherwise provide) the information to the holders of the Series B Preferred Stock within 15 days after the respective dates by which a periodic report on Form 10-K or Form 10-Q, as the case may be, in respect of such information would have been required to be filed with the SEC, if we were subject to Section 13 or 15(d) of the Exchange Act, in each case, based on the dates on which we would be required to file such periodic reports if we were a non-accelerated filer within the meaning of the Exchange Act.

Restrictions on Ownership and Transfer

To assist us in qualifying as a REIT, our articles of incorporation and the Series B articles of amendment prohibit anyone from acquiring or holding, beneficially or constructively, ownership of a number of shares of our capital stock in excess of 9.8% of the outstanding shares. For this purpose the term ownership is deemed to include shares constructively owned by a person under the provisions of Section 544 of the Code, as modified in Section 856(h) of the Code, and shares beneficially owned under the provisions of Rule 13d-3 or any successor rule under the Exchange Act.

The constructive ownership provisions of Section 544 of the Code generally attribute ownership of securities owned by a corporation, partnership, estate or trust proportionately to its shareholders, partners or beneficiaries; attribute ownership of securities owned by family members to other members of the same family; and set forth rules for attributing securities constructively owned by one person to another person. To determine whether a person holds or would hold capital stock in excess of the 9.8% ownership limit, a person will be treated as owning not only shares of capital stock actually owned, but also any shares of capital stock attributed to that person under the attribution rules described above. Accordingly, a person who individually owns less than 9.8% of the shares outstanding may nevertheless be in violation of the 9.8% ownership limit.

Any transfer of shares of Series B Preferred Stock that would cause us to be disqualified as a REIT will be null and void, and the intended transferee (the purported transferee) will acquire no rights to those shares. In addition, no holder of Series B Preferred Stock will be entitled to convert the Series B Preferred Stock into our common stock upon a Change of Control to the extent that receipt of our common stock would cause the holder to beneficially or constructively own stock exceeding either of the 9.8% ownership thresholds unless we provide an exemption from these ownership limitations to such holder at our sole discretion.

Shares of Series B Preferred Stock which, but for the provisions of Article VI of our articles of incorporation, would be owned by a person or persons acting as a group and would, at any time, be in excess of the 9.8% ownership limit will constitute Excess Shares. At the discretion of our board of directors, all Excess Shares may be redeemed by us. We will provide written notice of redemption to the holder of the Excess Shares not less than one week prior to the redemption date (the Redemption Date) determined by the board of directors and included in the notice of redemption. The redemption price to be paid for Excess Shares will be equal to (a) the closing price of those shares on the principal national securities exchange on which the shares are listed or admitted to trading on the last business day prior to the Redemption Date, or (b) if the shares are not so listed or admitted to trading, the closing bid price on the last business day prior to the Redemption Date as reported on the NASD System, if quoted thereon, or (c) if the redemption price is not determinable in accordance with either clause (a) or (b) of this sentence, the net asset value of the shares determined in good faith by the board of directors and in accordance with the Virginia Stock Corporation Act. From and after the Redemption Date, the holder of any Excess Shares called for redemption shall cease to be entitled to any distributions and other benefits with respect to those shares, except the right to payment of the redemption price.

Our board of directors in its discretion may exempt from the 9.8% ownership limit ownership of designated shares of our capital stock by a person who has provided our board of directors with evidence and assurances acceptable to the board of directors that our qualification as a REIT would not be jeopardized by such ownership. At present, we do not intend to exempt any purchaser of our Series B Preferred Stock from the 9.8% ownership limit.

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In addition, any acquisition of shares of our capital stock, including the Series B Preferred Stock, that could or would result in the imposition of a penalty tax (a Penalty Tax) on us (including the imposition of an entity-level tax on one or more REMICs in which we have acquired or plan to acquire an interest) or endanger the tax status of one or more REMICs in which we have acquired or plan to acquire an interest will be null and void to the fullest extent permitted by law, and the intended transferee (the purported transferee) will be deemed never to have had an interest in such shares. In addition, to avoid a Penalty Tax or the endangerment of the tax status of one or more REMICs in which we have acquired or plan to acquire an interest, we may redeem shares of our capital stock in the same manner as described with respect to Excess Shares.

For further information regarding restrictions on ownership and transfer of the Series B Preferred Stock, please see the section entitled Description of Our Capital Stock Restrictions on Ownership and Transfer in the accompanying prospectus.

Preemptive Rights

No holders of the Series B Preferred Stock will, as holders of Series B Preferred Stock, have any preemptive rights to purchase or subscribe for our common stock or our any other security.

Book-Entry Procedures

DTC will act as securities depositary for the Series B Preferred Stock. We will issue one or more fully registered global securities certificates in the name of DTC s nominee, Cede & Co. These certificates will represent the total aggregate number of shares of Series B Preferred Stock. We will deposit these certificates with DTC or a custodian appointed by DTC. We will not issue certificates to you for the shares of Series B Preferred Stock that you purchase, unless DTC s services are discontinued as described below.

Title to book-entry interests in the Series B Preferred Stock will pass by book-entry registration of the transfer within the records of DTC in accordance with its procedures. Book-entry interests in the securities may be transferred within DTC in accordance with procedures established for these purposes by DTC. Each person owning a beneficial interest in shares of the Series B Preferred Stock must rely on the procedures of DTC and the participant through which such person owns its interest to exercise its rights as a holder of the Series B Preferred Stock.

DTC has advised us that it is a limited-purpose trust company organized under the New York Banking Law, a member of the Federal Reserve System, a clearing corporation within the meaning of the New York Uniform Commercial Code and a clearing agency registered under the provisions of Section 17A of the Exchange Act. DTC holds securities that its participants (Direct Participants) deposit with DTC. DTC also facilitates the settlement among Direct Participants of securities transactions, such as transfers and pledges, in deposited securities through electronic computerized book-entry changes in Direct Participants accounts, thereby eliminating the need for physical movement of securities certificates. Direct Participants include securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. Access to the DTC system is also available to others such as securities brokers and dealers, including the underwriters, banks and trust companies that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly (Indirect Participants). The rules applicable to DTC and its Direct and Indirect Participants are on file with the SEC.

When you purchase shares of Series B Preferred Stock within the DTC system, the purchase must be by or through a Direct Participant. The Direct Participant will receive a credit for the Series B Preferred Stock on DTC s records. You will be considered to be the beneficial owner of the Series B Preferred Stock. Your beneficial ownership interest will be recorded on the Direct and Indirect Participants records, but DTC will have no knowledge of your individual ownership. DTC s records reflect only the identity of the Direct Participants to whose accounts shares of Series B Preferred Stock are credited.

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You will not receive written confirmation from DTC of your purchase. The Direct or Indirect Participants through whom you purchased the Series B Preferred Stock should send you written confirmations providing details of your transactions, as well as periodic statements of your holdings. The Direct and Indirect Participants are responsible for keeping an accurate account of the holdings of their customers like you.

Transfers of ownership interests held through Direct and Indirect Participants will be accomplished by entries on the books of Direct and Indirect Participants acting on behalf of the beneficial owners.

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

We understand that, under DTC s existing practices, in the event that we request any action of the holders, or an owner of a beneficial interest in a global security, such as you, desires to take any action which a holder is entitled to take under our articles of incorporation (including the Series B articles of amendment), DTC would authorize the Direct Participants holding the relevant shares to take such action, and those Direct Participants and any Indirect Participants would authorize beneficial owners owning through those Direct and Indirect Participants to take such action or would otherwise act upon the instructions of beneficial owners owning through them.

Any redemption notices with respect to the Series B Preferred Stock will be sent to Cede & Co. If less than all of the outstanding shares of Series B Preferred Stock are being redeemed, DTC will reduce each Direct Participant s holdings of shares of Series B Preferred Stock in accordance with its procedures.

In those instances where a vote is required, neither DTC nor Cede & Co. itself will consent or vote with respect to the shares of Series B Preferred Stock. Under its usual procedures, DTC would mail an omnibus proxy to us as soon as possible after the record date. The omnibus proxy assigns Cede & Co. s consenting or voting rights to those Direct Participants whose accounts the shares of Series B Preferred Stock are credited to on the record date, which are identified in a listing attached to the omnibus proxy.

Dividends on the Series B Preferred Stock will be made directly to DTC s nominee (or its successor, if applicable). DTC s practice is to credit participants accounts on the relevant payment date in accordance with their respective holdings shown on DTC s records unless DTC has reason to believe that it will not receive payment on that payment date.

Payments by Direct and Indirect Participants to beneficial owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in street name. These payments will be the responsibility of the participant and not of DTC, us or any agent of ours.

DTC may discontinue providing its services as securities depositary with respect to the Series B Preferred Stock at any time by giving reasonable notice to us. Additionally, we may decide to discontinue the book-entry only system of transfers with respect to the Series B Preferred Stock. In that event, we will print and deliver certificates in fully registered form for the Series B Preferred Stock. If DTC notifies us that it is unwilling to continue as securities depositary, or it is unable to continue or ceases to be a clearing agency registered under the Exchange Act and a successor depositary is not appointed by us within 90 days after receiving such notice or becoming aware that DTC is no longer so registered, we will issue the Series B Preferred Stock in definitive form, at our expense, upon registration of transfer of, or in exchange for, such global security.

According to DTC, the foregoing information with respect to DTC has been provided to the financial community for informational purposes only and is not intended to serve as a representation, warranty or contract modification of any kind.

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Global Clearance and Settlement Procedures

Initial settlement for the Series B Preferred Stock will be made in immediately available funds. Secondary market trading among DTC s Participants will occur in the ordinary way in accordance with DTC s rules and will be settled in immediately available funds using DTC s Same-Day Funds Settlement System.

Transfer Agent and Registrar

The transfer agent and registrar for the Series B Preferred Stock is Computershare. Its principal business address is 480 Washington Boulevard, 29th Floor, Jersey City, New Jersey 07310 and its telephone number is (201) 680-4000.

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ADDITIONAL U.S. FEDERAL INCOME TAX CONSIDERATIONS

The following discussion is a supplement to, and is intended to be read together with, the discussion under the heading U.S. Federal Income Tax Considerations included in the accompanying prospectus. Terms used in this section but not defined in this section have the meanings ascribed to them elsewhere in this prospectus supplement or in the accompanying prospectus. You should refer to the discussion in the accompanying prospectus under U.S. Federal Income Tax Considerations for a discussion of the tax consequences of our election to be taxed as a REIT and the tax consequences to owners of shares of our stock. The following is a summary of certain additional material United States federal income tax considerations relates to the acquisition, ownership and disposition of Series B Preferred Stock. This summary is provided on the same basis and subject to the same qualifications as are set forth in the paragraphs under the heading U.S. Federal Income Tax Considerations in the accompanying prospectus as if those paragraphs were set forth in this prospectus supplement.

Allocation of Capital Gain Dividends to Holders of Series B Preferred Stock. If we properly designate any portion of a dividend as a capital gain dividend then, except as otherwise required by law, we presently intend to allocate a portion of the total capital gain dividends paid or made available to holders of all classes of our stock for the year to the holders of the Series B Preferred Stock in proportion to the amount that our total dividends, as determined for federal income tax purposes, paid or made available to the holders of the Series B Preferred Stock for the year bears to the total dividends, as determined for federal income tax purposes, paid or made available to holders of all classes of our stock for the year.

Taxation of U.S. Holders on the Redemption of Series B Preferred Stock. A redemption of shares of Series B Preferred Stock will be treated under Section 302 of the Code as a distribution (and taxable as a dividend to the extent of our current and accumulated earnings and profits as described under U.S. Federal Income Considerations Taxation of Taxable U.S. Holders of Stock in the accompanying prospectus) unless the redemption satisfies one of the tests set forth in Section 302(b) of the Code and is therefore treated as a sale or exchange of the redeemed shares. A redemption of shares of Series B Preferred Stock generally will be treated as a sale or exchange of the redeemed shares if it:

- is substantially disproportionate with respect to the U.S. holder;
- results in a complete termination of the U.S. holder s stock interest in us; or
- is not essentially equivalent to a dividend with respect to the U.S. holder, all within the meaning of Section 302(b) of the Code.

In determining whether any of these tests have been met, shares of stock, including common stock and other equity interests in us, considered to be owned by the U.S. holder by reason of certain constructive ownership rules set forth in the Code, as well as shares of our stock actually owned by the U.S. holder, must generally be taken into account. Because the determination as to whether any of the alternative tests of Section 302(b) of the Code will be satisfied with respect to a U.S. holder depends upon the facts and circumstances at the time that the determination must be made, U.S. holders are advised to consult their tax advisors to determine such tax treatment.

If a redemption of shares of the Series B Preferred Stock is treated as a distribution, the amount of the distribution will be measured by the amount of cash and the fair market value of any property received. See U.S. Federal Income Considerations Taxation of Taxable U.S. Holders of Stock in the accompanying prospectus. A U.S. holder s adjusted tax basis in the redeemed shares of the Series B Preferred Stock will be transferred to the U.S. holder s remaining shares of our stock, if any. If the U.S. holder owns no other shares of our stock, under certain circumstances, such basis may be transferred to a related person or it may be lost entirely.

Recently proposed Treasury Regulations, if enacted in their current form, would affect the basis recovery rules described above. It is not clear whether these proposed regulations will be enacted in their current form or at all. Prospective investors should consult their tax advisors regarding the federal income tax consequences of a redemption of the Series B Preferred Stock.

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If a redemption of shares of Series B Preferred Stock is not treated as a distribution, it will be treated as a taxable sale or exchange of the redeemed shares in the manner described under U.S. Federal Income Considerations Taxation of Taxable U.S. Holders of Stock Taxation of U.S. Holders on the Disposition of Stock in the accompanying prospectus.

Taxation of U.S. Holders upon the Conversion of Series B Preferred Stock. Except as provided below, (i) a U.S. holder generally will not recognize gain or loss upon the conversion of Series B Preferred Stock into our common stock, and (ii) a U.S. holder s basis and holding period in our common stock received upon conversion generally will be the same as those of the converted Series B Preferred Stock (but the basis will be reduced by the portion of adjusted tax basis allocated to any fractional share exchanged for cash). Any of our common stock received in a conversion that is attributable to accumulated and unpaid dividends on the converted Series B Preferred Stock will be treated as a distribution that is potentially taxable as a dividend. Cash received upon conversion in lieu of a fractional share generally will be treated as a payment in a taxable exchange for such fractional share, and gain or loss will be recognized on the receipt of cash in an amount equal to the difference between the amount of cash received and the adjusted tax basis allocable to the fractional share deemed exchanged. This gain or loss will be long-term capital gain or loss if the U.S. holder has held the Series B Preferred Stock for more than one year at the time of conversion. Holders are urged to consult with their tax advisors regarding the federal income tax consequences of any transaction by which such holder exchanges shares received on a conversion of the Series B Preferred Stock for cash or other property.

In addition, if a holder receives the Alternative Form Consideration (in lieu of shares of our common stock) in connection with the conversion of the holder s shares of the Series B Preferred Stock (see Description of Series B Preferred Stock Conversion Rights), the tax treatment of the receipt of any such other consideration depend on the nature of the consideration and the structure of the transaction that gives rise to the Change of Control, and it may be a taxable exchange. U.S. holders converting their shares of Series B Preferred Stock into Alternative Form Consideration should consult their tax advisors regarding the United States federal income tax consequences of any such conversion and of the ownership and disposition of the Alternative Form Consideration received upon any such conversion.

A non-U.S. holder could recognize gain or loss upon the conversion of our Series B Preferred Stock into our common stock, if our Series B Preferred Stock constituted a United States real property interest. See U.S. Federal Income Tax Considerations Taxation of Non-U.S. Holders in the accompanying prospectus. However, gain would not be recognized if our common shares also constitute a United States real property interest provided certain reporting requirements are satisfied. A holder s basis and holding period in the common stock received upon conversion generally will be the same as those of the converted Series B Preferred Stock (but the basis will be reduced by the portion of adjusted tax basis allocated to any fractional share of common stock exchanged for cash or adjusted to the extent that a non-U.S. holder s disposition of the Series B preferred stock is treated as a disposition of a United States real property interest).

The following discussion supersedes in its entirety the discussion under the heading **Federal Income Tax Consequences of our Status as a REIT Recent Developments** *The Hiring Incentives to Restore Employment Act* in the accompanying prospectus.

Withholding on Payments to Certain Foreign Entities. The Foreign Account Tax Compliance Act (FATCA), which was enacted in 2010, imposes a 30% withholding tax on certain types of payments made to foreign financial institutions and certain other non-U.S. entities unless certain due diligence, reporting, withholding, and certification obligations requirements are satisfied.

The U.S. Treasury Department and the IRS have issued final regulations under FATCA. As a general matter, FATCA imposes a 30% withholding tax on dividends on, and gross proceeds from the sale or other disposition of, our shares if paid to a foreign entity unless either (i) the foreign entity is a foreign financial institution that undertakes certain due diligence, reporting, withholding, and certification obligations, or in the

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case of a foreign financial institution that is a resident in a jurisdiction that has entered into an intergovernmental agreement to implement FATCA, the entity complies with the diligence and reporting requirements of such agreement, (ii) the foreign entity is not a foreign financial institution and identifies certain of its U.S. investors, or (iii) the foreign entity otherwise is exempted under FATCA. Under delayed effective dates provided for in the regulations, the required withholding would not begin until January 1, 2014 with respect to dividends on our shares, and January 1, 2017 with respect to gross proceeds from a sale or other disposition of our shares.

If withholding is required under FATCA on a payment related to our shares, investors that otherwise would not be subject to withholding (or that otherwise would be entitled to a reduced rate of withholding) generally will be required to seek a refund or credit from the IRS to obtain the benefit of such exemption or reduction (provided that such benefit is available). Prospective investors should consult their tax advisors regarding the effect of FATCA in their particular circumstances.

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UNDERWRITING

J.P. Morgan Securities LLC and Keefe, Bruyette & Woods, Inc. are acting as joint book-runners and representatives of the underwriters of the shares of Series B Preferred Stock being offered to the public in this offering. Subject to the terms and conditions contained in the underwriting agreement dated , 2013, the underwriters have agreed, severally, and not jointly, to purchase from us the respective number of Series B Preferred Stock shown opposite their names below:

Underwriter	Number of Shares
J.P. Morgan Securities LLC	
Keefe, Bruyette & Woods, Inc.	
Total	

The underwriting agreement provides that the obligations of the underwriters to purchase the shares included in the offering of shares to the public are subject to approval of certain legal matters by counsel and to certain other conditions. The underwriters are obligated to purchase and accept delivery of all the shares if they purchase any of the shares offered for sale to the public.

We have granted the underwriters the right to purchase up to an additional shares of Series B Preferred Stock at the public offering price, less the underwriting discount, to cover overallotments within 30 days from the date of this prospectus supplement.

The underwriters propose to offer some of the shares directly to the public at the public offering price set forth on the cover page of this prospectus supplement and may offer some of the shares to dealers at the public offering price less a concession fee not to exceed $ per share. The underwriters may allow, and dealers may re-allow, a concession not to exceed $ per share on sales to other dealers. After the initial offering of the shares to the public, the representatives may change the public offering price and concessions. The offering of the shares by the underwriters is subject to receipt and acceptance and subject to the underwriters right to withdraw cancel or modify offers to the public and reject any order in whole or in part.

We estimate that our total expenses for this offering, excluding the underwriting discount, will be $.

We have agreed to indemnify the underwriters against certain liabilities, including liabilities under the Securities Act, and to contribute to payments the underwriters may be required to make in respect 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 offer, sell, contract to sell, pledge, purchase any option or contract to sell, grant any option, right or warrant to purchase or otherwise transfer or dispose of, directly or indirectly, any securities substantially similar to the Series B Preferred Stock, or any securities convertible into or exercisable or exchangeable for, or represent rights to receive, shares of the Series B Preferred Stock or securities substantially similar to the Series B Preferred Stock, or file with the SEC a registration statement under the Securities Act with respect to the foregoing, or publicly disclose the intention to do any of the foregoing, or enter into swaps or similar arrangements having similar economic consequences without the prior written consent of the representatives. The foregoing sentence shall not apply to the shares sold in this offering.

In connection with the offering, the underwriters may purchase and sell shares of our Series B Preferred Stock in the open market. These transactions may include short sales and stabilizing transactions. Short sales involve syndicate sales of Series B Preferred Stock in excess of the number of shares to be purchased by the underwriters in the offering, which creates a syndicate short position. Stabilizing transactions consist of certain bids for or purchases of shares made for the purpose of preventing or retarding a decline in the market price of the shares while the offering is in progress.

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Any of these activities may have the effect of preventing or retarding a decline in the market price of the shares. They may also cause the price of the Series B Preferred Stock to be higher than the price that would otherwise exist in the open market in the absence of these transactions. The underwriters may conduct these transactions on the over-the-counter market, or otherwise. If the underwriters commence any of these transactions, they may discontinue them at any time.

The underwriters have from time to time performed, and may in the future perform, various financial advisory and investment banking and commercial banking services for us for which they have received or will receive customary fees and expenses. In addition, we are parties to master repurchase agreements with J.P. Morgan Securities LLC and its affiliates.

We expect that delivery of the Series B Preferred Stock will be made to investors on or about , 2013, which will be the sixth business day following the date of this prospectus supplement (such settlement being referred to as T+6). Under Rule 15c6-1 under the Exchange Act, trades in the secondary market are required to settle in three business days, unless the parties to any such trade expressly agree otherwise. Accordingly, purchasers who wish to trade Series B Preferred Stock prior to April , 2013 will be required, by virtue of the fact that the Series B Preferred Stock initially settle in T+6, to specify an alternate settlement arrangement at the time of any such trade to prevent a failed settlement. Purchasers of the Series B Preferred Stock who wish to trade the Series B Preferred Stock prior to their date of delivery hereunder should consult their advisors.

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LEGAL MATTERS

The validity of our Series B Preferred Stock offered by this prospectus supplement and certain legal matters in connection with the offering of the Series B Preferred Stock will be passed on for us by Troutman Sanders LLP, Richmond, Virginia. Certain legal matters will be passed upon for the underwriters by DLA Piper LLP (US), New York, New York.

EXPERTS

The financial statements as of December 31, 2012 and 2011 and for each of the three years in the period ended December 31, 2012 and management s assessment of the effectiveness of internal control over financial reporting as of December 31, 2012 incorporated by reference in this prospectus supplement and accompanying prospectus have been so incorporated in reliance on the reports of BDO USA, LLP, an independent registered public accounting firm, incorporated herein by reference, given on the authority of said firm as experts in auditing and accounting.

WHERE YOU CAN FIND MORE INFORMATION

We file annual, quarterly and current reports, proxy statements and other documents with the SEC under the Exchange Act. You may read and copy any materials that we file with the SEC without charge at the public reference room of the SEC, 100 F Street, N.W., Room 1580, Washington, DC 20549. Information about the operation of the public reference room may be obtained by calling the SEC at 1-800-SEC-0330. Also, the SEC maintains an internet website that contains reports, proxy and information statements, and other information regarding issuers, including Dynex Capital, Inc., that file electronically with the SEC. The public may obtain any documents that we file with the SEC at www.sec.gov.

We also make available free of charge on or through our internet website (www.dynexcapital.com) our Annual Report on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, and, if applicable, amendments to those reports filed or furnished pursuant to Section 13(a) of the Exchange Act as soon as reasonably practicable after we electronically file such material with, or furnish it to, the SEC.

This prospectus supplement and the accompanying prospectus are part of a registration statement on Form S-3 that we filed with the SEC. This prospectus supplement and the accompanying prospectus do not contain all of the information set forth in the registration statement and exhibits and schedules to the registration statement. For further information with respect to our company and our securities, reference is made to the registration statement, including the exhibits and schedules to the registration statement. Statements contained in this prospectus supplement and the accompanying prospectus as to the contents of any contract or other document referred to in this prospectus supplement or the accompanying prospectus are not necessarily complete and, where that contract is an exhibit to the registration statement, each statement is qualified in all respects by reference to the exhibit to which the reference relates.

INCORPORATION OF INFORMATION BY REFERENCE

The SEC allows us to incorporate by reference the information we file with it, which means that we can disclose important information to you by referring you to other documents that we have filed with the SEC. These incorporated documents contain important business and financial information about us that is not included in or delivered with this prospectus supplement and the accompanying prospectus. The information incorporated by reference is considered to be part of this prospectus supplement and the accompanying prospectus, and later information filed with the SEC will update and supersede this information.

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We incorporate by reference the documents listed below and any future filings we make with the SEC under Section 13(a), 13(c), 14 or 15(d) of the Exchange Act, until the offering of securities covered by this prospectus supplement and the accompanying prospectus is complete:

- Annual Report on Form 10-K for the period ended December 31, 2012, filed on March 8, 2013;
- Current Report on Form 8-K, filed on March 8, 2013; and
- The description of our capital stock included in our Registration Statement on Form 8-A, filed pursuant to Section 12(b) of the Exchange Act on January 17, 1989, including any amendment or report filed for the purpose of updating that description.

You may obtain copies of these documents at no cost by writing or telephoning us at the following address:

Investor Relations

Dynex Capital, Inc.

4991 Lake Brook Drive, Suite 100

Glen Allen, VA 23060

(804) 217-5800

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PROSPECTUS

$500,000,000

DYNEX CAPITAL, INC.

COMMON STOCK

PREFERRED STOCK

DEBT SECURITIES

WARRANTS

SHAREHOLDER RIGHTS

UNITS

We intend to offer and sell from time to time the debt and equity securities described in this prospectus:

- shares of our common stock;
- shares of our preferred stock;
- debt securities;
- warrants to purchase shares of our common stock or our preferred stock;
- rights issuable to our shareholders to purchase shares of our common stock or our preferred stock, to purchase warrants exercisable for shares of our common stock or our preferred stock, or to purchase units consisting of two or more of the foregoing, and
- units consisting of two or more of the foregoing.

The total offering price of the securities described in this prospectus will not exceed $500,000,000 in the aggregate. We will provide the specific terms of any securities we may offer in prospectus supplements to this prospectus. You should carefully read this prospectus and any applicable prospectus supplement before deciding to invest in these securities.

Our common stock is listed on the New York Stock Exchange under the symbol DX. We may make any sales of our common stock under this prospectus, if any, on or through the facilities of the New York Stock Exchange, to or through a market maker, or to or through an electronic communications network, at market prices prevailing at the time of sale, or in any other manner permitted by law (including, without limitation, privately negotiated transactions). On December 7, 2011, the last reported sale price of our common stock was $9.30 per share.

To assist us in qualifying as a real estate investment trust for federal income tax purposes, no person may own more than 9.8% of the outstanding shares of our capital stock, unless our Board of Directors waives this limitation.

We may offer these securities directly, through agents designated by us from time to time, or to or through underwriters or dealers.

Our principal executive offices are located at 4991 Lake Brook Drive, Suite 100, Glen Allen, Virginia 23060. Our telephone number is (804) 217-5800.

Investing in our securities involves risks. You should carefully consider the information referred to under the heading Risk Factors beginning on page 6 of this prospectus for information regarding risks associated with an investment in our securities before you invest.

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

The date of this prospectus is December 13, 2011.

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ABOUT THIS PROSPECTUS

This prospectus is part of a registration statement on Form S-3 that we filed with the Securities and Exchange Commission (the SEC). This prospectus does not contain all of the information set forth in the registration statement, portions of which we have omitted as permitted by the rules and regulations of the SEC. Statements contained in this prospectus as to the contents of any contract or other document are not necessarily complete. If the SEC s rules and regulations require that a contract or document be filed as an exhibit to the registration statement, we refer you to the copy of the contract or document filed as an exhibit to the registration statement for a complete description. You should rely only on the information in our prospectus and the documents that are incorporated by reference. We have not authorized anyone else to provide you with different information. We are not offering these securities in any jurisdiction where the offer is prohibited by law. You should not assume that the information in our prospectus or any incorporated document is accurate as of any date other than the date of the document. Our business, financial condition, results of operations and prospects may have changed since that date.

We may sell, from time to time, in one or more offerings, any combinations of the securities described in this prospectus. The total dollar amount of the securities sold under this prospectus will not exceed $500,000,000. This prospectus only provides you with a general description of the securities we may offer. Each time we sell securities under this prospectus, we will provide a prospectus supplement that contains specific information about the terms of the securities. The prospectus supplement may also add, update or change information contained in this prospectus. You should read both this prospectus and any prospectus supplement together with the additional information described under the heading Where You Can Find More Information.

When used in this prospectus, the terms Dynex , company, issuer, we, our, and us refer to Dynex Capital, Inc. and its consolidated subsidi unless otherwise specified.

WHERE YOU CAN FIND MORE INFORMATION

We file annual, quarterly and current reports, proxy statements and other documents with the SEC under the Securities Exchange Act of 1934, as amended (the Exchange Act). You may read and copy any materials that we file with the SEC without charge at the public reference room of the SEC, 100 F Street, N.W., Room 1580, Washington, D.C. 20549. Information about the operation of the public reference room may be obtained by calling the SEC at 1-800-SEC-0330. Also, the SEC maintains an internet website that contains reports, proxy and information statements, and other information regarding issuers, including Dynex Capital, Inc., that file electronically with the SEC. The public may obtain any documents that we file with the SEC at www.sec.gov.

Our common stock is listed on New York Stock Exchange (the NYSE) under the symbol DX and all such reports, proxy statements and other information filed by us with the NYSE may be inspected at the NYSE s offices at 20 Broad Street, New York, New York 10005. Finally, we maintain an internet website where you can find additional information. The address of our internet website is http://www.dynexcapital.com. All internet addresses provided in this prospectus are for informational purposes only and are not intended to be hyperlinks. In addition, the information on our internet website, or any other internet website described herein, is not a part of, and is not incorporated or deemed to be incorporated by reference in, this prospectus or other offering materials.

INCORPORATION OF INFORMATION BY REFERENCE

The SEC s rules allow us to incorporate by reference information into this prospectus, which means that we can disclose important information to you by referring you to another document filed separately with the SEC. The information incorporated by reference is deemed to be part of this prospectus from the date of filing

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those documents. Any reports filed by us with the SEC on or after the date of this prospectus will automatically update and, where applicable, supersede any information contained in this prospectus or incorporated by reference in this prospectus. We have filed the documents listed below with the SEC under the Exchange Act, and these documents are incorporated herein by reference (other than information in such documents that is furnished and not deemed to be filed):

- Our Annual Report on Form 10-K for the year ended December 31, 2010, filed on March 16, 2011;

- Our Quarterly Reports on Form 10-Q for the periods ended March 31, 2011, June 30, 2011 and September 30, 2011 filed on May 10, 2011, August 5, 2011 and November 9, 2011, respectively;

- Our Current Reports on Form 8-K filed on February 17, 2011, March 3, 2011, March 9, 2011, May 17, 2011 and September 9, 2011, as well as our Current Report on Form 8-K/A filed on September 9, 2011; and

- The description of our capital stock included in our registration statement on Form 8-A, filed pursuant to Section 12(b) of the Exchange Act on January 17, 1989, including any amendment or report filed for the purpose of updating that description.

All documents we file pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act on or after the date of this prospectus and prior to the termination of the offering of the securities to which this prospectus relates (other than information in such documents that is furnished and not deemed to be filed) shall be deemed to be incorporated by reference into this prospectus and to be part hereof from the date of filing of those documents. All documents we file pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act after the date of the initial registration statement that contains this prospectus and prior to the effectiveness of the registration statement shall be deemed to be incorporated by reference into this prospectus and to be part hereof from the date of filing those documents.

We will provide to each person, including any beneficial owner, to whom a copy of this prospectus is delivered, a copy of any or all of the information that has been incorporated by reference in this prospectus but not delivered with this prospectus (other than the exhibits to such documents which are not specifically incorporated by reference therein); we will provide this information at no cost to the requester upon written or oral request to:

Investor Relations Officer

Dynex Capital, Inc.

4991 Lake Brook Drive, Suite 100

Glen Allen, Virginia 23060

(804) 217-5800

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FORWARD-LOOKING STATEMENTS

Certain written statements we make in this prospectus, and in our other filings with the SEC that are incorporated herein by reference, that are not historical facts constitute forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended (the Securities Act), and Section 21E of the Exchange Act. Forward-looking statements are those that predict or describe future events or trends and that do not relate solely to historical matters. All statements contained or incorporated by reference in this prospectus addressing our future results of operations and operating performance, events, or developments that we expect or anticipate will occur in the future, including, but not limited to, statements relating to investment strategies, changes in net interest income growth, investment performance, earnings or earnings per share growth, the future interest rate environment, future capital raising strategies and activities, economic conditions and outlook, expected impact of hedging transactions, and market share, as well as statements expressing optimism or pessimism about future operating results, are forward-looking statements. You can generally identify forward-looking statements as statements containing the words will, believe, expect, anticipate, intend, estimate, assume, plan, continue, should, may or other similar expressions. Forward-looking statements are based current beliefs, assumptions and expectations of our future performance, taking into account all information currently available to us. These beliefs, assumptions and expectations are subject to risks and uncertainties and can change as a result of many possible events or factors, not all of which are known to us. If a change occurs, our business, financial condition, liquidity and results of operations may vary materially from those expressed or implied in our forward-looking statements. We caution readers not to place undue reliance on these forward-looking statements, which may be based on assumptions and expectations that do not materialize.

We make forward-looking statements in this prospectus, and in our other filings with the SEC that are incorporated herein by reference, regarding:

- Our business and investment strategy including our ability to generate acceptable risk-adjusted returns;
- Our financing and hedging strategy, including our target leverage ratios;
- Our investment portfolio composition and target investments;
- Our investment portfolio performance, including the fair value, yields and forecasted prepayment speeds of our investment portfolio;
- Our liquidity and ability to access financing, and the anticipated availability and cost of financing;
- Our use of our tax net operating loss carryforward;
- The status of pending litigation, including our intent and ability to settle pending litigation and the proposed terms of such settlement;
- The anticipated effect on us of recent accounting pronouncements;
- Estimates of future interest expenses related to our derivatives designated as hedging instruments;
- Market, industry and economic trends; and

Interest rates.

While it is not possible to identify all factors, some of the factors that may cause actual results to differ from historical results or from any results expressed or implied by forward-looking statements, or that may cause our projections, assumptions, expectations or beliefs to change, include the following:

The risks and uncertainties referenced in this prospectus, or in our other filings with the SEC that are incorporated herein by reference, particularly those set forth under the heading Risk Factors herein and in our most recent Annual Report on Form 10-K and our Quarterly Reports on Form 10-Q for the periods ended June 30, 2011 and September 30, 2011 under Item 1A, Risk Factors ;

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Our ability to find suitable reinvestment opportunities;

Changes in economic conditions;

Changes in interest rates and interest rate spreads;

Our investment portfolio performance particularly as it relates to cash flow, prepayment rates and credit performance;

Adverse reactions in financial markets related to the budget deficit or national debt of the United States government; potential or actual default by the United States government on Treasury securities; and potential or actual downgrades to the sovereign credit rating of the United States;

The cost and availability of financing;

The cost and availability of new equity capital;

Changes in our use of leverage;

The quality of performance of third-party servicer providers of our loans and loans underlying our securities;

The level of defaults by borrowers on loans we have securitized;

Our ability to finalize, including obtaining court and class approval, the proposed settlement of litigation filed by Teamsters Local 445 Freight Division Pension Fund;

Changes in our industry;

Increased competition;

Changes in government regulations affecting our business;

Government initiatives to support the United States financial system and United States housing and real estate markets;

Government-sponsored entity reform or other government policies and actions; and

An ownership shift under Section 382 of the Internal Revenue Code of 1986, as amended (the Code), that impacts the use of our tax net operating loss carryforward.

These and other risks, uncertainties and factors, including those described in the annual, quarterly and current reports that we file with the SEC, could cause our actual results to differ materially from those projected in any forward-looking statements we make. All forward-looking statements speak only as of the date on which they are made. New risks and uncertainties arise over time and it is not possible to predict those events or how they may affect us. Except as required by law, we are not obligated to, and do not intend to, update or revise any forward-looking statements, whether as a result of new information, future events or otherwise.

We are including this cautionary statement in this prospectus to make applicable and take advantage of the safe harbor provisions of the Private Securities Litigation Reform Act of 1995 for any forward-looking statements made by us or on our behalf. Any forward-looking statements should be considered in context with the various disclosures made by us about our business in our public filings with the SEC, including without limitation the risk factors described above and those described in Risk Factors beginning on page 4.

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OUR COMPANY

We are an internally-managed real estate investment trust, or REIT, which invests in mortgage assets on a leveraged basis. Our objective is to provide attractive risk-adjusted returns to our shareholders over the long term that are reflective of a leveraged, high quality fixed income portfolio with a focus on capital preservation. We seek to provide returns to our shareholders through regular quarterly dividends and through capital appreciation. Our common stock is listed on the New York Stock Exchange under the symbol DX .

We were formed in 1987 and commenced operations in 1988. Beginning with our inception through 2000, our operations largely consisted of originating and securitizing various types of loans, principally single-family and commercial mortgage loans and manufactured housing loans. Since 2000, we have been an investor in Agency and non-Agency mortgage-backed securities (MBS), and we are no longer originating or securitizing mortgage loans.

Our primary source of income is net interest income, which is the excess of the interest income earned on our investments over the cost of financing these investments. Our investment strategy as approved by our Board of Directors is a diversified investment strategy that targets higher credit quality, shorter duration investments in Agency MBS and non-Agency MBS. Investments considered to be of higher credit quality have less or limited exposure to loss of principal while investments which have shorter durations have less exposure to changes in interest rates.

Agency MBS consist of residential MBS (RMBS) and commercial MBS (CMBS), which come with a guaranty of payment by the U.S. government or a U.S. government-sponsored entity such as Fannie Mae and Freddie Mac. Non-Agency MBS (also consisting of RMBS and CMBS) have no such guaranty of payment. We currently target an overall investment portfolio composition of 50%-70% in Agency MBS with the balance in non-Agency MBS and securitized mortgage loans. Our securitized mortgage loans are loans which were originated and securitized by us during the 1990s.

We finance our investments through a combination of short-term repurchase agreements and non-recourse collateralized financing such as securitization financing and financing provided by the Federal Reserve Bank of New York under its Term Asset-Backed Securities Loan Facility (TALF financing). Repurchase agreement financing generally has maturities of 30-90 days and is uncommitted financing. Securitization financing is generally term financing and is repaid from the cash flow received on the securitized mortgage loans. Our TALF financing, which had an initial maturity of three years, is recourse only to the assets which it is funding.

In executing our investment strategy, we seek to balance the various risks of owning mortgage assets, such as interest rate, credit, prepayment, and liquidity risk with the earnings opportunity on the investment. We believe our strategy of investing in Agency and non-Agency mortgage assets provides superior diversification of these risks across our investment portfolio and therefore provides plentiful opportunities to generate attractive risk-adjusted returns while preserving our shareholders capital.

Our address and telephone number are 4991 Lake Brook Drive, Suite 100, Glen Allen, Virginia 23060 and (804) 217-5800.

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RISK FACTORS

An investment in our securities involves various risks. You should carefully consider the risk factors described below and under the heading Risk Factors in Item 1A of our most recent Annual Report on Form 10-K and the other information contained in 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 our securities. Please see Where You Can Find More Information above.

Risks Related to our Common Stock

The market price and trading volume of our common stock may be volatile.

The market price of our common stock may become highly volatile and subject to wide fluctuations. In addition, trading volume in our common stock may fluctuate and cause significant price variations to occur. Some of the factors that could result in fluctuations in the price or trading volume of our common stock include, among other things: actual or anticipated changes in our current or future financial performance; changes in market interest rates and general market and economic conditions. We cannot assure you that the market price of our common stock will not fluctuate or decline significantly.

We have not established a minimum dividend payment level for our common shareholders and there are no assurances of our ability to pay dividends to them in the future.

We intend to pay dividends and to make distributions to our common shareholders in amounts such that all or substantially all of our taxable income in each year, subject to certain adjustments including adjustments for tax loss carryforwards, is distributed. This, along with other factors, should enable us to qualify for the tax benefits accorded to a REIT under the Code. We have not established a minimum dividend payment level for our common shareholders. Further, our ability to pay dividends may be harmed by the risk factors described herein and in our Annual Report on Form 10-K for the fiscal year ended December 31, 2010, and in our Quarterly Reports on Form 10-Q filed for the periods ended June 30, 2011 and September 30, 2011. All distributions to our common shareholders will be made at the discretion of our Board of Directors and will depend on our earnings, our financial condition, maintenance of our REIT status and such other factors as our Board of Directors may deem relevant from time to time. There are no assurances of our ability to pay dividends in the future.

Future offerings of debt securities, which would rank senior to our common stock upon our liquidation, and future offerings of equity securities, which would dilute our existing shareholders and may be senior to our common stock for the purposes of dividend and liquidating distributions, may adversely affect the market price of our common stock.

In the future, we may attempt to increase our capital resources by making offerings of debt or additional offerings of equity securities, including commercial paper, medium-term notes, senior or subordinated notes and classes of preferred stock or common stock. Upon liquidation, holders of our debt securities and lenders with respect to our other borrowings will receive a distribution of our available assets prior to the holders of our common stock.

In addition, upon liquidation, holders of shares of our preferred stock will receive a distribution of our available assets prior to the holders of our common stock. Additional equity offerings may dilute the holdings of our existing shareholders or reduce the market price of our common stock, or both. Moreover, any future issuance of preferred stock by us may have a preference on liquidating distributions and on dividend payments that could limit our ability to make a dividend distribution to the holders of our common stock. Because our decision to issue securities in any future offering will depend on market conditions and other factors beyond our control, we cannot predict or estimate the amount, timing or nature of our future offerings. Thus, holders of our common stock bear the risk of our future offerings reducing the market price of our common stock and diluting their stock holdings in us.

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Future sales of our common stock could have an adverse effect on our stock price.

We cannot predict the effect, if any, of future sales of common stock, or the availability of shares for future sales, on the market price of our common stock. Sales of substantial amounts of common stock, or the perception that such sales could occur, may adversely affect prevailing market prices for our common stock.

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USE OF PROCEEDS

Unless otherwise indicated in a prospectus supplement, we expect to use the net proceeds from the sale of these securities for general corporate purposes.

RATIOS OF EARNINGS TO FIXED CHARGES AND OF EARNINGS TO COMBINED

FIXED CHARGES AND PREFERRED STOCK DIVIDENDS

The following table sets forth the historical ratios of income from continuing operations (before fixed charges) to (i) fixed charges and (ii) combined fixed charges and our preferred stock dividends for the periods indicated.

	Nine Months Ended	Year Ended December 31,				
	September 30, 2011	2010	2009	2008	2007	2006
Ratio of earnings to fixed charges	2.46x	3.05x	2.03x	2.09x	1.46x	1.15x
Ratio of earnings to combined fixed charges and preferred stock dividends	2.46x	2.52x	1.60x	1.73x	1.22x	1.04x

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DESCRIPTION OF OUR CAPITAL STOCK

The following is a description of the material terms of our capital stock. Because it is only a summary, it does not contain all of the information that may be important to you. For a complete description, please refer to the Virginia Stock Corporation Act and our articles of incorporation and bylaws. See Where You Can Find More Information.

General

Our articles of incorporation currently authorize a total of 150,000,000 shares of capital stock, consisting of 100,000,000 shares of common stock, $0.01 par value per share, and 50,000,000 shares of preferred stock, $0.01 par value per share.

As of December 5, 2011, we had issued and outstanding 40,382,435 shares of common stock and zero shares of preferred stock. Under the Virginia Stock Corporation Act, shareholders generally are not liable for the corporation s debts or obligations.

Restrictions on Ownership and Transfer

Two of the requirements of qualification for the tax benefits accorded by the REIT provisions of the Code are that (1) during the last half of each taxable year not more than 50% in value of the outstanding shares may be owned directly or indirectly by five or fewer individuals, and (2) there must be at least 100 stockholders on 335 days of each taxable year of 12 months.

To assist us in meeting these requirements and qualifying as a REIT, our articles of incorporation prohibit anyone from owning in the aggregate, directly or indirectly, more than 9.8% of the outstanding shares of our capital stock (the Ownership Limit). For this purpose, ownership includes constructive ownership in accordance with the constructive ownership provisions of Section 544 of the Code, as modified in Section 856(h) of the Code, as well as shares beneficially owned under the provisions of Rule 13d-3 (or any successor rule) under the Exchange Act.

The constructive ownership provisions of Section 544 of the Code generally attribute ownership of securities owned by a corporation, partnership, estate or trust proportionately to its shareholders, partners or beneficiaries; attribute ownership of securities owned by family members to other members of the same family; and set forth rules for attributing securities constructively owned by one person to another person. To determine whether a person holds or would hold capital stock in excess of the Ownership Limit, a person will be treated as owning not only shares of capital stock actually owned, but also any shares of capital stock attributed to that person under the attribution rules described above. Accordingly, a person who individually owns less than 9.8% of the shares outstanding may nevertheless be in violation of the Ownership Limit.

Any acquisition of shares of capital stock that could or would (i) cause us to be disqualified as a REIT, (ii) result in the imposition of a penalty tax (a Penalty Tax) on us (including the imposition of an entity-level tax on one or more real estate mortgage investment conduits (REMICs) in which we have acquired or plan to acquire an interest) or (iii) endanger the tax status of one or more REMICs in which we have acquired or plan to acquire an interest will be null and void to the fullest extent permitted by law, and the intended transferee (the purported transferee) will be deemed never to have had an interest in such shares. If the prior sentence is held void or invalid by virtue of any legal decision, statute, rule or regulation, then the purported transferee of those shares shall be deemed, at our option, to have acted as agent on our behalf in acquiring those shares and to hold those shares on behalf of us.

Shares which, but for the provisions of Article VI of our articles of incorporation, would be owned by a person or persons acting as a group and would, at any time, be in excess of the Ownership Limit will be Excess

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Shares. At the discretion of the Board of Directors, all Excess Shares may be redeemed by us. We will provide written notice of redemption to the holder of the Excess Shares not less than one week prior to the redemption date (the Redemption Date) determined by the Board of Directors and included in the notice of redemption. The redemption price to be paid for Excess Shares will be equal to (a) the closing price of those shares on the principal national securities exchange on which the shares are listed or admitted to trading on the last business day prior to the Redemption Date, or (b) if the shares are not so listed or admitted to trading, the closing bid price on the last business day prior to the Redemption Date as reported on the NASD System, if quoted thereon, or (c) if the redemption price is not determinable in accordance with either clause (a) or (b) of this sentence, the net asset value of the shares determined in good faith by the Board of Directors and in accordance with the Virginia Stock Corporation Act. From and after the Redemption Date, the holder of any shares of our capital stock called for redemption shall cease to be entitled to any distributions and other benefits with respect to those shares, except the right to payment of the redemption price.

In addition, to avoid a Penalty Tax or the endangerment of the tax status of one or more REMICs in which we have acquired or plan to acquire an interest, we may redeem shares of our capital stock in the manner described in the foregoing paragraph.

Whenever our Board of Directors deems it to be prudent in protecting our tax status, the Board of Directors may require to be filed with us a statement or affidavit from each proposed transferee of shares of our capital stock setting forth the number of such shares already owned by the transferee and any related person(s). Any contract for the sale or other transfer of shares of our capital stock will be subject to this provision. Prior to any transfer or transaction which would cause a shareholder to own, directly or indirectly, shares in excess of the Ownership Limit, and in any event upon demand of our Board of Directors, such shareholder must file with us an affidavit setting forth the number of shares of our capital stock of the Corporation owned by it directly or indirectly, including both constructive and beneficial ownership. The affidavit must set forth all information required to be reported in returns filed by shareholders under Treasury Regulation § 1.857-9 issued under the Code or similar provisions of any successor regulation, and in reports to be filed under Section 13(d), or any successor rule thereto, of the Exchange Act. The affidavit must be filed with us within ten days after demand therefor and at least fifteen days prior to any transfer or transaction which, if consummated, would cause the filing person to hold a number of shares of our capital stock in excess of the Ownership Limit. The Board of Directors has the right, but is not required, to refuse to transfer any shares of our capital stock purportedly transferred other than in compliance with this paragraph.

In addition, whenever our Board of Directors deems it to be prudent in avoiding (i) the imposition of a Penalty Tax on us or (ii) the endangerment of the tax status of one or more REMICs in which we have acquired or plan to acquire an interest, the Board of Directors may require to be filed with us a statement or affidavit from any holder or proposed transferee of our capital stock stating whether the holder or proposed transferee is a tax-exempt organization or a pass-through entity. Any contract for the sale or other transfer of shares of our capital stock of the Corporation will be subject to this provision. The Board of Directors has the right, but is not required, to refuse to transfer any shares of our capital stock purportedly transferred, if either (a) a statement or affidavit requested as described in this paragraph has not been received, or (b) the proposed transferee is a tax-exempt organization or pass-through entity.

Our Board of Directors may take any and all other action as it in its sole discretion deems necessary or advisable to protect us and the interests of our shareholders by (i) maintaining our eligibility to be, and preserving our status as, a REIT, (ii) avoiding the imposition of a Penalty Tax and (iii) avoiding the endangerment of the tax status of one or more REMICs in which we have acquired or plan to acquire an interest. Notwithstanding the foregoing, nothing in our articles of incorporation may preclude settlement of any transaction entered into or through the facilities of New York Stock Exchange or any other exchange on which our common shares may be listed from time to time.

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The Board of Directors in its discretion may exempt from the Ownership Limit and from the affidavit filing requirements described above ownership or transfers of certain designated shares of our capital stock while owned by or transferred to a person who has provided the Board of Directors with acceptable evidence and assurances that our REIT status would not be jeopardized thereby.

The provisions described above may inhibit market activity, and may delay, defer or prevent a change in control or other transaction and the resulting opportunity for the holders of our capital stock to receive a premium for their shares that might otherwise exist in the absence of such provisions. Such provisions also may make us an unsuitable investment vehicle for any person seeking to obtain ownership of more than 9.8% of the outstanding shares of our capital stock.

Transfer Agent and Registrar

The transfer agent and registrar for our common stock is BNY Mellon Shareowner Services. The transfer agent and registrar for any other class or series of stock that we may issue will be identified in the applicable prospectus supplement.

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DESCRIPTION OF OUR COMMON STOCK

The following description of our common stock sets forth certain general terms and provisions of our common stock to which any prospectus supplement may relate, including a prospectus supplement providing that common stock will be issuable upon conversion or exchange of our debt securities or preferred stock or upon the exercise of warrants to purchase our common stock.

All shares of our common stock covered by this prospectus will be duly authorized, fully paid and nonassessable. Subject to the preferential rights of any other class or series of stock and to the provisions of the articles of incorporation regarding the restrictions on transfer of stock, holders of shares of our common stock are entitled to receive dividends on such stock when, as and if authorized by our Board of Directors out of funds legally available therefor and declared by us and to share ratably in the assets of our company legally available for distribution to our shareholders in the event of our liquidation, dissolution or winding up after payment of or adequate provision for all known debts and liabilities of our company, including the preferential rights on dissolution of any class or classes of preferred stock.

Subject to the provisions of our articles of incorporation regarding the restrictions on transfer of stock, each outstanding share of our common stock entitles the holder to one vote on all matters submitted to a vote of shareholders, including the election of directors and, except as provided with respect to any other class or series of stock, the holders of such shares will possess the exclusive voting power. There is no cumulative voting in the election of our Board of Directors, which means that the holders of a plurality of the outstanding shares of our common stock can elect all of the directors then standing for election and the holders of the remaining shares will not be able to elect any directors.

Holders of shares of our common stock have no preference, conversion, exchange, sinking fund, redemption or appraisal rights and have no preemptive rights to subscribe for any securities of our company. Subject to the provisions of the articles of incorporation regarding the restrictions on transfer of stock, shares of our common stock will have equal dividend, liquidation and other rights.

Under the Virginia Stock Corporation Act, a Virginia corporation generally cannot dissolve, amend its articles of incorporation, 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 approved by the affirmative vote of more than two-thirds of all votes entitled to be cast on the matter, unless a greater or lesser proportion of votes (but not less than a majority of all votes cast) is specified in the articles of incorporation. Our articles of incorporation provide that, except as otherwise required or authorized by the Virginia Stock Corporation Act or our articles of incorporation, the vote required to approve an amendment or restatement of the articles of incorporation will be a majority of all votes entitled to be cast by each voting group entitled to vote on the amendment, other than in the case of an amendment or restatement that amends or affects: (i) the shareholder vote required by the Virginia Stock Corporation Act to approve a merger, share exchange, sale of all or substantially all of our assets or our dissolution, or (ii) the provisions addressing the ownership of excess shares in the articles of incorporation.

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DESCRIPTION OF OUR PREFERRED STOCK

The prospectus supplement relating to any series of preferred stock offered by that supplement will describe the specific terms of those securities, including where applicable:

- the title and stated value of that preferred stock;
- the number of shares of that preferred stock offered, the liquidation preference per share and the offering price of that preferred stock;
- the dividend rate(s), period(s) and payment date(s) or method(s) of calculation thereof applicable to that preferred stock;
- whether dividends will be cumulative or non-cumulative and, if cumulative, the date from which dividends on that preferred stock will accumulate;
- the voting rights applicable to that preferred stock;
- the procedures for any auction and remarketing, if any, for that preferred stock;
- the provisions for a sinking fund, if any, for that preferred stock;
- the provisions for redemption including any restriction thereon, if applicable, of that preferred stock;
- any listing of that preferred stock on any securities exchange;
- the terms and conditions, if applicable, upon which that preferred stock will be convertible into other securities of ours, including the conversion price (or manner of calculation of the conversion price) and conversion period;
- a discussion of any material U.S. federal income tax considerations applicable to that preferred stock;
- any limitations on issuance of any series of preferred stock ranking senior to or on a parity with that series of preferred stock as to dividend rights and rights upon liquidation, dissolution or winding up of our affairs;
- in addition to those limitations described above under Description of Our Capital Stock Restrictions on Ownership and Transfer, any other limitations on actual and constructive ownership and restrictions on transfer, in each case as may be appropriate to preserve our status as a REIT; and

any other specific terms, preferences, rights, limitations or restrictions of that preferred stock.

Rank Within Our Capital Structure

Unless otherwise specified in the applicable prospectus supplement, the preferred stock will, with respect to dividend rights and rights upon liquidation, dissolution or winding up of our affairs rank:

senior to all classes or series of common stock and to all equity securities ranking junior to the preferred stock with respect to dividend rights or rights upon liquidation, dissolution or winding up of our affairs;

on a parity with all equity securities issued by us the terms of which specifically provide that those equity securities rank on a parity with the preferred stock with respect to dividend rights or rights upon liquidation, dissolution or winding up of our affairs; and

junior to all equity securities issued by us the terms of which specifically provide that those equity securities rank senior to the preferred stock with respect to dividend rights or rights upon liquidation, dissolution or winding up of our affairs.

The term equity securities does not include convertible debt securities.

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Dividends

Subject to the preferential rights of any other class or series of stock and to the provisions of the articles of incorporation regarding the restrictions on transfer of stock, holders of shares of our preferred stock will be entitled to receive dividends on such stock when, as and if authorized by our Board of Directors out of funds legally available therefor and declared by us, at rates and on dates as will be set forth in the applicable prospectus supplement.

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

If any shares of preferred stock of any series or class are outstanding, no dividends may be authorized or paid or set apart for payment on the preferred stock of any other series or class ranking, as to dividends, on a parity with or junior to the preferred stock of that series or class for any period unless:

- the series or class of preferred stock has a cumulative dividend, and full cumulative dividends have been or contemporaneously are authorized and paid or authorized and a sum sufficient for the payment of those dividends is set apart for payment on the preferred stock of that series or class for all past dividend periods and the then current dividend period; or

- the series or class of preferred stock does not have a cumulative dividend, and full dividends for the then current dividend period have been or contemporaneously are authorized and paid or authorized and a sum sufficient for the payment of those dividends is set apart for the payment on the preferred stock of that series or class.

When dividends are not paid in full (or a sum sufficient for the full payment is not set apart) upon the shares of preferred stock of any series or class and the shares of any other series or class of preferred stock ranking on a parity as to dividends with the preferred stock of that series or class, then all dividends authorized on shares of preferred stock of that series or class and any other series or class of preferred stock ranking on a parity as to dividends with that preferred stock shall be authorized pro rata so that the amount of dividends authorized per share on the preferred stock of that series or class and other series or class of preferred stock will in all cases bear to each other the same ratio that accrued dividends per share on the shares of preferred stock of that series or class (which will not include any accumulation in respect of unpaid dividends for prior dividend periods if the preferred stock does not have a cumulative dividend) and that other series or class of preferred stock bear to each other. No interest, or sum of money in lieu of interest, will be payable in respect of any dividend payment or payments on preferred stock of that series or class that may be in arrears.

Redemption

We may have the right or may be required to redeem one or more series of preferred stock, in whole or in part, in each case upon the terms, if any, and at the time and at the redemption prices set forth in the applicable prospectus supplement.

If a series of preferred stock is subject to mandatory redemption, we will specify in the applicable prospectus supplement the number of shares we are required to redeem, when those redemptions start, the redemption price, and any other terms and conditions affecting the redemption. The redemption price will include all accrued and unpaid dividends, except in the case of noncumulative preferred stock. The redemption price may be payable in cash or other property, as specified in the applicable prospectus supplement. If the redemption price for preferred stock of any series or class is payable only from the net proceeds of the issuance

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of our stock, the terms of that preferred stock may provide that, if no such stock shall have been issued or to the extent the net proceeds from any issuance are insufficient to pay in full the aggregate redemption price then due, that preferred stock shall automatically and mandatorily be converted into shares of our applicable stock pursuant to conversion provisions specified in the applicable prospectus supplement.

Liquidation Preference

Upon any voluntary or involuntary liquidation or dissolution of us or winding up of our affairs, then before any distribution or payment will be made to the holders of common stock or any other series or class of stock ranking junior to any series or class of the preferred stock in the distribution of assets upon any liquidation, dissolution or winding up of our affairs, the holders of that series or class of preferred stock will be entitled to receive out of our assets legally available for distribution to shareholders liquidating distributions in the amount of the liquidation preference per share (set forth in the applicable prospectus supplement), plus an amount equal to all dividends accrued and unpaid on the preferred stock (which will not include any accumulation in respect of unpaid dividends for prior dividend periods if the preferred stock does not have a cumulative dividend). After payment of the full amount of the liquidating distributions to which they are entitled, the holders of preferred stock will have no right or claim to any of our remaining assets.

If, upon any voluntary or involuntary liquidation, dissolution or winding up, the legally available assets are insufficient to pay the amount of the liquidating distributions on all outstanding shares of any series or class of preferred stock and the corresponding amounts payable on all shares of other classes or series of our stock of ranking on a parity with that series or class of preferred stock in the distribution of assets upon liquidation, dissolution or winding up, then the holders of that series or class of preferred stock and all other classes or series of capital stock ranking on a parity as to liquidating distributions will share ratably in any distribution of assets in proportion to the full liquidating distributions to which they would otherwise be respectively entitled.

If liquidating distributions have been made in full to all holders of any series or class of preferred stock, our remaining assets will be distributed among the holders of any other classes or series of stock ranking junior to that series or class of preferred stock upon liquidation, dissolution or winding up, according to their respective rights and preferences and in each case according to their respective number of shares. For these purposes, the consolidation or merger of us with or into any other entity, or the 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.

Voting Rights

Holders of preferred stock will not have any voting rights, except as indicated in the applicable prospectus supplement.

Conversion Rights

The terms and conditions, if any, upon which shares of any series or class of preferred stock are convertible into shares of common stock or other securities of ours will be set forth in the applicable prospectus supplement. The terms will include, where applicable:

- the number or value of shares of common stock or other securities of ours into which the preferred stock is convertible;
- the conversion price (or manner of calculation of the conversion price);
- the conversion period;
- provisions as to whether conversion will be at the option of the holders of the preferred stock or us,
- the events requiring an adjustment of the conversion price; and

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

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Series D Preferred Stock

In 2004, our Board of Directors classified and designated 5,713,430 shares of Series D Preferred Stock. On October 15, 2010, all outstanding shares of Series D Preferred Stock were converted to an equivalent number of shares of common stock. This redemption was executed pursuant to our articles of incorporation, which provided for the redemption of the Series D Preferred Stock at our option once the closing price of our common stock equaled or exceeded $10.00 per share for at least 20 out of 30 consecutive trading days. As of the date of this prospectus, there are no shares of Series D Preferred Stock outstanding. Per our articles of incorporation, all redeemed shares of Series D Preferred Stock have been restored to the status of authorized but unissued shares of preferred stock without designation as to series.

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DESCRIPTION OF OUR DEBT SECURITIES

The following description, together with the additional information we include in any applicable prospectus supplements, summarizes the material terms and provisions of the debt securities that we may offer under this prospectus. Although the terms we have summarized below will apply generally to any future debt securities we may offer, we will describe the particular terms of any debt securities that we may offer in more detail in the applicable prospectus supplement. If we indicate in a prospectus supplement, the terms of any debt securities we offer under that prospectus supplement may differ from the terms we describe below.

The debt securities will be our direct unsecured general obligations and may include debentures, notes, bonds or other evidences of indebtedness. The debt securities will be either senior debt securities or subordinated debt securities. The debt securities will be issued under one or more separate indentures. Senior debt securities will be issued under a senior indenture, and subordinated debt securities will be issued under a subordinated indenture. We use the term indentures to refer to both the senior indenture and the subordinated indenture. The indentures will be qualified under the Trust Indenture Act of 1939, as amended. We use the term trustee to refer to either the senior trustee or the subordinated trustee, as applicable.

The following summaries of material provisions of the debt securities are subject to, and qualified in their entirety by reference to, all the provisions of the indenture applicable to a particular series of debt securities.

General

The prospectus supplement relating to a particular series of debt securities will describe the terms of those debt securities, including, where applicable:

- the title;
- any limit on the amount that may be issued;
- whether or not we will issue the series of debt securities in global form and who the depository will be;
- the maturity date;
- the annual interest rate, which may be fixed or variable, or the method for determining the rate and the date interest will begin to accrue, the dates interest will be payable and the regular record dates for interest payment dates or the method for determining such dates;
- the terms of the subordination of any series of subordinated debt;
- the place where payments will be payable;
- our right, if any, to defer payment of interest and the maximum length of any such deferral period;
- the date, if any, after which, and the price at which, we may, at our option, redeem the series of debt securities pursuant to any optional redemption provisions;

the date, if any, on which, and the price at which we are obligated, pursuant to any mandatory sinking fund provisions or otherwise, to redeem, or at the holder s option to purchase, the series of debt securities;

whether the indenture will restrict our ability to pay dividends, or will require us to maintain any asset ratios or reserves;

whether we will be restricted from incurring any additional indebtedness;

a discussion of any material U.S. federal income tax considerations applicable to the debt securities;

the denominations in which we will issue the series of debt securities, if other than denominations of $1,000 and any integral multiple thereof; and

any other specific terms, preferences, rights or limitations of, or restrictions on, the debt securities.

Conversion or Exchange Rights

We will set forth in the prospectus supplement the terms on which a series of debt securities may be convertible into or exchangeable for shares of common stock or other securities of ours. We will include provisions as to whether conversion or exchange is mandatory, at the option of the holder or at our option. We may include provisions pursuant to which the number of shares of common stock or other securities of ours that the holders of the series of debt securities receive would be subject to adjustment.

Consolidation, Merger or Sale

We will set forth in the prospectus supplement the covenant, if any, that restrict our ability to merge or consolidate, or sell, convey, transfer or otherwise dispose of all or substantially all of our assets.

Events of Default Under an Indenture

We will set forth in the prospectus supplement a description of the events of default under any indenture with respect to a series of debt securities that we may issue.

Discharge

Each indenture will describe the circumstances under which we can elect to be discharged from our obligations with respect to a series of debt securities.

Form, Exchange and Transfer

We will issue the debt securities of each series only in fully registered form without coupons and, unless we otherwise specify in the applicable prospectus supplement, in denominations of $1,000 and any integral multiple thereof. We may issue debt securities of a series in temporary or permanent global form and as book-entry securities that will be deposited with, or on behalf of, The Depository Trust Company or another depository named by us and identified in a prospectus supplement with respect to that series.

At the option of the holder, subject to the terms of the indentures and the limitations applicable to global securities described in the applicable prospectus supplement, the holder of the debt securities of any series can exchange the debt securities for other debt securities of the same series, in any authorized denomination and of like tenor and aggregate principal amount.

Subject to the terms of the indentures and the limitations applicable to global securities set forth in the applicable prospectus supplement, holders of the debt securities may present the debt securities for exchange or for registration of transfer, duly endorsed or with the form of transfer endorsed thereon duly executed if so required by us or the security registrar, at the office of the security registrar or at the office of any transfer agent designated by us for this purpose. Unless otherwise provided in the debt securities that the holder presents for transfer or exchange, we will make no service charge for any registration of transfer or exchange, but we may require payment of any taxes or other governmental charges.

We will name in the applicable prospectus supplement the security registrar, and any transfer agent in addition to the security registrar, that we initially designate for any debt securities. We may at any time designate additional transfer agents or rescind the designation of any transfer agent or approve a change in the office through which any transfer agent acts, except that we will be required to maintain a transfer agent in each place of payment for the debt securities of each series.

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If we elect to redeem the debt securities of any series, we will not be required to:

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

- register the transfer of or exchange any debt securities so selected for redemption, in whole or in part, except the unredeemed portion of any debt securities we are redeeming in part.

Information Concerning the Trustee

The trustee, other than during the occurrence and continuance of an event of default under an indenture, will undertake to perform only those duties as are specifically set forth in the applicable indenture. Upon an event of default under an indenture, the trustee will be obligated to use the same degree of care as a prudent person would exercise or use in the conduct of his or her own affairs. Subject to this provision, a trustee will be under no obligation to exercise any of the powers given it by an indenture at the request of any holder of debt securities unless it is offered reasonable security and indemnity against the costs, expenses and liabilities that it might incur.

Payment and Paying Agents

Unless we otherwise indicate in the applicable prospectus supplement, we will make payment of the interest on any debt securities on any interest payment date to the person in whose name the debt securities, or one or more predecessor securities, are registered at the close of business on the regular record date for the interest.

We will pay principal of and any premium and interest on the debt securities of a particular series at the office of the paying agents designated by us, except that unless we otherwise indicate in the applicable prospectus supplement, we will make interest payments by check which we will mail to the holder. Unless we otherwise indicate in a prospectus supplement, we will designate the corporate trust office of the trustee in the City of New York as our sole paying agent for payments with respect to debt securities of each series. We will name in the applicable prospectus supplement any other paying agents that we initially designate for the debt securities of a particular series. We will maintain a paying agent in each place of payment for the debt securities of a particular series.

All money we pay to a paying agent or the trustee for the payment of the principal of or any premium or interest on any debt securities which remains unclaimed at the end of two years after such principal, premium or interest has become due and payable will be repaid to us, and the holder of the security thereafter may look only to us for payment thereof.

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DESCRIPTION OF OUR WARRANTS

This section describes the general terms and provisions of our warrants. The applicable prospectus supplement will describe the specific terms of the warrants offered through that prospectus supplement as well as any general terms described in this section that will not apply to those warrants.

We may issue warrants for the purchase of our debt securities, preferred stock, or common stock. We may issue warrants independently or together with other securities, and they may be attached to or separate from the other securities. Each series of warrants will be issued under a separate warrant agreement that we will enter into with a bank or trust company, as warrant agent, as detailed in the applicable prospectus supplement. The warrant agent will act solely as our agent in connection with the warrants and will not assume any obligation, or agency or trust relationship, with you.

The prospectus supplement relating to a particular issue of warrants will describe the terms of those warrants, including, where applicable:

- the aggregate number of the securities covered by the warrant;
- the designation, amount and terms of the securities purchasable upon exercise of the warrant;
- the exercise price for our debt securities, the amount of debt securities upon exercise you will receive, and a description of that series of debt securities;
- the exercise price for shares of our preferred stock, the number of shares of preferred stock to be received upon exercise, and a description of that series of our preferred stock;
- the exercise price for shares of our common stock and the number of shares of common stock to be received upon exercise;
- the expiration date for exercising the warrant;
- the minimum or maximum amount of warrants that may be exercised at any time;
- a discussion of any material U.S. federal income tax consequences applicable to the warrants; and
- any other material terms of the warrants.

After the warrants expire they will become void. The prospectus supplement will describe how to exercise warrants. A holder must exercise warrants through payment in U.S. dollars. All warrants will be issued in registered form. The prospectus supplement may provide for the adjustment of the exercise price of the warrants.

Until a holder exercises warrants to purchase our debt securities, preferred stock, or common stock, that holder will not have any rights as a holder of our debt securities, preferred stock, or common stock by virtue of ownership of warrants.

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DESCRIPTION OF OUR SHAREHOLDER RIGHTS

This section describes the general terms and provisions of the rights to purchase certain of our securities that we may issue to holders of our securities by this prospectus. The applicable prospectus supplement will describe the specific terms of the rights offered through that prospectus supplement. The terms and provisions described in this section will apply only to the extent not superseded by the terms of the applicable prospectus supplement.

We may issue, as a dividend at no cost, to holders of record of our securities or any class or series thereof on the applicable record date, rights to purchase shares of our common stock or preferred stock, to purchase warrants exercisable for shares of our common stock or preferred stock, or to purchase units consisting of two or more of the foregoing. In this prospectus, we refer to such rights as shareholder rights. If shareholder rights are so issued to existing holders of securities, each shareholder right will entitle the holder of record thereof to purchase the securities issuable upon exercise of the rights pursuant to the terms set forth in the applicable prospectus supplement.

The prospectus supplement relating to a particular issuance of shareholder rights will describe the terms of those shareholder rights, including, where applicable:

- record date;
- subscription price;
- subscription agent;
- aggregate number of shares of common stock, shares of preferred stock, warrants, or units purchasable upon exercise of such shareholder rights and in the case of shareholder rights for preferred stock or warrants exercisable for preferred stock, the designation, aggregate number, and terms of the class or series of preferred stock purchasable upon exercise of such shareholder rights or warrants;
- the date on which the right to exercise such shareholder rights shall commence and the expiration date on which such right shall expire;
- a discussion of any material U.S. federal income tax considerations applicable to the shareholder rights; and
- other material terms of such shareholder rights.

In addition to the terms of the shareholder rights and the securities issuable upon exercise thereof, the prospectus supplement may describe, for a holder of such shareholder rights who validly exercises all shareholder rights issued to such holder, how to subscribe for unsubscribed securities, issuable pursuant to unexercised shareholder rights issued to other holders, to the extent such shareholder rights have not been exercised.

Holders of shareholder rights will not be entitled by virtue of being such holders, to vote, to consent, to receive dividends, to receive notice with respect to any meeting of shareholders for the election of our directors or any other matter, or to exercise any rights whatsoever as shareholders of Dynex, except to the extent described in the related prospectus supplement.

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DESCRIPTION OF OUR UNITS

We may issue units consisting of two or more other constituent securities. These units may be issuable as, and for a specified period of time may only be transferable as, a single security, rather than as the separate constituent securities comprising such units. The statements made in this section relating to the units are summaries only. These summaries are not complete. When we offer units, we will provide the specific terms of the units in a prospectus supplement. To the extent the information contained in the prospectus supplement differs from this summary description, you should rely on the information in the prospectus supplement.

The prospectus supplement relating to a particular offering of units will describe the terms of those units, including, where applicable:

- the title of any series of units;
- identification and description of the separate constituent securities comprising the units;
- the price or prices at which the units will be issued;
- the date, if any, on and after which the constituent securities comprising the units will be separately transferable;
- information with respect to any book-entry procedures;
- a discussion of any material U.S. federal income tax consequences applicable to an investment in the units; and
- any other terms of the units and their constituent securities.

BOOK-ENTRY SECURITIES

The securities offered by means of this prospectus may be issued in whole or in part in book-entry form, meaning that beneficial owners of the securities will not receive certificates representing their ownership interests in the securities, except in the event the book-entry system for the securities is discontinued. Securities issued in book-entry form will be evidenced by one or more global securities that will be deposited with, or on behalf of, a depositary identified in the applicable prospectus supplement relating to the securities. We expect that The Depository Trust Company will serve as depository. Unless and until it is exchanged in whole or in part for the individual securities represented by that security, a global security may not be transferred except as a whole by the depository for the global security to a nominee of that depository or by a nominee of that depository to that depository or another nominee of that depository or by the depository or any nominee of that depository to a successor depository or a nominee of that successor. Global securities may be issued in either registered or bearer form and in either temporary or permanent form. The specific terms of the depositary arrangement with respect to a class or series of securities that differ from the terms described here will be described in the applicable prospectus supplement.

Unless otherwise indicated in the applicable prospectus supplement, we anticipate that the provisions described below will apply to depository arrangements.

Upon the issuance of a global security, the depository for the global security or its nominee will credit on its book-entry registration and transfer system the respective principal amounts of the individual securities represented by that global security to the accounts of persons that have accounts with such depository, who are called participants. Those accounts will be designated by the underwriters, dealers or agents with respect to the securities or by us if the securities are offered and sold directly by us. Ownership of beneficial interests in a global security will be limited to the depository s participants or persons that may hold interests through those participants. Ownership of beneficial interests in the global security will be shown on, and the transfer of that ownership will be effected only through records maintained by the applicable depository or its nominee (with respect to beneficial interests of participants) and records of the participants (with respect to beneficial interests of persons who hold through participants). The laws of some states require that certain purchasers of securities take physical delivery of such securities in definitive form. These limits and laws may impair the ability to own, pledge or transfer beneficial interest in a global security.

So long as the depository for a global security or its nominee is the registered owner of such global security, that depository or nominee, as the case may be, will be considered the sole owner or holder of the securities represented by that global security for all purposes under the applicable indenture or other instrument defining the rights of a holder of the securities. Except as provided below or in the applicable prospectus supplement, owners of beneficial interest in a global security will not be entitled to have any of the individual securities of the series represented by that global security registered in their names, will not receive or be entitled to receive physical delivery of any such securities in definitive form and will not be considered the owners or holders of that security under the applicable indenture or other instrument defining the rights of the holders of the securities.

Payments of amounts payable with respect to individual securities represented by a global security registered in the name of a depository or its nominee will be made to the depository or its nominee, as the case may be, as the registered owner of the global security representing those securities. None of us, our officers and directors or any trustee, paying agent or security registrar for an individual series of securities will have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests in the global security for such securities or for maintaining, supervising or reviewing any records relating to those beneficial ownership interests.

We expect that the depository for a series of securities offered by means of this prospectus or its nominee, upon receipt of any payment of principal, premium, interest, dividend or other amount in respect of a permanent global security representing any of those securities, will immediately credit its participants accounts with

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payments in amounts proportionate to their respective beneficial interests in the principal

amount of that global security for those securities as shown on the records of that depository or its nominee. We also expect that payments by participants to owners of beneficial interests in that global security held through those participants will be governed by standing instructions and customary practices, as is the case with securities held for the account of customers in bearer form or registered in street name. Those payments will be the responsibility of these participants.

If a depository for a series of securities is at any time unwilling, unable or ineligible to continue as depository and a successor depository is not appointed by us within 90 days, we will issue individual securities of that series in exchange for the global security representing that series of securities. In addition, we may, at any time and in our sole discretion, subject to any limitations described in the applicable prospectus supplement relating to those securities, determine not to have any securities of that series represented by one or more global securities and, in that event, will issue individual securities of that series in exchange for the global security or securities representing that series of securities.

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MATERIAL PROVISIONS OF VIRGINIA LAW AND OF

OUR ARTICLES OF INCORPORATION AND BYLAWS

The following is a summary of certain provisions of Virginia law and of our articles of incorporation and bylaws. Copies of our articles of incorporation and bylaws are filed as exhibits to the registration statement of which this prospectus is a part. See Where You Can Find More Information.

The Board of Directors

Our bylaws provide that the number of directors of our company may be increased or decreased from time to time by our Board of Directors but may not be fewer than three nor more than 15. A majority of the directors are required to be Unaffiliated Directors. An Unaffiliated Director means a director of our company who is not affiliated, directly or indirectly, with any person or entity, if any, responsible for directing and performing our day-to-day business affairs.

Any vacancy other than by reason of an increase in the number of directors may be filled, at any regular meeting or at any special meeting called for that purpose, by a majority of the remaining directors, provided, however, that Unaffiliated Directors will nominate replacements for vacancies among the Unaffiliated Directors, which replacements must be elected by a majority of the directors, including a majority of the Unaffiliated Directors. A vacancy occurring by reason of an increase in the number of directors may be filled by action of a majority of the entire Board of Directors including a majority of Unaffiliated Directors. Directors elected by the Board to fill a vacancy shall be elected to hold office until the next annual meeting of shareholders or until a successor is elected and qualified.

Pursuant to our bylaws, all members of our Board of Directors will serve until the next annual meeting of shareholders or until their successors are elected and qualified. Holders of shares of our common stock will have no right to cumulative voting in the election of directors. Consequently, at each annual meeting of shareholders at which our Board of Directors is elected, the holders of a plurality of the outstanding shares of our common stock will be able to elect all of the members of our Board of Directors, other than directors, if any, entitled to be elected by holders of our preferred stock.

Amendments to Our Articles of Incorporation

Our articles of incorporation provide that, except as otherwise required or authorized by the Virginia Stock Corporation Act or our articles of incorporation, the vote required to approve an amendment or restatement of the articles of incorporation will be a majority of all votes entitled to be cast by each voting group entitled to vote on the amendment, other than in the case of an amendment or restatement that amends or affects: (i) the shareholder vote required by the Virginia Stock Corporation Act to approve a merger, share exchange, sale of all or substantially all of our assets or our dissolution, or (ii) the provisions addressing the ownership of excess shares in the articles of incorporation.

Dissolution of Our Company

The dissolution of our company must be declared advisable by the Board of Directors and approved by the affirmative vote of the holders of more than two-thirds of all of the votes entitled to be cast on the matter.

Advance Notice of Director Nominations and New Business

Our bylaws provide that:

- with respect to an annual meeting of shareholders, the only business to be considered and the only proposals to be acted upon will be those properly brought before the annual meeting:

  - by, or at the direction of, our Board of Directors; or

by a shareholder who is entitled to vote at the meeting and has complied with the advance notice provisions set forth in our bylaws;

with respect to special meetings of shareholders, only the business specified in our notice of the meeting may be brought before the meeting of shareholders unless otherwise provided by law; and

nominations of persons for election to our Board of Directors at any annual or special meeting of shareholders may be made only:

by our Board of Directors or any committee thereof; or

by a shareholder who is entitled to vote at the meeting and has complied with the advance notice provisions set forth in our bylaws.

Anti-Takeover Effect of Certain Provisions of Virginia Law and of Our Articles of Incorporation and Bylaws

Affiliated Transactions. The Virginia Stock Corporation Act limits affiliated transactions between a corporation and an interested shareholder for three years after the date on which the interested shareholder became an interested shareholder, except in compliance with the Act. These affiliated transactions include a merger, statutory share exchange, dissolution, or, in circumstances specified in the statute, certain transfers of assets, certain stock issuances and transfers and reclassifications involving interested shareholders. Virginia law defines an interested shareholder as:

any person who beneficially owns more than 10% of any class of our outstanding voting stock; or

an affiliate or associate of the corporation who, at any time within the three-year period prior to the date in question, was the beneficial owner of more than 10% of any class of our then-outstanding voting stock.

The Virginia Stock Corporation Act provides that no corporation may engage in any affiliated transaction with any interested shareholder for a period of three years following the date on which an interested shareholder becomes an interested shareholder unless approved by the affirmative vote of a majority (but not less than two) of the disinterested directors and by the affirmative vote of the holders of two-thirds of the voting shares other than shares beneficially owned by the interested shareholder. After the three-year period, a corporation may engage in an affiliated transaction with an interested shareholder, provided that such transaction is approved by the affirmative vote of the holders of two-thirds of the voting shares other than shares beneficially owned by the interested shareholders.

The statute permits various exemptions from its provisions, including for affiliated transactions entered into after the three-year period that are approved by a majority of disinterested directors and affiliated transactions where the consideration will be paid to the holders of each class or series of voting shares and certain other statutory fair price conditions are met.

Control Share Acquisitions. The Virginia Stock Corporation Act provides that shares of a Virginia corporation acquired in a control share acquisition have no voting rights except to the extent approved by resolution or at a special meeting by the affirmative vote of a majority of the votes entitled to be cast on the matter, excluding interested shares of stock in a corporation in respect of which any of the following persons is entitled to exercise or direct the exercise of the voting power: (i) an acquiring person with respect to a control share acquisition; (ii) any officer of such corporation; or (iii) any employee of such corporation who is also a director of the corporation. A control share acquisition means the acquisition of shares by a person that when added to all other shares owned by such person would cause such person to become entitled, immediately upon acquisition of such shares, to vote or direct the vote of, shares having voting power within any of the following ranges of the votes entitled to be cast in an election of directors (i) one-fifth or more but less than one-third of such votes; (ii) one-third or more but less than a majority of such votes; or (iii) a majority or more of such votes.

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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 shareholders to be held within 50 days of demand to consider the voting rights of the shares. If no request for a meeting is made, the corporation may itself present the question at any shareholders meeting.

If voting rights for control shares are approved at a shareholders meeting and the acquiror becomes entitled to vote a majority of the shares entitled to vote, all other shareholders may exercise appraisal rights. The fair value of the shares as determined for purposes of such 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.

Bylaws. The advance notice provisions of our bylaws could delay, defer or prevent 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.

Indemnification and Limitation of Directors and Officers Liability

The Virginia Stock Corporation Act and our articles of incorporation provide for indemnification of our directors and officers in a variety of circumstances, which may include liabilities under the Securities Act. Our articles of incorporation require indemnification of directors and officers with respect to certain liabilities, expenses, and other amounts imposed on them by reason of having been a director or officer, except in the case of willful misconduct or a knowing violation of criminal law. We also carry insurance on behalf of directors, officers, employees or agents which may cover liabilities under the Securities Act.

Under the Virginia Stock Corporation Act, a Virginia corporation may not indemnify for an adverse judgment in a suit by or in the right of the corporation or for a judgment of liability on the basis that personal benefit was improperly received, unless in either case a court orders indemnification and then only for expenses. In addition, the Virginia Stock Corporation Act permits a corporation to advance reasonable expenses to a director or officer upon the corporation s receipt of:

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

- a written undertaking by the director or on the director s behalf to repay the amount paid or reimbursed by the corporation if it is ultimately determined that the director did not meet the standard of conduct.

Insofar as the foregoing provisions permit indemnification of directors, officers or persons controlling us for liability arising under the Securities Act, we have been informed that in the opinion of the SEC, this indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

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U.S. FEDERAL INCOME TAX CONSIDERATIONS

The following discussion is a summary of the material U.S. federal income tax considerations that may be relevant to a prospective holder of our common stock. The prospectus supplement relating to a particular offering of securities other than our common stock will include a summary of the material U.S. federal income tax considerations, if any, that may be relevant to a prospective holder of the securities then being offered.

This summary is for general information only, and does not purport to address all aspects of U.S. federal income taxation that may be relevant to particular investors in light of their personal investment or tax circumstances, or to certain types of investors that are subject to special treatment under the federal income tax laws, such as insurance companies, financial institutions or broker-dealers, tax-exempt organizations, foreign corporations and persons who are not citizens or residents of the U.S. (except to the limited extent discussed in Taxation of Non-U.S. Holders), investors who hold or will hold securities as part of hedging or conversion transactions or other integrated investment, investors subject to federal alternative minimum tax, investors holding their interest through a partnership or other pass-through entities, investors that have a principal place of business or tax home outside the U.S. and investors whose functional currency is not the U.S. dollar. This summary assumes that shareholders will hold our common stock as capital assets.

This discussion is based on the Internal Revenue Code of 1986, as amended, or the Code, existing temporary, proposed and final Treasury regulations promulgated thereunder, current administrative interpretations, practices and rulings, and judicial decisions, all as currently in effect and all of which are subject to differing interpretations. In addition, no assurance can be given that future legislative, judicial, or administrative actions or decisions, which may be retroactive in effect, will not affect the accuracy of any statements in this prospectus with respect to the transactions entered into or contemplated prior to the effective date of such changes. No assurance can be given that the Internal Revenue Service (the IRS) would not assert, or that a court of competent jurisdiction would not sustain, a position contrary to any tax consequences described below.

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

Taxation of Our Company

We are currently taxed as a REIT under the U.S. federal income tax laws. We believe that we are organized and operate in such a manner as to qualify for taxation as a REIT under the Code, and we intend to continue to operate in such a manner, but no assurance can be given that we will operate in a manner so as to continue to qualify as a REIT. This section discusses the laws governing the federal income tax treatment of a REIT and its investors. These laws are highly technical and complex.

We have a tax net operating loss carryforward as of December 31, 2010 of approximately $146.3 million. The net operating loss carryforward expires substantially beginning in 2020. To the extent that we have taxable income that is not distributed by us to our shareholders, we may offset such taxable income with our loss carryforward and would not have to pay income tax and which would not impact our REIT status. As a result, we are not necessarily required to distribute 90% or more of our earnings to maintain our REIT status. See further discussion below.

We have received opinions of Troutman Sanders LLP to the effect that, commencing with our taxable year ended December 31, 2006, we have been organized in conformity with the requirements for qualification and taxation as a REIT under the Code, and our proposed method of operation will enable us to meet the requirements for qualification and taxation as a REIT under the Code. It must be emphasized that the opinion of

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Troutman Sanders LLP is based on various assumptions relating to our organization and operation, including that all factual representations and statements set forth in all relevant documents, records and instruments are true and correct, including representations regarding the nature of our assets and the future conduct of our business, all actions described in this prospectus are completed in a timely fashion and that we will at all times operate in accordance with the method of operation described in our organizational documents and this prospectus. Further, Troutman Sanders LLP s opinion is not binding upon the IRS or any court. In addition, Troutman Sanders LLP s opinion is based on existing federal income tax law governing qualification as a REIT as of the date of the opinion, which is subject to change either prospectively or retroactively. Moreover, our continued qualification and taxation as a REIT depend upon our ability to meet on a continuing basis, through actual annual operating results, certain qualification tests set forth in the U.S. federal tax laws. Those qualification tests include the percentage of income that we earn from specified sources, the percentage of our assets that falls within specified categories, the diversity of our share ownership, and the percentage of our earnings that we distribute. While Troutman Sanders LLP will review those matters in connection with rendering the foregoing opinion, Troutman Sanders LLP will not review our compliance with those tests on a continuing basis. Accordingly, no assurance can be given that the actual results of our operation for any particular taxable year will satisfy such requirements. For a discussion of the tax consequences of our failure to qualify as a REIT, see Failure to Qualify.

If we qualify as a REIT, we generally will not be subject to U.S. federal income tax on the taxable income that we distribute to our shareholders. The benefit of that tax treatment is that it avoids the double taxation, or taxation at both the corporate and shareholder levels, that generally results from owning stock in a corporation. However, we will be subject to U.S. federal tax in the following circumstances:

- We will pay U.S. federal income tax at regular corporate rates on taxable income, including net capital gain, that we do not distribute to our shareholders during, or within a specified time period after, the calendar year in which the income is earned, to the extent we cannot otherwise offset such income with our loss carryforward.

- Under certain circumstances, we may be subject to the alternative minimum tax on items of tax preference.

- We will pay U.S. federal income tax at the highest corporate rate on (1) net income from the sale or other disposition of property acquired through foreclosure (foreclosure property) that we hold primarily for sale to customers in the ordinary course of business and (2) other non-qualifying income from foreclosure property.

- We will pay a 100% tax on net income from sales or other dispositions of property, other than foreclosure property, that we hold primarily for sale to customers in the ordinary course of business.

- If we fail to satisfy the 75% gross income test or the 95% gross income test, as described below under Income Tests, and nonetheless continue to qualify as a REIT because we meet other requirements, we will pay a 100% tax on (1) the gross income attributable to the greater of the amounts by which we fail the 75% and 95% gross income tests, multiplied by (2) a fraction intended to reflect our profitability.

- After consideration of our loss carryforward, if we fail to distribute during a calendar year at least the sum of (1) 85% of our REIT ordinary income for such year, (2) 95% of our REIT capital gain net income for such year, and (3) any undistributed taxable income from prior periods, we will pay a 4% excise tax on the excess of this required distribution over the sum of the amount we actually distributed, plus any retained amounts on which income tax has been paid at the corporate level.

- We may elect to retain and pay U.S. federal income tax on our net long-term capital gain. In that case a U.S. holder, as defined below under Taxation of U.S. Holders, would be taxed on its proportionate share of our undistributed long-term capital gain (to the extent that a timely designation of such gain is made by us to the shareholder) and would receive a credit or refund for its proportionate share of the tax we paid.

If we acquire any asset from a C corporation, or a corporation that generally is subject to full corporate-level tax, in a merger or other transaction in which we acquire a basis in the asset that is determined by reference to the C corporation s basis in the asset, we will pay U.S. federal income tax at the highest regular corporate rate applicable if we recognize gain on the sale or disposition of such asset during the 10-year period after we acquire such asset. The amount of gain on which we will pay tax generally is the lesser of: (1) the amount of gain that we recognize at the time of the sale or disposition; or (2) the amount of gain that we would have recognized if we had sold the asset at the time we acquired the asset.

We will incur a 100% excise tax on transactions with a taxable REIT subsidiary (TRS) that are not conducted on an arm s-length basis.

If we fail to satisfy certain asset tests, described below under Asset Tests and nonetheless continue to qualify as a REIT because we meet certain other requirements, we will be subject to U.S. federal income tax of the greater of $50,000 or at the highest corporate rate on the net income generated by the non-qualifying assets.

We may be subject to a $50,000 tax for each failure if we fail to satisfy certain REIT qualification requirements, other than income tests or asset tests, and the failure is due to reasonable cause and not willful neglect.

If we recognize excess inclusion income and have shareholders who are disqualified organizations, we may have to pay U.S. federal income tax at the highest corporate rate on the portion of the excess inclusion income allocable to the shareholders that are disqualified organizations. See Taxable Mortgage Pools below.

We may be required to pay monetary penalties to the IRS in certain circumstances, including if we fail to meet record-keeping requirements intended to monitor our compliance with votes relating to the composition of our shareholders.

In addition, notwithstanding our qualification as a REIT, we may also have to pay certain state and local income taxes, because not all states and localities treat REITs in the same manner that they are treated for U.S. federal income tax purposes. Moreover, as further described below, any TRS in which we own an interest will be subject to U.S. federal and state corporate income tax on its taxable income.

Requirements for Qualification

A REIT is a corporation, trust, or association that meets the following requirements:

1. it is managed by one or more trustees or directors;

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

3. it would be taxable as a domestic corporation but for the REIT provisions of the U.S. federal income tax laws;

4. it is neither a financial institution nor an insurance company subject to special provisions of the U.S. federal income tax laws;

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

6. no more than 50% in value of its outstanding shares or ownership certificates is owned, directly or indirectly, by five or fewer individuals, as defined in the U.S. federal income tax laws to include certain entities, during the last half of each taxable year;

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7. it elects to be a REIT, or has made such election for a previous taxable year, and satisfies all relevant filing and other administrative requirements established by the IRS that must be met to elect and maintain REIT status;

8. it uses a calendar year for U.S. federal income tax purposes and complies with the recordkeeping requirements of the U.S. federal income tax laws; and

9. it meets certain other qualification tests, described below, regarding the nature of its income and assets and the amount of its distributions.

We must meet requirements 1 through 4 during our entire taxable year and must meet requirement 5 during at least 335 days of a taxable year of 12 months, or during a proportionate part of a taxable year of less than 12 months. If we comply with all the requirements for ascertaining the ownership of our outstanding shares in a taxable year and have no reason to know that we violated requirement 6, we will be deemed to have satisfied requirement 6 for such taxable year. For purposes of determining share ownership under requirement 6, an individual generally includes a supplemental unemployment compensation benefits plan, a private foundation, or a portion of a trust permanently set aside or used exclusively for charitable purposes. An individual, however, generally does not include a trust that is a qualified employee pension or profit sharing trust under the federal income tax laws, and beneficiaries of such a trust will be treated as holding shares of our stock in proportion to their actuarial interests in the trust for purposes of requirement 6.

We have issued sufficient stock with enough diversity of ownership to satisfy requirements 5 and 6 set forth above. In addition, our articles of incorporation restrict the ownership and transfer of the stock so that we should continue to satisfy requirements 5 and 6. The provisions of our charter restricting the ownership and transfer of the stock are described in Description of Our Capital Stock Restrictions on Ownership and Transfer.

If we comply with regulatory rules pursuant to which we are required to send annual letters to holders of our stock requesting information regarding the actual ownership of our stock, and we do not know, or exercising reasonable diligence would not have known, whether we failed to meet requirement 6 above, we will be treated as having met the requirement.

In addition, we must satisfy all relevant filing and other administrative requirements established by the IRS that must be met to elect and maintain REIT qualification.

A corporation that is a qualified REIT subsidiary is not treated as a corporation separate from its parent REIT. All assets, liabilities, and items of income, deduction, and credit of a qualified REIT subsidiary are treated as assets, liabilities, and items of income, deduction, and credit of the REIT. A qualified REIT subsidiary is a corporation, other than a TRS, all of the capital stock of which is owned by the REIT. Thus, in applying the requirements described in this section, any qualified REIT subsidiary that we own will be ignored for U.S. federal income tax purposes, and all assets, liabilities, and items of income, deduction, and credit of that subsidiary will be treated as our assets, liabilities, and items of income, deduction, and credit. Similarly, any wholly owned limited liability company or certain wholly owned partnerships that we own will be disregarded, and all assets, liabilities and items of income, deduction and credit of such limited liability company will be treated as ours.

In the case of a REIT that is a partner in a partnership that has other partners, the REIT is treated as owning its proportionate share of the assets of the partnership and as earning its allocable share of the gross income of the partnership for purposes of the applicable REIT qualification tests. For purposes of the 10% value test (as described below under Asset Tests), our proportionate share is based on our proportionate interest in the equity interests and certain debt securities issued by the partnership. For all of the other asset and income tests, our proportionate share is based on our proportionate interest in the capital interests in the partnership. Our proportionate share of the assets, liabilities, and items of income of any partnership, joint venture, or limited

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liability company that is treated as a partnership for federal income tax purposes in which we own or will acquire an interest, directly or indirectly, are treated as our assets and gross income for purposes of applying the various REIT qualification requirements.

Subject to restrictions on the value of TRS securities held by the REIT, a REIT is permitted to own up to 100% of the stock of one or more TRS. A TRS is a fully taxable corporation. The TRS and the REIT must jointly elect to treat the subsidiary as a TRS. A corporation of which a TRS directly or indirectly owns more than 35% of the voting power or value of the stock will be automatically treated as a TRS. Overall, no more than 25% of the value of a REIT s assets may consist of TRS securities. See Taxable REIT Subsidiaries.

Gross Income Tests

We must satisfy two gross income tests annually to maintain our qualification as a REIT. First, at least 75% of our gross income for each taxable year must consist of defined types of income that we derive, directly or indirectly, from investments relating to real property or mortgages on real property or qualified temporary investment income, excluding gross income from sales of inventory or dealer property in prohibited transactions. Qualifying income for purposes of that 75% gross income test generally includes:

- rents from real property;

- interest on debt secured by mortgages on real property or on interests in real property;

- dividends and gain from the sale of shares in other REITs;

- gain from the sale of real estate assets; and

- income derived from the temporary investment of new capital or qualified temporary investment income, that is attributable to the issuance of our stock or a public offering of our debt with a maturity date of at least five years and that we receive during the one year period beginning on the date on which we received such new capital.

Second, in general, at least 95% of our gross income, excluding gross income from prohibited transactions, for each taxable year must consist of income that is qualifying income for purposes of the 75% gross income test above, other types of dividends and interest, gain from the sale or disposition of stock or securities, income from certain hedging transactions, or any combination of these. In addition, income and gain from hedging transactions, as defined in Hedging Transactions, that we enter into to hedge indebtedness incurred or to be incurred to acquire or carry real estate assets and that are clearly and timely identified as such will be excluded from both the numerator and the denominator for purposes of the 95% gross income test (but not the 75% gross income test). The following paragraphs discuss the specific application of the gross income tests to us.

Rents from Real Property. Rent that we receive from any real property that we might own and lease to tenants will qualify as rents from real property, which is qualifying income for purposes of the 75% and 95% gross income tests, only if the several conditions are met, including the following:

- First, the rent must not be based, in whole or in part, on the income or profits of any person but may be based on a fixed percentage or percentages of gross receipts or gross sales.

- Second, neither we nor a direct or indirect owner of 10% or more of our shares of stock may own, actually or constructively, 10% or more of a tenant other than a TRS from whom we receive rent.

Third, if the rent attributable to personal property leased in connection with a lease of any real property that we might own exceeds 15% of the total rent received under the lease, then the portion of rent attributable to that personal property will not qualify as rents from real property.

Fourth, we generally must not operate or manage any real property or furnish or render services to tenants, other than through an independent contractor who is adequately compensated, from whom we do not derive revenue, and who does not, directly or through its shareholders, own more than 35%

of our shares of stock, taking into consideration the applicable ownership attribution rules. However, we need not provide services through an independent contractor, but instead may provide services directly to any such tenants, if the services are usually or customarily rendered in the geographic area in connection with the rental of space for occupancy only and are not considered to be provided for the tenants convenience. In addition, we may provide a minimal amount of non-customary services to the tenants of a property, other than through an independent contractor, as long as our income from the services (valued at not less than 150% of our direct cost of performing such services) does not exceed 1% of our income from the related property. Furthermore, we may own up to 100% of the stock of a TRS which may provide customary and noncustomary services to tenants without tainting our rental income from the related properties. See Taxable REIT Subsidiaries.

Interest. The term interest, as defined for purposes of both the 75% and 95% gross income tests, generally does not include any amount received or accrued, directly or indirectly, if the determination of such amount depends in whole or in part on the income or profits of any person. However, an amount received or accrued generally will not be excluded from the term interest solely by reason of being based on a fixed percentage or percentages of receipts or sales. Furthermore, to the extent that interest from a loan that is based on the residual cash proceeds from the sale of the property securing the loan constitutes a shared appreciation provision, income attributable to such participation feature will be treated as gain from the sale of the secured property.

In Revenue Procedure 2003-65, the IRS established a safe harbor under which interest from loans secured by a first priority security interest in ownership interests in a partnership or limited liability company owning real property will be treated as qualifying income for both the 75% and 95% gross income tests, provided several requirements are satisfied. Although the Revenue Procedure provides a safe harbor on which taxpayers may rely, it does not prescribe rules of substantive tax law. Moreover, although we anticipate that most or all of any mezzanine loans that we make or acquire will qualify for the safe harbor in Revenue Procedure 2003-65, it is possible that we may make or acquire some mezzanine loans that do not qualify for the safe harbor.

Prohibited Transactions. A REIT will incur a 100% tax on the net income derived from any sale or other disposition of property, other than foreclosure property, that the REIT holds primarily for sale to customers in the ordinary course of a trade or business. Whether a REIT holds an asset primarily for sale to customers in the ordinary course of a trade or business depends on the facts and circumstances in effect from time to time, including those related to a particular asset. We do not own assets that are held primarily for sale to customers. We will attempt to comply with the terms of safe-harbor provisions in the federal income tax laws prescribing when an asset sale will not be characterized as a prohibited transaction. We cannot provide assurance, however, that we can comply with such safe-harbor provisions or that we or our subsidiaries will avoid owning property that may be characterized as property held primarily for sale to customers in the ordinary course of a trade or business.

Foreclosure Property. We will be subject to tax at the maximum corporate rate on any income from foreclosure property, other than income that would be qualifying income for purposes of the 75% gross income test, less expenses directly connected with the production of such income. However, gross income from such foreclosure property will qualify for purposes of the 75% and 95% gross income tests. Foreclosure property is any real property, including interests in real property, and any personal property incident to such real property:

that is acquired by a REIT as the result of such REIT having bid on such property at foreclosure, or having otherwise reduced such property to ownership or possession by agreement or process of law, after there was a default or default was imminent on a lease of such property or on an indebtedness that such property secured;

for which the related loan or lease was acquired by the REIT at a time when the REIT had no intent to evict or foreclose or the REIT did not know or have reason to know that default would occur; and

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

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However, a REIT will not be considered to have foreclosed on a property where the REIT takes control of the property as a mortgagee-in-possession and cannot receive any profit or sustain any loss except as a creditor of the mortgagor. Property generally ceases to be foreclosure property with respect to a REIT at the end of the third taxable year following the taxable year in which the REIT acquired such property, or longer if an extension is granted by the Secretary of the Treasury. The foregoing grace period is terminated and foreclosure property ceases to be foreclosure property on the first day:

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

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

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

As a result of the rules with respect to foreclosure property, if a lessee defaults on its obligations under a percentage lease, we terminate the lessee s leasehold interest, and we are unable to find a replacement lessee for the property within 90 days of such foreclosure, gross income from operations conducted by us from such property could cease to qualify for the 75% and 95% gross income tests unless we are able to hire an independent contractor to manage and operate the property. In such event, we might be unable to satisfy the 75% and 95% gross income tests and, thus, might fail to qualify as a REIT.

Hedging Transactions. From time to time, we may enter into hedging transactions with respect to one or more of our assets or liabilities. Our hedging activities may include entering into interest rate swaps, caps, and floors, options to purchase such items, and futures and forward contracts. To the extent that we enter into hedging transactions on or before July 30, 2008, income arising from clearly identified hedging transactions that are entered into by the REIT in the normal course of business, either directly or through certain subsidiary entities, to manage the risk of interest rate movements, price changes, or currency fluctuations with respect to borrowings or obligations incurred or to be incurred by the REIT to acquire or carry real estate assets is excluded from the 95% gross income test, but not the 75% gross income test. Income from such transactions entered into after July 30, 2008 will not constitute gross income for purposes of the 95% and 75% gross income tests. Income from hedging transactions entered into after July 30, 2008 and made primarily to manage the risk of currency fluctuations with respect to any item of income or gain that would qualify under the 75% or 95% gross income tests (or any property which generates such income or gain) also will not constitute gross income for purposes of the 95% and 75% gross income tests. We must clearly identify any such hedges in our books and records. In general, for a hedging transaction to be clearly identified, (A) the transaction must be identified as a hedging transaction before the end of the day on which it is entered into, and (B) the items or risks being hedged must be identified substantially contemporaneously with the hedging transaction, meaning that the identification of the items or risks being hedged must generally occur within 35 days after the date the transaction is entered into. We intend to structure any hedging transactions in a manner that does not jeopardize our status as a REIT. The REIT income and asset rules may limit our ability to hedge loans or securities acquired as investments.

Failure to Satisfy Gross Income Tests. We intend to monitor our sources of income so as to ensure our compliance with the gross income tests. If we fail to satisfy one or both of the gross income tests for any taxable year, we nevertheless may qualify as a REIT for such year if we qualify for relief under certain provisions of the federal income tax laws. Those relief provisions generally will be available if:

- our failure to meet such tests is due to reasonable cause and not due to willful neglect; and

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following our identification of the failure to meet one or both gross income tests for a taxable year, a description of each item of our gross income included in the 75% or 95% gross income tests is set forth in a schedule for such taxable year filed as specified by Treasury regulations.

We cannot predict, however, whether in all circumstances we would qualify for the relief provisions. In addition, as discussed above in Taxation of Our Company, even if the relief provisions apply, we would incur a 100% tax on the gross income attributable to the greater of the amounts by which we fail the 75% and 95% gross income tests, multiplied by a fraction intended to reflect our profitability.

Asset Tests

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

First, at least 75% of the value of our total assets must consist of:

- cash or cash items, including certain receivables;
- U.S. government securities;
- interests in real property, including leaseholds and options to acquire real property and leaseholds;
- interests in mortgages on real property;
- stock in other REITs; and
- investments in stock or debt instruments during the one-year period following our receipt of new capital that we raise through equity offerings or offerings of debt with at least a five-year term.

Second, of our investments not included in the 75% asset class, the value of our interest in any one issuer s securities may not exceed 5% of the value of our total assets.

Third, of our investments not included in the 75% asset class, we may not own more than 10% of the voting power or value of any one issuer s outstanding securities.

Fourth, no more than 25% of the value of our total assets may consist of the securities of one or more TRSs. For taxable years beginning on or before July 30, 2008, not more than 20% of our total assets could be represented by the securities of TRSs.

For purposes of the second and third asset tests, the term securities does not include stock in another REIT, equity or debt securities of a qualified REIT subsidiary or TRS, or equity interests in a partnership.

For purposes of the 10% value test, the term securities does not include:

Straight debt securities, which is defined as a written unconditional promise to pay on demand or on a specified date a sum certain in money if (i) the debt is not convertible, directly or indirectly, into stock, and (ii) the interest rate and interest payment dates are not contingent on profits, the borrower s discretion, or similar factors. Straight debt securities do not include any securities issued by a partnership or a corporation in which we or any controlled TRS (i.e., a TRS in which we own directly or indirectly more than 50% of the voting power or value of the stock) hold non straight debt securities that have an aggregate value of more than 1% of the issuer s outstanding securities. However, straight debt securities include debt subject to the following contingencies:

a contingency relating to the time of payment of interest or principal, as long as either (i) there is no change to the effective yield of the debt obligation, other than a change to the annual yield that does not exceed the greater of 0.25% or 5% of the annual yield, or (ii) neither the aggregate issue price nor the aggregate face amount of the issuer s debt obligations held by us exceeds $1 million and no more than 12 months of unaccrued interest on the debt obligations can be required to be prepaid; and

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a contingency relating to the time or amount of payment upon a default or prepayment of a debt obligation, as long as the contingency is consistent with customary commercial practice.

Any loan to an individual or an estate.

Any section 467 rental agreement, other than an agreement with a related party tenant.

Any obligation to pay rents from real property.

Certain securities issued by governmental entities.

Any security issued by a REIT.

Any debt instrument of an entity treated as a partnership for federal income tax purposes to the extent of our interest as a partner in the partnership.

Any debt instrument of an entity treated as a partnership for federal income tax purposes not described in the preceding bullet points if at least 75% of the partnership s gross income, excluding income from prohibited transactions, is qualifying income for purposes of the 75% gross income test described above in Income Tests.

We will monitor the status of our assets for purposes of the various asset tests and will seek to manage our assets to comply at all times with such tests. There can be no assurances, however, that we will be successful in this effort. In this regard, to determine our compliance with these requirements, we will need to estimate the value of the real estate securing our mortgage loans at various times. In addition, we will have to value our investment in our other assets to ensure compliance with the asset tests. Although we will seek to be prudent in making these estimates, there can be no assurances that the IRS might not disagree with these determinations and assert that a different value is applicable, in which case we might not satisfy the 75% and the other asset tests and would fail to qualify as a REIT. If we fail to satisfy the asset tests at the end of a calendar quarter, we will not lose our REIT qualification if:

we satisfied the asset tests at the end of the preceding calendar quarter; and

the discrepancy between the value of our assets and the asset test requirements arose from changes in the market values of our assets and was not wholly or partly caused by the acquisition of one or more non qualifying assets.

If we did not satisfy the condition described in the second item, above, we still could avoid disqualification by eliminating any discrepancy within 30 days after the close of the calendar quarter in which it arose.

In the event that we violate the second or third asset tests described above at the end of any calendar quarter, we will not lose our REIT qualification if (i) the failure is de minimis (up to the lesser of 1% of our assets or $10 million) and (ii) we dispose of assets or otherwise comply with the asset tests within six months after the last day of the quarter in which we identified such failure. In the event of a more than de minimis failure of any of the asset tests, as long as the failure was due to reasonable cause and not to willful neglect, we will not lose our REIT qualification if we (i) dispose of assets or otherwise comply with the asset tests within six months after the last day of the quarter in which we identified such failure, (ii) file a schedule with the IRS describing the assets that caused such failure in accordance with regulations promulgated by the Secretary of Treasury and (iii) pay a tax equal to the greater of $50,000 or 35% of the net income from the nonqualifying assets during the period in which we failed to satisfy the asset tests.

Taxable REIT Subsidiaries

We may own stock of a TRS. A TRS is a fully taxable corporation for which a TRS election is properly made. A corporation of which a TRS directly or indirectly owns more than 35% of the voting power or value of the stock will automatically be treated as a TRS. Overall, no more than 25% of the value of our assets may consist of securities of one or more TRSs, and no more than 25% of the value of our assets may consist of the securities of TRSs and other assets that are not qualifying assets for purposes of the 75% asset test.

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The TRS rules limit the deductibility of interest paid or accrued by a TRS to us to assure that the TRS is subject to an appropriate level of corporate taxation. Further, the rules impose a 100% excise tax on transactions between a TRS and us or our tenants, if any, that are not conducted on an arm s-length basis.

We have formed and made a timely election with respect to one TRS presently owned. Additionally, we may form or acquire additional TRSs in the future.

Distribution Requirements

Each taxable year, in order to qualify as a REIT we must distribute dividends, other than capital gain dividends and deemed distributions of retained capital gain, to our shareholders in an aggregate amount at least equal to:

the sum of (1) 90% of our REIT taxable income, computed without regard to the dividends paid deduction and net capital gains, and (2) 90% of our after-tax net income, if any, from foreclosure property; minus

the sum of certain items of non-cash income and

any net operating loss or capital loss carryforward that we have available and elect to apply.

These distributions must be paid in the taxable year to which they relate or in the following taxable year if such distributions are declared in October, November or December of the taxable year, are payable to shareholders of record on a specified date in any such month and are actually paid before the end of January of the following year. Such distributions are treated as both paid by us and received by each shareholder on December 31 of the year in which they are declared. In addition, at our election, a distribution for a taxable year may be declared before we timely file our tax return for the year and be paid with or before the first regular dividend payment after such declaration, provided that such payment is made during the 12-month period following the close of such taxable year. These distributions are taxable to our shareholders in the year in which paid, even through the distributions relate to our prior taxable year for purposes of the 90% distribution requirement.

In order for distributions to be counted towards our distribution requirement and to give rise to a tax deduction by us, they must not be preferential dividends. A dividend is not a preferential dividend if it is pro rata among all outstanding shares of stock within a particular class and is in accordance with the preferences among different classes of stock as set forth in the organizational documents.

We will pay federal income tax at ordinary corporate tax rates on taxable income, including net capital gain, that we do not distribute to our shareholders. Furthermore, we must distribute during a calendar year, or by the end of January following such calendar year in the case of distributions with declaration and record dates falling in the last three months of the calendar year, at least the sum of:

85% of our REIT ordinary income for such year;

95% of our REIT capital gain income for such year; and

any undistributed taxable income from prior periods.

If we fail to distribute such amounts within the proscribed timeframe, then we will incur a 4% nondeductible excise tax on the excess of such required distribution over the amounts we actually distributed. We may elect to retain and pay income tax on the net long-term capital gain we receive in a taxable year. See Taxation of Taxable U.S. Holders of Stock. If we so elect, we will be treated as having distributed any such retained amount for purposes of the 4% excise tax described above. We intend to make timely distributions sufficient to satisfy the annual distribution requirements.

It is possible that, from time to time, we may experience timing differences between (1) the actual receipt of income and actual payment of deductible expenses, and (2) the inclusion of that income and deduction of such expenses in arriving at our REIT taxable income. In addition, we may not deduct recognized net capital losses from our REIT taxable income. As a result of the foregoing, we may have less cash than is necessary to distribute all of our taxable income and thereby avoid corporate income tax and the excise tax imposed on certain undistributed income. In such a situation, we may need to borrow funds or issue additional common or preferred shares.

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

Recordkeeping Requirements

To avoid a monetary penalty, we must request on an annual basis information from our shareholders designed to disclose the actual ownership of our outstanding shares of stock. We intend to comply with such requirements.

Failure to Qualify

If we fail to satisfy one or more requirements for REIT qualification, other than the gross income tests and the asset tests, we could avoid disqualification if our failure is due to reasonable cause and not to willful neglect and we pay a penalty of $50,000 for each such failure. In addition, there are relief provisions for a failure of the gross income tests and asset tests, as described in Income Tests and Asset Tests.

If we were to fail to qualify as a REIT in any taxable year, and no relief provision applied, we would be subject to federal income tax on our taxable income at regular corporate rates and any applicable alternative minimum tax. In calculating our taxable income in a year in which we failed to qualify as a REIT, we would not be able to deduct amounts paid out to shareholders. In fact, we would not be required to distribute any amounts to shareholders in such year. In such event, to the extent of our current and accumulated earnings and profits, all distributions to shareholders would be taxable as regular corporate dividends. The excess inclusion income rules (which are described under Taxable Mortgage Pools below) will not apply to the distributions we make. Subject to certain limitations of the federal income tax laws, corporate shareholders might be eligible for the dividends received deduction and individual and certain non corporate trust and estate shareholders may be eligible for the reduced U.S. federal income tax rate of 15% on such dividends. Unless we qualified for relief under specific statutory provisions, we also would be disqualified from taxation as a REIT for the four taxable years following the year during which we ceased to qualify as a REIT. We cannot predict whether in all circumstances we would qualify for such statutory relief.

Taxation of Tax-Exempt U.S. Entities

Tax-exempt U.S. entities, including qualified employee pension and profit sharing trusts and individual retirement accounts, generally are exempt from U.S. federal income taxation, thus typically dividends received by such entities are not subject to taxation when received. However, these entities or accounts are subject to taxation on any unrelated business taxable income generated. While many investments in real estate generate unrelated business taxable income, the IRS has issued a published ruling that dividend distributions from a REIT to an exempt employee pension trust do not constitute unrelated business taxable income, provided that the exempt employee pension trust does not otherwise use the shares of the REIT in an unrelated trade or business of the pension trust. Based on that ruling, amounts that we distribute to tax-exempt shareholders generally should not constitute unrelated business taxable income.

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However, if a tax-exempt shareholder were to finance its acquisition of our stock with debt, a portion of the income that it receives from us would constitute unrelated business taxable income pursuant to the debt-financed property rules. Furthermore, social clubs, voluntary employee benefit associations, supplemental unemployment benefit trusts, and qualified group legal services plans that are exempt from taxation under special provisions of the federal income tax laws are subject to different unrelated business taxable income rules, which generally will require them to characterize distributions that they receive from us as unrelated business taxable income. Finally, if we are a pension-held REIT, a qualified employee pension or profit sharing trust that owns more than 10% of our shares of stock is required to treat a percentage of the dividends that it receives from us as unrelated business taxable income. That percentage is equal to the gross income that we derive from an unrelated trade or business, if any, determined as if we were a pension trust, divided by our total gross income for the year in which we pay the dividends. That rule applies to a pension trust holding more than 10% of our shares of stock only if:

- the percentage of our dividends that the tax-exempt trust would be required to treat as unrelated business taxable income is at least 5%;
- we qualify as a REIT by reason of the modification of the rule requiring that no more than 50% of our stock be owned by five or fewer individuals that allows the beneficiaries of the pension trust to be treated as holding our stock in proportion to their actuarial interests in the pension trust (see Requirements for Qualification above); and
- either (1) one pension trust owns more than 25% of the value of our stock or (2) a group of pension trusts individually holding more than 10% of the value of our stock collectively owns more than 50% of the value of our stock.

The ownership and transfer restrictions in our charter reduce the risk that we may become a pension-held REIT.

A tax-exempt entity may also be required to treat any excess inclusion income as unrelated business taxable income as described in Taxable Mortgage Pools.

Taxation of U.S. Holders

The term U.S. holder means a holder of our securities that for U.S. federal income tax purposes is a U.S. person. A U.S. person means:

- a citizen or resident of the U.S.;
- a corporation (including an entity treated as a corporation for U.S. federal income tax purposes) created or organized in or under the laws of the U.S., any of its states, or the District of Columbia;
- an estate whose income is subject to U.S. federal income taxation regardless of its source; or
- any trust if (1) a U.S. court is able to exercise primary supervision over the administration of such trust and one or more U.S. persons have the authority to control all substantial decisions of the trust or (2) it has a valid election in place to be treated as a U.S. person.

If a partnership, entity or arrangement treated as a partnership for U.S. federal income tax purposes holds our securities, the U.S. federal income tax treatment of a partner in the partnership will generally depend on the status of the partner and the activities of the partnership. If you are a partner in a partnership holding our securities, you should consult your tax advisor regarding the consequences of the purchase, ownership and disposition of our securities by the partnership. The following section addresses the treatment of a U.S. holder that holds our stock; the treatment of a U.S. holder that holds our debt securities is discussed below under Holders of Debt Securities.

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Taxation of Taxable U.S. Holders of Stock

As long as we qualify as a REIT, (1) a taxable U.S. holder of our stock must report as ordinary income, distributions or retained long-term capital gain that are made out of our current or accumulated earnings and profits and that we do not designate as capital gain dividends, and (2) a corporate U.S. holder of our stock will not qualify for the dividends received deduction generally available to corporations. In addition, dividends paid to a U.S. holder generally will not qualify for the 15% tax rate (through 2012) for qualified dividend income. Qualified dividend income generally includes dividends from most U.S. corporations but does not generally include REIT dividends. As a result, our ordinary REIT dividends generally will continue to be taxed at the higher tax rate applicable to ordinary income. However, the 15% tax rate for qualified dividend income will apply to our ordinary REIT dividends, if any, that are (1) attributable to dividends received by us from non-REIT corporations, such as our TRSs, and (2) attributable to income upon which we have paid corporate income tax (e.g., to the extent that we distribute less than 100% of our taxable income). In general, to qualify for the reduced tax rate on qualified dividend income, a shareholder must hold our stock for more than 60 days during the 121-day period beginning on the date that is 60 days before the date on which our stock becomes ex-dividend.

A U.S. holder generally will report distributions that we designate as capital gain dividends as long-term capital gain without regard to the period for which the U.S. holder has held our stock. A corporate U.S. holder, however, may be required to treat up to 20% of certain capital gain dividends as ordinary income.

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

To the extent that we make a distribution in excess of our current and accumulated earnings and profits, such distribution will not be taxable to a U.S. holder to the extent that it does not exceed the adjusted tax basis of the U.S. holder s stock. Instead, such distribution will reduce the adjusted tax basis of such stock. To the extent that we make a distribution in excess of both our current and accumulated earnings and profits and the U.S. holder s adjusted tax basis in its stock, such shareholder will recognize long-term capital gain, or short-term capital gain if the stock has been held for one year or less, assuming the stock is a capital asset in the hands of the U.S. holder. The IRS has ruled that if total distributions for two or more classes of stock are in excess of current and accumulated earnings and profits, dividends must be treated as having been distributed to those shareholders having a priority under the corporate charter before any distribution to shareholders with lesser priority. If we declare a dividend in October, November, or December of any year that is payable to a U.S. holder of record on a specified date in any such month, such dividend shall be treated as both paid by us and received by the U.S. holder on December 31 of such year, provided that we actually pay the dividend during January of the following calendar year.

Shareholders may not include in their individual income tax returns any of our net operating losses or capital losses. Instead, we would carry over such losses for potential offset against our future income generally. Taxable distributions from us and gain from the disposition of our stock will not be treated as passive activity income, and, therefore, shareholders generally will not be able to apply any passive activity losses, such as losses from certain types of limited partnerships in which the shareholder is a limited partner, against such income. In addition, taxable distributions from us and gain from the disposition of the stock generally will be treated as investment income for purposes of the investment interest limitations.

We will notify shareholders after the close of our taxable year as to the portions of the distributions attributable to that year that constitute ordinary income, return of capital, and capital gain.

Taxation of U.S. Holders on the Disposition of Stock. In general, a U.S. holder who is not a dealer in securities must treat any gain or loss realized upon a taxable disposition of our stock as long-term capital gain or loss if the U.S. holder has held the stock for more than one year and otherwise as short-term capital gain or loss. However, a U.S. holder must treat any loss upon a sale or exchange of stock held by such shareholder for six months or less as a long-term capital loss to the extent of any actual or deemed distributions from us that such U.S. holder previously has characterized as long-term capital gain. All or a portion of any loss that a U.S. holder realizes upon a taxable disposition of the stock may be disallowed if the U.S. holder purchases the same type of stock within 30 days before or after the disposition.

Capital Gains and Losses. A taxpayer generally must hold a capital asset for more than one year for gain or loss derived from its sale or exchange to be treated as long-term capital gain or loss. The maximum tax rate on long-term capital gain applicable to non-corporate taxpayers is 15% (20% for taxable years after 2012) for sales and exchanges of assets held for more than one year (for ordinary income, the highest marginal individual income tax rate is 35% (39.6% for taxable years after 2012)). The maximum tax rate on long-term capital gain from the sale or exchange of section 1250 property, or depreciable real property, is 25% to the extent that such gain would have been treated as ordinary income if the property were section 1245 property. With respect to distributions that we designate as capital gain dividends and any retained capital gain that we are deemed to distribute, we generally may designate whether such a distribution is taxable to our non-corporate shareholders at a 15% or 25% rate. Thus, the tax rate differential between capital gain and ordinary income for non-corporate taxpayers may be significant. In addition, the characterization of income as capital gain or ordinary income may affect the deductibility of capital losses. A non-corporate taxpayer may deduct capital losses not offset by capital gains against its ordinary income only up to a maximum annual amount of $3,000. A non-corporate taxpayer may carry forward unused capital losses indefinitely. A corporate taxpayer must pay tax on its net capital gain at ordinary corporate rates. A corporate taxpayer may deduct capital losses only to the extent of capital gains, with unused losses being carried back three years and forward five years.

Information Reporting Requirements and Backup Withholding. We will report to our shareholders and to the IRS the amount of distributions we pay during each calendar year and the amount of tax we withhold, if any. Under the backup withholding rules, a shareholder may be subject to backup withholding at the rate of 28% (31% for taxable years after 2012) with respect to distributions unless such holder:

- is a corporation or comes within certain other exempt categories and, when required, demonstrates this fact; or
- provides a taxpayer identification number, certifies as to no loss of exemption from backup withholding, and otherwise complies with the applicable requirements of the backup withholding rules.

A shareholder who does not provide us with its correct taxpayer identification number also may be subject to penalties imposed by the IRS. Any amount paid as backup withholding will be creditable against the shareholder s income tax liability. In addition, any shareholders who fail to certify their non-foreign status to us may be subject to withholding on a portion of capital gain distributions. See Taxation of Non-U.S. Holders.

Taxation of Non-U.S. Holders

The rules governing U.S. federal income taxation of nonresident alien individuals, foreign corporations, foreign partnerships, and other holders of our securities that are not U.S. persons (collectively, non-U.S. holders) are complex. This section is only a summary of such rules as they apply to non-U.S. holders of our stock; a summary of such rules as they apply to non-U.S. holders of our debt securities is discussed below under Holders of Debt Securities. We urge non-U.S. holders to consult their own tax advisors to determine the impact of U.S. federal, state, and local income tax laws on ownership of our stock, including any reporting requirements.

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A non-U.S. holder that receives a distribution that is not attributable to gain from our sale or exchange of U.S. real property interests, as defined below, and that we do not designate as a capital gain dividend will recognize ordinary income to the extent that we pay such distribution out of our current or accumulated earnings and profits. A withholding tax equal to 30% of the gross amount of the distribution ordinarily will apply to such distribution unless an applicable tax treaty reduces or eliminates the tax. Under some treaties, however, lower rates generally applicable to dividends do not apply to dividends from REITs. In general, non-U.S. holders are not considered to be engaged in a U.S. trade or business solely as a result of their ownership of our stock. However, if a distribution is treated as effectively connected with the non-U.S. holder s conduct of a U.S. trade or business, the non-U.S. holder generally will be subject to federal income tax on the distribution at graduated rates, in the same manner as U.S. holders are taxed with respect to such distributions. A non-U.S. holder that is a corporation also may be subject to the 30% branch profits tax with respect to the distribution. Generally, a non-U.S. holder will be subject to U.S. income tax withholding at the rate of 30% on the gross amount of any such distribution paid to a non-U.S. holder unless either:

- a lower treaty rate applies and the non-U.S. holder files an IRS Form W-8BEN evidencing eligibility for that reduced rate with the payor; or

- the non-U.S. holder files an IRS Form W-8ECI with the payor claiming that the distribution is effectively connected income.

Generally, a non-U.S. holder will not incur tax on a distribution in excess of our current and accumulated earnings and profits if the excess portion of such distribution does not exceed the adjusted basis of its stock. Instead, the excess portion of such distribution will reduce the adjusted basis of such stock. A non-U.S. holder will be subject to tax on a distribution that exceeds both our current and accumulated earnings and profits and the adjusted basis of its stock, if the non-U.S. holder otherwise would be subject to tax on gain from the sale or disposition of its stock, as described below. Because we generally cannot determine at the time we make a distribution whether or not the distribution will exceed our current and accumulated earnings and profits, the entire amount of any distribution will be subject to withholding as a taxable dividend. However, a non-U.S. holder may obtain a full or partial refund, as appropriate, of amounts that are withheld if we later determine that a distribution in fact exceeded our current and accumulated earnings and profits.

Unless we are a domestically-controlled REIT, as defined below, withholding at a rate of 10% is required on any distribution that exceeds our current and accumulated earnings and profits. Consequently, although withholding at a rate of 30% on the entire amount of any distribution is generally required, withholding at a rate of 10% may be required on any portion of a distribution not subject to withholding at a rate of 30%.

For any year in which we qualify as a REIT, a non-U.S. holder may incur tax on distributions that are attributable to gain from any sale or exchange of United States real property interests under special provisions of the U.S. federal income tax laws referred to as FIRPTA. The term United States real property interests includes certain interests in real property and stock in corporations at least 50% of whose assets consists of interests in real property. Under those rules, a non-U.S. holder is taxed on distributions attributable to gain from sales of United States real property interests as if such gain were effectively connected with a U.S. business of the non-U.S. holder. A non-U.S. holder thus would be taxed on such a distribution at the normal capital gains rates applicable to U.S. holders, subject to applicable alternative minimum tax and a special alternative minimum tax in the case of a nonresident alien individual. A non-U.S. corporate holder not entitled to treaty relief or exemption also may be subject to the 30% branch profits tax on such a distribution. Except as described below with respect to regularly traded stock, withholding is required at a rate of 35% of any distribution that we could designate as a capital gain dividend. A non-U.S. holder may receive a credit against its tax liability for the amount we withhold. Any distribution with respect to any class of stock which is regularly traded on an established securities market located in the U.S., such as our stock, shall not be treated as gain recognized from the sale or exchange of a United States real property interest if the non-U.S. holder did not own more than 5% of such class of stock at any time during the taxable year within which the distribution is received. The distribution will be treated as an ordinary dividend to the non-U.S. holder and taxed as an ordinary dividend that is not a

capital gain. A non-U.S. holder is not required to file a U.S. federal income tax return by reason of receiving such a distribution, and the branch profits tax no longer applies to such a distribution. However, the distribution will be subject to U.S. federal income tax withholding as an ordinary dividend as described above.

Under the Tax Increase Prevention and Reconciliation Act of 2005 (TIPRA), any distribution that is made by a REIT that would otherwise be subject to FIRPTA because the distribution is attributable to the disposition of a United States real property interest to retain its character as FIRPTA income when distributed to any regulated investment company or other REIT, and to be treated as if it were from the disposition of a United States real property interest by that regulated investment company or other REIT. A wash sale rule is also included in TIPRA for transactions involving certain dispositions of REIT stock to avoid FIRPTA tax on dispositions of United States real property interests.

A non-U.S. holder generally will not incur tax under FIRPTA with respect to gain realized upon a disposition of our stock as long as we are a domestically-controlled REIT. A domestically controlled REIT is a REIT in which, at all times during a specified testing period, less than 50% in value of its shares are held directly or indirectly by non U.S. holders. We cannot assure you that that test will be met. However, a non-U.S. holder that owned, actually or constructively, 5% or less of our stock at all times during a specified testing period will not incur tax under FIRPTA with respect to any such gain if the stock is regularly traded on an established securities market. To the extent that our stock is regularly traded on an established securities market, a non-U.S. holder will not incur tax under FIRPTA unless it owns more than 5% of our stock. If the gain on the sale of the stock were taxed under FIRPTA, a non-U.S. holder would be taxed in the same manner as U.S. holders with respect to such gain, subject to applicable alternative minimum tax and a special alternative minimum tax in the case of nonresident alien individuals. Furthermore, a non-U.S. holder generally will incur tax on gain not subject to FIRPTA if (1) the gain is effectively connected with the non-U.S. holder s U.S. trade or business, in which case the non-U.S. holder will be subject to the same treatment as U.S. holders with respect to such gain, or (2) the non-U.S. holder is a nonresident alien individual who was present in the U.S. for 183 days or more during the taxable year and has a tax home in the U.S., in which case the non-U.S. holder will incur a 30% tax on his capital gains.

Taxable Mortgage Pools

A taxable mortgage pool is any entity (or in certain cases, a portion of an entity) other than a REMIC that has the following characteristics:

- Substantially all (generally, more than 80%) of the assets of such entity consist of debt obligations and more than 50% of such debt obligations are real estate mortgages;
- Such entity issues two or more classes of debt obligations having different maturities; and
- The timing and amount of payments or projected payments on the debt obligations issued by the entity are determined in large part by the timing and amount of payments the entity receives on the debt obligations it holds as assets.

If a REIT is a taxable mortgage pool, or if a REIT owns a qualified REIT subsidiary that is a taxable mortgage pool, then a portion of the REIT s income will be treated as excess inclusion income and a portion of the dividends the REIT pays to its shareholders will be considered to be excess inclusion income. You cannot offset excess inclusion income with net operating losses or otherwise allowable deductions. Moreover, if you are a tax-exempt shareholder, such as a domestic pension fund, you must treat excess inclusion income as unrelated business taxable income. If you are not a U.S. holder, your dividend distributions may be subject to withholding tax, without regard to any exemption or reduction in rate that might otherwise apply, with respect to your share of excess inclusion income. The manner in which excess inclusion income would be allocated among shares of different classes of our stock or how such income is to be reported to shareholders is not clear under current law.

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Several of our investments are contained in securitization trusts which are considered taxable mortgage pools. To the extent that these taxable mortgage pools have excess inclusion income, we will report these amounts annually.

Federal Income Tax Consequences of our Status as a REIT Recent Developments

The Health Care and Education Reconciliation Act of 2010. On March 30, 2010, the Health Care and Education Reconciliation Act of 2010 was signed into law (the Health Care Act). The Health Care Act will require certain individuals, estates and trusts to pay a 3.8% Medicare surtax on net investment income, which includes, among other things, dividends on and proceeds from the sale of securities like our common stock, subject to certain exceptions. This surtax applies to net investment income earned in taxable years beginning after December 31, 2012. Prospective shareholders are advised to consult their tax advisors regarding this legislation and the potential implications of this legislation on their particular circumstances.

The Hiring Incentives to Restore Employment Act. On March 18, 2010, the Hiring Incentives to Restore Employment Act (the Hire Act) was signed into law. The Hire Act imposes withholding taxes on certain types of payments made to foreign financial institutions (as specifically defined in the Hire Act) and certain other non-U.S. entities (including financial intermediaries) after December 31, 2012. The Hire Act imposes a 30% withholding tax on withholdable payments to a foreign financial institution or to a foreign non-financial entity, unless (i) the foreign financial institution undertakes certain diligence and reporting obligations or (ii) the foreign non-financial entity either certifies it does not have any substantial U.S. owners or furnishes identifying information regarding each substantial U.S. owner. For these purposes, a withholdable payment includes any U.S. source payments of interest (including original issue discount), dividends, rents, compensation and other fixed or determinable annual or periodical gains, profits and income. If the payee is a foreign financial institution, it must enter into an agreement with the U.S. Treasury requiring, among other things, that it undertake to identify accounts held by certain U.S. persons or U.S.-owned foreign entities, annually report certain information about such accounts, and withhold 30% on payments to account holders whose actions prevent it from complying with these reporting and other requirements. Prospective shareholders are advised to consult their tax advisors regarding this legislation and the potential implications of this legislation on their particular circumstances.

Revenue Procedure 2010-12. The IRS has recently issued Revenue Procedure 2010-12. Under this Revenue Procedure, a stock dividend paid by a REIT that is declared on or before December 31, 2012 with respect to a taxable year ending on or before December 31, 2011 may be treated as a taxable dividend if each shareholder has an option to elect to receive his or her dividend in cash, even if the aggregate cash amount paid to all shareholders is limited, as long as the cash portion represents at least 10% of the total dividend payment to be made to all shareholders and certain other requirements are satisfied. Accordingly, if we pay a stock dividend with a cash election feature in accordance with this Revenue Procedure, your tax liability with respect to such dividend may be significantly greater than the amount of cash you receive.

State and Local Taxes

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

Legislative or Other Actions Affecting REITs

The rules dealing with U.S. federal income taxation are constantly under review by persons involved in the legislative process and by the IRS and the U.S. Treasury Department. No assurance can be given as to whether, when, or in what form, U.S. federal income tax laws applicable to us and our shareholders may be enacted, possibly with retroactive effect. Changes to the U.S. federal income tax laws and interpretations of U.S. federal income tax laws could adversely affect an investment in our shares of common stock.

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PLAN OF DISTRIBUTION

We may sell our securities domestically or abroad, through underwriters, dealers or agents, or directly, or through any combination of those methods. The applicable prospectus supplement will describe the terms of the offering that it applies to, including the names of any underwriters, dealers or agents, the purchase price for our securities, and the proceeds we expect to receive. It will also include any delayed delivery arrangements, any underwriting discounts and other items constituting underwriters compensation, the initial public offering price, any discounts or concessions allowed or re-allowed or paid to dealers, and a list of any securities exchanges on which the securities offered may be listed.

If we use underwriters in any sale, our securities will be purchased by the underwriters or dealers for their own account and may be resold from time to time in one or more transactions, including negotiated transactions, at a fixed public offering price or at varying prices determined at the time of sale. Our securities may be offered to the public either through underwriting syndicates represented by one or more managing underwriters or directly by one or more firms acting as underwriters. The underwriters with respect to a particular underwritten offering will be named in the applicable prospectus supplement relating to that offering. If an underwriting syndicate is used, the managing underwriter or underwriters will be disclosed on the cover of the applicable prospectus supplement. Generally, the obligations of the underwriters or agents to purchase the securities that we offer will be subject to conditions precedent, and the underwriters will have to purchase all of the offered securities if any are purchased. The initial public offering price and any discounts or concessions allowed or re-allowed or paid to dealers may be changed from time to time. In no event will the maximum commission or discount to be received by any Financial Industry Regulatory Authority member or independent broker-dealer exceed 8% for the sale of the securities registered hereunder.

If we use dealers to sell our securities, we will sell our securities to the dealers as principals. The dealers may then resell our securities to the public at varying prices that they determine at the time of resale. We will disclose the names of the dealers and the terms of the transaction in the applicable prospectus supplement.

We may sell the securities through agents that we designate from time to time at fixed prices that may be changed, or at varying prices determined at the time of sale. We will name any agent involved in the offer or sale of our securities and specify any commissions that we will pay them. Unless otherwise specified in the applicable prospectus supplement, any agent will be acting on a best efforts basis for the period of its appointment.

Underwriters or agents may be paid by us or by purchasers of our securities for whom they act as agents in the form of discounts, concessions or commissions. Underwriters, agents and dealers participating in the distribution of our securities may all be deemed to be underwriters, and any discounts or commissions that they receive, as well as profit they receive on the resale of our securities, may be deemed to be underwriting discounts or commissions under the Securities Act.

A prospectus supplement may indicate that we will authorize agents, underwriters or dealers to solicit from specified types of institutions offers to purchase our securities at the public offering price set forth in the prospectus supplement pursuant to delayed delivery contracts permitting payment and delivery on a specified future date. The prospectus supplement will describe conditions of any delayed delivery contracts, as well as the commission we will pay for solicitation of these contracts.

Some or all of the securities that we offer though this prospectus may be new issues of securities with no established trading market. Any underwriters to whom we sell our securities for public offering and sale may make a market in those securities, but they will not be obligated to and they may discontinue any market making at any time without notice. Accordingly, we cannot assure you of the liquidity of, or continued trading markets for, any securities that we offer.

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In order to facilitate the offering of our securities, any underwriters or agents involved in the offering may engage in transactions that stabilize, maintain or otherwise affect the price of our securities, or other securities that affect payments on our securities. Specifically, the underwriters or agents may overallot in connection with the offering, creating a short position for their own account. In addition, to cover overallotments or to stabilize the price of our securities, or other securities that affect payments on our securities, the underwriters or agents may bid for and purchase the securities in the open market. In any offering of our securities through a syndicate of underwriters, the underwriting syndicate may reclaim selling concessions allowed to an underwriter or dealer for distributing our securities if the syndicate repurchases previously distributed securities in transactions to cover syndicate short positions, in stabilizing transactions or otherwise. Any of these activities may stabilize or maintain the market price of our securities above independent market levels. The underwriters or agents are not required to engage in these activities, and may end any of these activities at any time.

Agents, dealers and underwriters may be entitled to be indemnified by us against specified civil liabilities, including liabilities under the Securities Act, or to contribution with respect to payments that they may be required to make.

Any underwriters, dealers or agents that we use, as well as their affiliates, may engage in transactions with us or perform services for us in the ordinary course of business.

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EXPERTS

The consolidated financial statements as of December 31, 2010 and 2009 and for each of the three years in the period ended December 31, 2010 and management s assessment of the effectiveness of internal control over financial reporting as of December 31, 2010 incorporated by reference in this prospectus have been so incorporated in reliance on the reports of BDO USA, LLP, an independent registered public accounting firm, incorporated herein by reference, given on the authority of said firm as experts in accounting and auditing.

LEGAL MATTERS

The validity of the securities offered hereby and certain U.S. federal income tax matters are being passed upon for us by Troutman Sanders LLP, Richmond, Virginia.

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