

ENTERTAINMENT PROPERTIES TRUST

Form 424B5

December 18, 2006

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The information in this preliminary prospectus supplement and accompanying prospectus is not complete and may be changed. This preliminary prospectus supplement and the accompanying prospectus are not an offer to sell these securities and are not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.

This filing is made pursuant to Rule 424(b)(5) of the Securities Act of 1933 with respect to Registration Statement No. 333-113626

**Subject to completion, dated December 18, 2006**

**Preliminary Prospectus Supplement  
(To prospectus dated March 26, 2004)**

**5,000,000 Shares**

## **Entertainment Properties Trust**

**% Series C Cumulative Convertible Preferred Shares**

**Liquidation Preference \$25.00 per Share**

We are offering 5,000,000 shares of our % Series C Cumulative Convertible Preferred Shares of beneficial interest, par value \$0.01 per share, or the Series C Preferred Shares, in this offering. We will pay cumulative distributions on the Series C Preferred Shares from and including the date of original issuance in the amount of \$ per share each year, which is equivalent to % of the \$25.00 liquidation preference per share. Distributions on the Series C Preferred Shares will be payable quarterly in arrears, beginning on January 15, 2007. Our only other preferred shares outstanding as of the date of this prospectus supplement are 2,300,000 shares of our 9.50% Series A cumulative redeemable preferred shares with a liquidation preference of \$25.00 per share and 3,200,000 shares of our 7.75% Series B cumulative redeemable preferred shares with a liquidation preference of \$25.00 per share. The Series C Preferred Shares will rank on a parity with the Series A and Series B cumulative redeemable preferred shares.

You may convert the Series C Preferred Shares into our common shares subject to certain conditions. The conversion rate will initially be common shares per \$25.00 liquidation preference, which is equivalent to an initial conversion price of \$ per common share. The conversion rate will be subject to adjustment upon the occurrence of specified events. On or after January 15, 2012, we may, at our option, convert some or all of the Series C Preferred Shares into common shares in certain circumstances based on the market price of our common shares. Upon any conversion of Series C Preferred Shares, we will have the option to deliver either (1) a number of common shares based upon the applicable conversion rate, or (2) an amount of cash and common shares, as described in this prospectus supplement.

If you elect to convert your Series C Preferred Shares in connection with a fundamental change that occurs on or prior to January 15, 2017, we will increase the conversion rate for the Series C Preferred Shares surrendered for conversion to the extent disclosed in this prospectus supplement. In addition, upon a fundamental change, when the actual applicable price of our common shares is less than \$ per share, you may require us to convert some or all of your Series C Preferred Shares at a conversion rate equal to the liquidation preference of the Series C Preferred Shares being converted plus accrued and unpaid distributions divided by 98% of the market price of our common shares. We will have the right to repurchase for cash some or all of the Series C Preferred Shares that would otherwise be required to be converted.

We have filed an application to list the Series C Preferred Shares on the New York Stock Exchange, or NYSE, under the symbol EPR PrC. If the application is approved, trading of the Series C Preferred Shares on the NYSE is expected to begin within 30 days after the date of initial delivery of the Series C Preferred Shares. Our common shares are listed on the NYSE under the symbol EPR. The last reported sale price of our common shares on December 15, 2006 was \$62.31 per share.

**Investing in our Series C Preferred Shares and common shares involves risks. Before buying any Series C Preferred Shares you should carefully read this entire prospectus supplement and the accompanying prospectus and the documents incorporated by reference herein, including the section of this prospectus supplement entitled Risk Factors beginning on page S-9 and the Risk Factors section of**

our Annual Report on Form 10-K for the year ended December 31, 2005.

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

	<u>Per Share</u>	<u>Total</u>
Public offering price(1)	\$	\$
Underwriting discount	\$	\$
Proceeds, before expenses, to us	\$	\$

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

The underwriters are severally underwriting the shares being offered. The underwriters have an option to purchase up to an additional 750,000 Series C Preferred Shares from us to cover over-allotments, if any.

The Series C Preferred Shares are subject to certain restrictions on ownership and transfer designed to preserve our qualification as a real estate investment trust for federal income tax purposes. See Description of Series C Preferred Shares Restrictions on Ownership and Transfer on page S-35 of this prospectus supplement for more information about these restrictions.

The underwriters expect that the Series C Preferred Shares will be ready for delivery in book-entry form through the facilities of The Depository Trust Company on or about December , 2006.

*Sole Book-Running Manager*

## **Bear, Stearns & Co. Inc.**

*Joint Lead Manager*

## **RBC Capital Markets**

The date of this prospectus supplement is , 2006

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

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**ABOUT THIS PROSPECTUS SUPPLEMENT**

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

References to we, us, our, EPR or the Company refer to Entertainment Properties Trust. The term you refers to a prospective investor.

**INCORPORATION OF CERTAIN INFORMATION BY REFERENCE**

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

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

1. Our annual report on Form 10-K for the year ended December 31, 2005 filed on February 28, 2006.
2. Our quarterly report on Form 10-Q for the quarter ended March 31, 2006 filed on May 2, 2006; our quarterly report on Form 10-Q for the quarter ended June 30, 2006 filed on August 3, 2006; and our quarterly report on Form 10-Q for the quarter ended September 30, 2006 filed on November 3, 2006.
3. Our current report on Form 8-K filed on February 1, 2006; our current report on Form 8-K filed on February 3, 2006; our current report on Form 8-K/A filed on March 15, 2006; and our current report on Form 8-K filed on June 6, 2006.
4. The description of our Series B Preferred Shares included in our registration statement on Form 8-A filed on January 12, 2005.
5. The description of our Series A Preferred Shares included in our registration statement on Form 8-A filed on May 24, 2002.
6. The description of our common shares included in our registration statement on Form 8-A filed on November 4, 1997.

In addition, all documents filed by us under Section 13(a), 13(c), 14 or 15(d) of the Exchange Act (excluding any information furnished pursuant to Item 2.02 or Item 7.01 in any current report on Form 8-K) after the date of this prospectus supplement and prior to the termination of the offering of the securities covered by this prospectus supplement, are incorporated by reference herein.

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

**Investor Relations Department**

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

## Edgar Filing: ENTERTAINMENT PROPERTIES TRUST - Form 424B5

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

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As you read these documents, you may find some differences in information from one document to another. If you find differences between the documents and this prospectus supplement or the accompanying prospectus, you should rely on the statements made in the most recent document.

**CAUTIONARY STATEMENT CONCERNING FORWARD-LOOKING STATEMENTS**

With the exception of historical information, this prospectus supplement and the accompanying prospectus and our reports filed under the Exchange Act and incorporated by reference in this prospectus supplement and the accompanying prospectus contain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended, such as those pertaining to our acquisition of properties, our capital resources and our results of operations. Forward-looking statements involve numerous risks and uncertainties and you should not rely on them as predictions of actual events. There is no assurance the events or circumstances reflected in the forward-looking statements will occur. You can identify forward-looking statements by use of words such as will be, intend, continue, believe, may, expect, hope, anticipate, goal, forecast, or other comparable terms, or by discussing plans or intentions. Forward-looking statements are necessarily dependent on assumptions, data or methods that may be incorrect or imprecise. Factors that could materially and adversely affect us include, but are not limited to the factors listed below:

The performance of lease terms by tenants;

Risk of our tenants filing for bankruptcy;

The concentration of leases with our single largest tenant;

Our continued qualification as a REIT;

Risks relating to real estate ownership and development;

Risks associated with use of leverage to acquire properties;

Risk of potential uninsured losses;

Risks involved in joint ventures;

Risks in leasing multi-tenant properties;

Risks of environmental liability;

Our ability to pay distributions to our shareholders;

Risks associated with changes in the Canadian exchange rate; and

Certain limits on change in control imposed under law and by our charter and bylaws.

You should consider the risks described in Risk Factors on page S-9 of this prospectus supplement and on page 4 of our annual report on Form 10-K for the year ended December 31, 2005 filed on February 28, 2006 incorporated by reference herein in evaluating any forward-looking statements included or incorporated by reference in this prospectus supplement and the accompanying prospectus.

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



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**PROSPECTUS SUPPLEMENT  
SUMMARY**

*This summary may not contain all of the information that is important to you. Before making a decision to purchase shares, you should carefully read this entire prospectus supplement and the accompanying prospectus, especially the Risk Factors section on page S-9 of this prospectus supplement and on page 4 of our annual report on Form 10-K for the year ended December 31, 2005 filed on February 28, 2006 and incorporated by reference herein, as well as the other documents incorporated by reference in this prospectus supplement and in the accompanying prospectus. Unless otherwise indicated, financial information included in this prospectus supplement is presented on a historical basis.*

**About EPR**

EPR is a self-administered real estate investment trust, or REIT. Our real estate portfolio is comprised of over \$1.5 billion in assets (before accumulated depreciation) and consists of:

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

six theatre properties under development located in four states

seven entertainment retail centers (including one joint venture property) located in Westminster, Colorado, New Rochelle, New York, Burbank, California and Ontario, Canada

other specialty properties

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

We have also provided a secured mortgage construction loan with a carrying value of approximately US \$60.4 million as of December 15, 2006 (including accrued interest) for construction of an urban entertainment district being developed in downtown Toronto, Ontario. The loan is payable to us in Canadian dollars. In addition, we have provided mortgage financing with a carrying value of \$8.0 million as of December 15, 2006 (including accrued interest) for the Crotched Mountain Ski Resort located in Bennington, New Hampshire.

Our theatre properties are leased to prominent theatre operators, including American Multi-Cinema, Inc. (referred to in this prospectus as AMC), Muvico Entertainment LLC, Regal Cinemas, Consolidated Theatres, Loews Cineplex Entertainment (now part of AMC), Rave Motion Pictures, AmStar Cinemas LLC, Wallace Theatres, Southern Theatres, Cobb Theatres and Kerasotes Showplace Theatres.

As of December 15, 2006, approximately 55% of our megaplex theatre properties were leased to AMC as a result of a series of sale-leaseback transactions relating to a number of AMC megaplex theatres, and approximately 55% of our total annual lease revenues were derived from rental payments by AMC under these leases.

Approximately 21% of our total annual revenue is derived from our four entertainment retail centers in Ontario, Canada and a mortgage note receivable secured by an additional property under development in Ontario, Canada. The Canadian entertainment retail centers represent approximately 13% of the net book value of our rental properties at December 15, 2006, and combined with the carrying value of our mortgage note receivable, represent approximately 15% of our total assets at December 15, 2006.

Beginning with our taxable year ended December 31, 1997, we have elected to be treated as a REIT for U.S. federal income tax purposes. In order to maintain our status as a REIT, we must comply with a number of requirements under federal income tax law that are discussed in Additional Federal Income Tax Considerations on page S-38 of this prospectus supplement and U.S. Federal Income Tax Consequences on page 18 of the accompanying prospectus.

We lease our single-tenant properties to tenants on a long-term triple-net basis that requires the tenant to assume the primary risks involved in operating the property and to pay substantially all expenses associated with

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the operation and maintenance of the property. We also own multi-tenant properties which are managed for us by third-party management companies.

EPR was formed on August 22, 1997 as a Maryland real estate investment trust. We completed an initial public offering of our common shares on November 18, 1997. Our executive offices are located at 30 W. Pershing Road, Suite 201, Kansas City, Missouri 64108. Our telephone number is (816) 472-1700.

## **Recent Developments**

### ***Increase in authorized preferred shares***

We intend to file an amendment to our Amended and Restated Declaration of Trust, which is also referred to as our Declaration of Trust, increasing the authorized number of preferred shares of beneficial interest, par value \$0.01 per share, from 10 million shares to 15 million shares. We currently have 2,300,000 Series A preferred shares outstanding and 3,200,000 Series B preferred shares outstanding.

### ***KeyBank unsecured revolving line of credit***

On January 31, 2006, we amended and restated our \$150 million secured revolving credit facility, increasing the size of the facility to \$200 million and converting it to an unsecured facility. On June 6, 2006, we increased the size of the facility to \$235 million with no other material modifications to the terms and conditions. KeyBank National Association serves as Agent for the lenders under this credit facility (referred to in this prospectus as the KeyBank unsecured revolving credit facility ). The KeyBank unsecured revolving credit facility bears interest at a floating rate and is used for general corporate purposes and to finance the acquisition and development of properties. Bear Stearns Corporate Lending Inc., an affiliate of one of the underwriters, Bear, Stearns & Co. Inc., and Royal Bank of Canada, an affiliate of one of the underwriters, RBC Capital Markets, are lenders under this credit facility.

### ***Sale of common shares***

In February 2006, we completed a public offering of 1,150,000 common shares for net proceeds, after expenses, of approximately \$46.2 million. We used the net proceeds to reduce indebtedness under our KeyBank unsecured revolving credit facility. RBC Capital Markets, one of the underwriters in this offering, was the underwriter in our February 2006 offering.

### ***Recent real estate acquisitions and mortgage financing***

Since January 1, 2006, we have acquired approximately \$102.9 million in real estate assets (including approximately \$11.5 million in land under development being leased by the tenants), provided additional mortgage construction financing of approximately \$7.7 million, and provided a secured mortgage loan of \$8.0 million increasing our real estate and mortgage note asset base by approximately 8.8%.

Since September 30, 2006, we have completed development of a megaplex theatre property in Kalamazoo, Michigan. The Cityplace 14 is operated by Rave Motion Pictures and was completed for a total development cost (including land and building) of approximately \$17.1 million. We purchased the land in 2005 for \$5.1 million. The theatre is leased under a long-term triple-net lease.

On December 13, 2006, we entered into a sale lease back transaction with a wholly-owned subsidiary of Billington Imports, Inc. for a ten acre vineyard and winery facility in Napa Valley, California. The acquisition price for the property was approximately \$7.0 million and it is leased under a long-term triple-net lease.

### ***Development financing projects***

We had a total of six theatre development financing projects as of December 15, 2006 for which we have agreed to either finance the development costs or purchase the theatre upon completion. Two of these projects are expansions of previously completed theatres. The properties are being developed by the prospective tenants. The theatres are expected to have a total of 71 screens and their total development cost (including land) is expected to



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be approximately \$63.2 million. We have purchased the underlying land on these theatre projects for an aggregate of approximately \$14.6 million, and intend to fund the remaining development costs through our KeyBank unsecured revolving credit facility and/or additional debt or equity financings. Development costs are advanced by us either in periodic draws or upon successful completion of construction. If we determine that construction is not being completed in accordance with the terms of a development agreement, we can discontinue funding construction draws or refuse to purchase the completed theatre. We have agreed to lease the theatres to the operators at predetermined rates.

***Distributions***

On December 11, 2006, our Board of Trustees declared a common share distribution of \$0.6875 per share for the fourth quarter of 2006, which is to be paid on January 15, 2007 to shareholders of record as of December 29, 2006. The aggregate distribution declared on our common shares for 2006 was \$2.75 per share. We have paid the regular quarterly 9.50% fixed distribution on our Series A preferred shares and the regular quarterly 7.75% fixed distribution on our Series B preferred shares.

***Anticipated Effect of Staff Accounting Bulletin No. 108***

In September 2006, the SEC issued Staff Accounting Bulletin No. 108, *Considering the Effects of Prior Year Misstatements when Quantifying Misstatements in Current Year Financial Statements (SAB 108)*. SAB 108 requires companies to evaluate errors that occurred in prior year(s), even though such errors were immaterial for each year in which they arose, to determine whether the correction or reversal of the cumulative effect of such errors would be material if recorded in the current year statement of income. Companies may restate all previously presented financial statements or, instead, may record in the year of adoption the cumulative effect of such errors as of the beginning of the current fiscal year, with an offsetting adjustment to the opening balance of retained earnings in the year of adoption, so that the full impact of the correction or reversal of the cumulative effect of such errors is not recorded in the current year statement of income. Companies must also make corresponding adjustments of any interim financial statements within the fiscal year in which the cumulative adjustment is made when that interim information is next presented. However, those adjustments do not require previously issued financial statements to be amended.

SAB 108 is effective for the year ending December 31, 2006. We are in the process of evaluating the impact of SAB 108. We do not expect to restate previously filed annual financial statements. However, based upon our preliminary analysis, we expect that the consolidated financial statements and other financial information for the year ending December 31, 2006 and for the 2006 interim periods included in our 2006 Annual Report on Form 10-K, and subsequent reports that include interim periods for 2006, will be adjusted in accordance with the method described above in connection with our initial adoption of SAB 108. We believe, based on our preliminary analysis, that such adjustments will not be material to either the 2006 interim statements of income or to the consolidated statement of income for the year ending December 31, 2006.

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**THE OFFERING**

*The following is a brief summary of certain terms of this offering and is not intended to be complete. It does not contain all of the information that will be important to a holder or the issuer of the Series C Preferred Shares. For a more complete description of the terms of the Series C Preferred Shares, see "Description of the Series C Preferred Shares" in this prospectus supplement and "Description of Securities" in the accompanying prospectus.*

Issuer	Entertainment Properties Trust.
Securities Offered	5,000,000 shares of % Series C Cumulative Convertible Preferred Shares plus up to an additional 750,000 shares of Series C Preferred Shares that we may issue and sell upon the exercise of the underwriters' overallotment option.
Distributions	Investors will be entitled to receive cumulative cash distributions on the Series C Preferred Shares at a rate of % per year of the \$25.00 liquidation preference (equivalent to \$ per year per share). Distributions on the Series C Preferred Shares are payable quarterly in arrears on January 15, April 15, July 15 and October 15 of each year, or if not a business day, the next succeeding business day, beginning January 15, 2007. The first distribution will be for less than a full quarterly period. Distributions payable to investors on the Series C Preferred Shares issued in this offering will be cumulative from the date of original issuance.
Liquidation Preference	If we liquidate, dissolve or wind up, you will have the right to receive \$25.00 per Series C Preferred Share, plus accrued and unpaid distributions (whether or not declared) to the date of payment, before any payments are made to our common shareholders or to holders of any other of our equity securities that we may issue ranking junior to the Series C Preferred Shares as to liquidation rights (but after any payments are made to holders of our debt, holders of our subsidiaries' debt and holders of any other of our equity securities that we may issue ranking senior to the Series C Preferred Shares as to liquidation rights (which equity securities we may authorize only with the affirmative vote of the holders of at least two-thirds of the Series C Preferred Shares)). Your rights to receive the liquidation preference will be subject to the proportionate rights of each other series or class of our equity securities ranking on a parity with the Series C Preferred Shares that we have issued or may issue in the future (including our Series A and Series B preferred shares).
Ranking	The Series C Preferred Shares will rank, with respect to distribution rights and rights upon our liquidation, dissolution or winding up: <p style="margin-left: 40px;">junior to all of our existing and future debt obligations;</p> <p style="margin-left: 40px;">senior to our common shares and to any other of our equity securities that by their terms rank junior to the Series C Preferred Shares with respect to distribution rights or payments upon our liquidation, dissolution or winding up;</p> <p style="margin-left: 40px;">on a parity with our existing Series A and Series B preferred shares and with other series of our preferred shares or other equity securities that we may later authorize and that by their terms are on a parity with the Series C Preferred Shares with respect to</p>

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distribution rights or payments upon our liquidation, dissolution or winding up; and

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

Conversion Rights

You, at your option, may convert some or all of your outstanding Series C Preferred Shares initially at a conversion rate of \_\_\_\_\_ common shares per \$25.00 liquidation preference, or the Conversion Rate, which is equivalent to an initial conversion price of approximately \$ \_\_\_\_\_ per common share (subject to adjustment in certain events). Except as otherwise provided, our Series C Preferred Shares will only be convertible into our common shares. See Description of the Series C Preferred Shares Conversion Rights.

Conversion Settlement

Upon conversion, we will deliver, at our option, either (1) a number of common shares based upon the applicable Conversion Rate, or (2) an amount of cash and common shares as follows:

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

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

See Description of Series C Preferred Shares Conversion Rights Payment Upon Conversion.

The Conversion Value for each Series C Preferred Share to be converted is an amount equal to the applicable Conversion Rate multiplied by the average of the Closing Sale Price of our common shares during the Cash Settlement Averaging Period. The Cash Settlement Averaging Period for each Series C Preferred Share is equal to the average of the Closing Sale Price over the 20 consecutive Trading Days (as defined below) (including the last Trading Day of such period) starting on, and including the third Trading Day following the conversion date for such shares.

At any time, we may irrevocably waive in our sole discretion our right to satisfy our conversion obligation solely in our common shares as described above.

Company Conversion Option

On or after January 15, 2012, we may, at our option, convert some or all of the Series C Preferred Shares into that number of common shares that are issuable at the then applicable Conversion Rate, which we refer to as the Company Conversion Option. We may exercise the Company Conversion Option only if the Closing Sale Price of our common shares equals or exceeds 130% of then applicable conversion price of the Series C Preferred Shares for at least 20 Trading Days in a period of 30 consecutive Trading Days (including the last Trading Day of such period) ending on the Trading Day immediately

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prior to our issuance of a press release announcing our exercise of the Company Conversion Option and our method of payment as described above under Conversion Settlement . See Description of the Series C Preferred Shares Company Conversion Option.

Payments of Distributions Upon Conversion

If you exercise your conversion rights, upon delivery of the Series C Preferred Shares for conversion, those Series C Preferred Shares will cease to cumulate distributions as of the conversion date and you will not receive any cash payment representing accrued and unpaid distributions on the Series C Preferred Shares, except in those limited circumstances discussed below. Except as provided below, we will make no payment for accrued and unpaid distributions, whether or not in arrears, on Series C Preferred Shares converted at your election, or for distributions on the common shares issued upon such conversion. If we convert your Series C Preferred Shares pursuant to the Company Conversion Option, whether prior to, on, or after the record date for the current period, all unpaid distributions that are in arrears as of the Company Conversion Option Date will be payable to you. See Description of the Series C Preferred Shares Payment of Distributions Upon Conversion.

Conversion Rate Adjustments

The Conversion Rate is subject to adjustment upon the occurrence of certain events, including if we distribute in any fiscal quarter to our common shareholders any cash, including quarterly cash distributions, in excess of \$0.6875 per common share (subject to adjustment). See Description of the Series C Preferred Shares Conversion Rate Adjustments.

Adjustment to Conversion Rate Upon Certain Fundamental Changes

If you elect to convert your Series C Preferred Shares in connection with a Fundamental Change (as defined below) that occurs on or prior to January 15, 2017, we will increase the Conversion Rate for the Series C Preferred Shares surrendered for conversion by a number of additional shares determined based on our share price at the time of such Fundamental Change. See Description of the Series C Preferred Shares The Increase in the Conversion Rate.

Rights Upon a Fundamental Change

In the event of a Fundamental Change, when the actual applicable price of our common shares described in Description of the Series C Preferred Shares The Increase in the Conversion Rate is less than \$ per share, then you will have a special right to convert some or all of your Series C Preferred Shares on the Fundamental Change Conversion Date (as defined below) into a number of our common shares per \$25.00 liquidation preference equal to such liquidation preference, plus accrued and unpaid distributions to, but not including, the Fundamental Change Conversion Date, divided by 98% of the Market Price (as defined below) of our common shares. In the event that you exercise that special conversion right, we have the right to repurchase for cash all or any part of your Series C Preferred Shares as to which the conversion right was exercised at a repurchase price equal to 100% of the liquidation preference of the Series C Preferred Shares to be repurchased plus accrued and unpaid distributions to, but not including, the Fundamental Change Conversion Date. If we elect to exercise our repur-

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chase right, you will not have the special conversion right described in this paragraph. See Description of the Series C Preferred Shares Special Conversion Right of Series C Preferred Shares upon a Fundamental Change; Company Repurchase Right below.

No Maturity; Redemption

Our Series C Preferred Shares have no maturity date. We are not required to redeem or repurchase the Series C Preferred Shares, and, except as described under Description of the Series C Preferred Shares Special Conversion Right of Series C Preferred Shares upon a Fundamental Change; Company Repurchase Right or Restrictions on Ownership and Transfer, may not elect to redeem or repurchase, the Series C Preferred Shares. On or after January 15, 2012, we have the right, in certain circumstances, to require you to convert your Series C Preferred Shares. See Description of the Series C Preferred Shares Company Conversion Option below.

Voting Rights

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

Listing

We have filed an application to list the Series C Preferred Shares on the NYSE under the symbol EPR PrC. If the application is approved, trading of the Series C Preferred Shares on the NYSE is expected to begin within 30 days after the date of initial delivery of the Series C Preferred Shares.

Restrictions on Ownership and Transfer

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

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Use of Proceeds	We estimate that our net proceeds from this offering (assuming no exercise of the underwriters overallotment option) will be \$            million after deducting the underwriting discount and other estimated expenses of the offering payable by us. We presently intend to use the net proceeds from this offering for general business purposes, which may include acquisitions of properties and funding of ongoing development projects. Pending this application, we intend to use the net proceeds of this offering to reduce indebtedness under our KeyBank credit facility.
Settlement Date	Delivery of the Series C Preferred Shares will be made against payment therefor on or about December    , 2006.
Risk Factors	See Risk Factors on page S-9 of this prospectus supplement and in our Annual Report in Form 10-K for the year ended December 31, 2005 as filed with the Securities and Exchange Commission on February 28, 2006.

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

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

	Nine Months Ended September 30, 2006	Years Ended December 31				
		2005	2004	2003	2002	2001
Ratio of earnings to combined fixed charges and preferred share distributions	2.1X	2.0X	2.0X	1.8X	1.9X	2.0X

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**RISK FACTORS**

*Before you decide to purchase our Series C Preferred Shares, you should be aware that there are risks in making this investment. You should carefully consider Risk Factors on page 3 of the accompanying prospectus and on page 4 of our annual report on Form 10-K for the year ended December 31, 2005 filed on February 28, 2006 and incorporated by reference herein, together with all other information included or incorporated by reference in this prospectus supplement and the accompanying prospectus, before you decide to invest in our Series C Preferred Shares.*

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

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

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

***The trading price for the Series C Preferred Shares could be substantially affected by various other factors.***

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

the trading price for our Series A Preferred Shares and Series B Preferred Shares;

any increases in prevailing interest rates, which may negatively affect the market for the Series C Preferred Shares;

the market for similar securities;

additional issuances of other series or classes of preferred shares;

general economic conditions or conditions in the financial or real estate markets; and

our financial condition, performance and prospects.

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

As described under Description of the Series C Preferred Shares Conversion Rate Adjustments, we will adjust the Conversion Rate of the Series C Preferred Shares for certain events, including, among others:

the issuance of distributions on our common shares payable in common shares;

certain subdivisions, combinations and reclassifications of our common shares;

the issuance of certain rights or warrants;

the distribution of indebtedness, non-cash assets or certain shares of beneficial interest;

certain cash distributions;

certain tender or exchange offers; and

certain fundamental changes.

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We will not adjust the Conversion Rate for other events, such as an issuance of common shares for cash or in connection with an acquisition, that may adversely affect the trading price of the Series C Preferred Shares or our common shares. If we engage in any of these types of transactions, the value of the common shares into which your Series C Preferred Shares may be convertible may be diluted.

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

If a Fundamental Change occurs on or prior to January 15, 2017, we will under certain circumstances adjust the Conversion Rate to provide for the issuance of additional common shares upon any conversion of Series C Preferred Shares in connection with such Fundamental Change. See Description of the Series C Preferred Shares Adjustment to the Conversion Rate upon the Occurrence of a Fundamental Change. This adjustment to the Conversion Rate is only an approximation of the lost option value of the Series C Preferred Shares as a result of the Fundamental Change and may not adequately compensate shareholders for the loss. In addition, if a Fundamental Change occurs after January 15, 2017, or if the applicable price is less than \$ per share or greater than \$ per share (in each case, subject to adjustment), we will not make an adjustment to the Conversion Rate.

***We may not have the ability to raise the funds necessary to purchase for cash Series C Preferred Shares upon a fundamental change or otherwise.***

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

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

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

***You should consider the United States federal income tax consequences of owning Series C Preferred Shares.***

The U.S. federal income tax consequences of acquiring, owning and disposing of Series C Preferred Shares and any common shares received upon conversion are described under Additional Federal Income Tax

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Considerations. Certain of our actions, including an increase in the cash distribution on our common shares, may result in an adjustment to the Conversion Rate that could cause you to be deemed to receive a taxable distribution subject to U.S. federal income tax without the receipt of any cash. If you are a non-U.S. shareholder (as defined in the Additional Federal Income Tax Considerations), such deemed distribution may be subject to U.S. federal withholding tax at a 30% rate or any lower rate as may be specified by an applicable treaty. See Additional Federal Income Tax Considerations. Also, federal tax may be imposed on the gain realized by a non-U.S. shareholder on the sale, repurchase or conversion of Series C Preferred Shares, depending on whether those shares constitute United States real property interests, all as more fully explained under Additional Federal Income Tax Considerations.

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

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

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

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

***We may issue additional securities and thereby materially and adversely affect the price of our common shares and Series C Preferred Shares.***

We are not restricted from issuing additional common shares, preferred shares, or securities convertible into or exchangeable for our common shares, except that we may not authorize equity securities ranking senior to the Series C Preferred Shares with respect to distribution rights or payments upon our liquidation, dissolution or winding up without the affirmative vote of the holders of at least two-thirds of the Series C Preferred Shares and each other class or series of preferred shares ranking on parity with the Series C Preferred Shares which are entitled to similar voting rights, voting together as a single class. If we issue additional common shares, preferred shares or convertible or exchangeable securities, the price of our common shares and, in turn, the price of the Series C Preferred Shares may be materially and adversely affected.

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

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

***Conversion of Series C Preferred Shares will dilute the ownership interest of existing shareholders.***

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

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

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

***Our adoption of Staff Accounting Bulletin No. 108 will result in changes to our financial statements, but we have not yet completed our analysis of SAB 108.***

In September 2006, the SEC issued Staff Accounting Bulletin No. 108, "Considering the Effects of Prior Year Misstatements when Quantifying Misstatements in Current Year Financial Statements" (SAB 108). SAB 108 requires registrants to evaluate errors that occurred in prior year(s), even though such errors were immaterial for each year in which they arose, to determine whether the correction or reversal of the cumulative effect of such errors would be material if recorded in the current year statement of income. Companies may restate all previously presented financial statements or, instead, may record in the year of adoption the cumulative effect of such errors as of the beginning of the current fiscal year, with an offsetting adjustment to the opening balance of retained earnings in the year of adoption, so that the full impact of the correction or reversal of the cumulative effect of such errors is not recorded in the current year statement of income. Companies must also make corresponding adjustments of any interim financial statements within the fiscal year in which the cumulative adjustment is made when that interim information is next presented. However, those adjustments do not require previously issued financial statements to be amended.

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SAB 108 is effective for the year ending December 31, 2006. We are in the process of evaluating the impact of SAB 108. We do not expect to restate previously filed annual financial statements. However, based upon our preliminary analysis, we expect that the consolidated financial statements and other financial information for the year ending December 31, 2006 and for the 2006 interim periods included in our 2006 Annual Report on Form 10-K and subsequent reports that include interim periods for 2006 (which reports will be incorporated by reference into this prospectus supplement), will be adjusted in accordance with the method described above in connection with our initial adoption of SAB 108. We believe, based on our preliminary analysis, that such adjustments will not be material to either the 2006 interim statements of income or to the consolidated statement of income for the year ending December 31, 2006. Our review of the impact of SAB 108 is ongoing and we cannot assure you that the impact as finally determined will not be materially different from that which is currently anticipated.

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**USE OF PROCEEDS**

The net proceeds to us from the sale of the Series C Preferred Shares offered hereby are expected to be approximately \$ (if the underwriters exercise their over-allotment option in full), after deducting the underwriting discount and commissions and our estimated offering expenses. We intend to use the net proceeds from this offering for general business purposes, which may include acquisitions of properties and funding ongoing development projects.

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

The KeyBank unsecured revolving credit facility bears interest at LIBOR plus 1.30% to 1.75% or the Applicable Base Rate plus 0.00% to 0.20% depending on our leverage ratio at the time of each advance. The KeyBank unsecured revolving credit facility matures on January 31, 2009 and may be extended for an additional year at our option. Bear Stearns Corporate Lending Inc., an affiliate of one of the underwriters, Bear, Stearns & Co. Inc., is a lender under this credit facility and will receive approximately 4% of any proceeds from this offering that are used to repay indebtedness under the credit facility. Royal Bank of Canada, an affiliate of one of the underwriters, RBC Capital Markets, is a lender under this credit facility and will receive approximately 15% of any proceeds from this offering that are used to repay indebtedness under the credit facility.

**Table of Contents****CAPITALIZATION**

The following table describes our actual capitalization as of September 30, 2006, and our capitalization on an as adjusted basis to reflect the issuance and sale of the 5,000,000 Series C Preferred Shares offered by this prospectus supplement (assuming no exercise of the underwriters over allotment option) and the application of the net proceeds as described in Use of Proceeds. This information should be read in conjunction with, and is qualified in its entirety by, the consolidated financial statements and schedules and notes thereto included in our quarterly report on Form 10-Q for the quarter ended September 30, 2006, incorporated by reference in this prospectus supplement.

	<b>September 30, 2006</b>	
	<b>Actual</b>	<b>As Adjusted</b>
	<b>(Dollars in thousands) (Unaudited)</b>	
<b>Debt:</b>		
KeyBank unsecured revolving credit facility(1)	\$ 107,900	\$
Other long-term debt	658,620	658,620
	<hr/>	<hr/>
Total debt	766,520	658,620
Minority interest	4,768	4,768
<b>Shareholders' equity:</b>		
Common shares, \$0.01 par value, 50,000,000 shares authorized; 27,149,727 shares issued	271	271
Preferred shares, \$0.01 par value, 10,000,000 shares authorized, actual; 15,000,000 shares authorized, as adjusted; 2,300,000 Series A cumulative redeemable preferred shares issued, actual and as adjusted; 3,200,000 Series B cumulative redeemable preferred shares issued, actual and as adjusted; and no Series C Preferred Shares issued, actual, and 5,000,000 Series C Preferred Shares issued, as adjusted(2)	55	105
Additional paid-in capital	752,319	873,419
Treasury shares, at cost, 675,487 shares	(15,500)	(15,500)
Loans to shareholders	(3,525)	(3,525)
Accumulated other comprehensive income	19,221	19,221
Distributions in excess of net income	(33,580)	(33,580)
	<hr/>	<hr/>
Total shareholders' equity	719,261	840,411
	<hr/>	<hr/>
<b>TOTAL CAPITALIZATION</b>	<b>\$ 1,490,549</b>	<b>\$ 1,503,799</b>

- (1) The As Adjusted column for our KeyBank unsecured revolving credit facility reflects the application of a portion of the net proceeds of this offering pending its application for general corporate purposes. See Use of Proceeds. At December 15, 2006, we had approximately \$133 million of indebtedness outstanding under our KeyBank unsecured revolving credit facility.
- (2) In connection with the consummation of this offering, we intend to file an amendment to our Declaration of Trust increasing the authorized number of preferred shares from 10,000,000 to 15,000,000.

**Table of Contents****SELECTED FINANCIAL DATA**

This table includes selected historical financial data of EPR. You should read carefully the consolidated financial statements and schedules, and Management's Discussion and Analysis of Financial Condition and Results of Operations, included in our annual report on Form 10-K for the year ended December 31, 2005 and our quarterly reports on Form 10-Q for the quarters ended March 31, 2006, June 30, 2006 and September 30, 2006. The selected financial data in this table are not intended to replace the consolidated financial statements and schedules included in our annual report on Form 10-K for the year ended December 31, 2005 or our quarterly reports on Form 10-Q for the quarters ended March 31, 2006, June 30, 2006 and September 30, 2006, which are incorporated by reference herein. Figures are in thousands except per share data.

**Operating Data**

	Nine Months Ended September 30, 2006	Years Ended December 31,				
		2005	2004	2003	2002	2001
	(Unaudited)					
Rental revenue	\$ 124,727	\$ 145,227	\$ 124,423	\$ 89,965	\$ 71,610	\$ 54,667
Other income	3,020	3,517	557	1,195		
Mortgage financing	6,808	3,560				
Property operating expense, net of tenant reimbursements	3,625	3,680	2,322	698	201	
General and administrative expense	10,030	7,249	6,093	4,785	3,341	2,747
Other operating expense	2,903	2,985				
Interest expense	35,179	42,427	38,054	30,570	24,475	20,334
Costs associated with loan refinancing	673		1,134			
Depreciation and amortization expense	23,191	27,597	23,365	16,359	12,862	10,209
Income before minority interest, income from joint ventures and gain on sale of real estate	58,954	68,366	54,012	38,748	30,731	21,377
Gain on sale of real estate	345				202	
Minority interest		(34)	(953)	(1,555)	(1,195)	
Equity in income from joint ventures	566	728	654	401	1,421	2,203
Preferred distribution requirements	(8,747)	(11,353)	(5,463)	(5,463)	(3,225)	
Net income available to common shareholders	\$ 51,118	\$ 57,707	\$ 48,250	\$ 32,131	\$ 27,934	\$ 23,580
Net income per common share:						
Basic	\$ 1.96	\$ 2.31	\$ 2.12	\$ 1.81	\$ 1.66	\$ 1.60
Diluted	1.93	2.26	2.07	1.77	1.64	1.60
Weighted average number of common shares outstanding:						
Basic	26,093	25,019	22,721	17,780	16,791	14,715
Diluted	26,511	25,504	23,664	19,051	17,762	14,783

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Cash distributions declared per common share	\$ 2.06	\$ 2.50	\$ 2.25	\$ 2.00	\$ 1.90	\$ 1.80
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**Table of Contents****Balance Sheet Data**

	As of	As of December 31,				
	September 30, 2006	2005	2004	2003	2002	2001
	(Unaudited)					
Net real estate investments	\$ 1,384,633	\$ 1,303,758	\$ 1,143,936	\$ 900,096	\$ 692,922	\$ 530,280
Mortgage note and related interest receivable	68,069	44,067				
Total assets	1,520,812	1,414,165	1,213,448	965,918	730,387	583,351
Common distributions payable	18,201	15,770	14,097	9,829	8,162	6,659
Preferred distributions payable	2,916	2,916	1,366	1,366	1,366	
Long-term debt	766,520	714,591	592,892	506,555	346,617	314,766
Total liabilities	796,783	742,509	620,059	521,509	361,834	325,223
Minority interests	4,768	5,235	6,049	21,630	15,375	
Shareholders' equity	\$ 719,261	\$ 666,421	\$ 587,340	\$ 422,779	\$ 353,178	\$ 258,128

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**DESCRIPTION OF THE SERIES C PREFERRED SHARES**

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

**General**

Under our Amended and Restated Declaration of Trust, as amended, we are authorized to issue up to 50,000,000 common shares and up to 10,000,000 preferred shares. We intend to file an amendment to our Declaration of Trust increasing the number of preferred shares of beneficial interest, par value \$0.01 per share, from 10,000,000 shares to 15,000,000 shares prior to the completion of this offering. As of December 15, 2006, a total of 26,477,923 common shares were issued and outstanding and 675,487 common shares were held in treasury, and a total of 2,300,000 Series A Preferred Shares (liquidation preference \$25.00 per share) and 3,200,000 Series B Preferred Shares (liquidation preference \$25.00 per share) were outstanding.

We are authorized to issue preferred shares in one or more series, with such designations, preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends, qualifications and terms and conditions of redemption, in each case as permitted by Maryland law and determined by our Board of Trustees. See *Description of Securities* in the accompanying prospectus.

Prior to completing this offering, we will adopt articles supplementary establishing the Series C Preferred Shares. You may obtain a complete copy of the articles supplementary describing the Series C Preferred Shares by contacting us. The articles supplementary will initially authorize 5,750,000 Series C Preferred Shares. Our board of trustees may authorize additional Series C Preferred Shares from time to time.

The transfer agent, registrar and distribution disbursing agent for the Series C Preferred Shares will be UMB Bank, n.a.

We will file an application to list the Series C Preferred Shares on the NYSE. If the application is approved, trading of the Series C Preferred Shares on the NYSE is expected to begin within 30 days after the date of initial delivery of the Series C Preferred Shares.

We expect that the Series C Preferred Shares initially will be issued in uncertificated, book-entry form.

**Ranking**

The Series C Preferred Shares will rank, with respect to distribution rights and rights upon our liquidation, dissolution or winding up:

junior to all of our existing and future debt obligations;

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

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

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

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### **Distributions**

Holders of the Series C Preferred Shares will be entitled to receive, when and as authorized by our board of trustees and declared by us, out of funds legally available for the payment of distributions, cumulative cash distributions at the rate of % of the liquidation preference per year (equivalent to \$ per Series C Preferred Share per year). Distributions on the Series C Preferred Shares issued in this offering will accrue and be cumulative from the date of original issuance and will be payable quarterly in arrears on the 15th day of each January, April, July and October or, if not a business day, the next business day, in each case a Distribution Payment Date. The first Distribution Payment Date will be January 15, 2007 and will be for less than a full quarterly period. Distributions payable on the Series C Preferred Shares for any partial period will be computed on the basis of a 360-day year consisting of twelve 30-day months. We will pay distributions to holders of record as they appear in our share records at the close of business on the applicable record date designated by our board of trustees for the payment of distributions that is not more than 60 nor less than 10 days prior to the Distribution Payment Date, each a Distribution Record Date.

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

Notwithstanding the foregoing, distributions on the Series C Preferred Shares will accrue whether or not we have earnings, whether or not there are funds legally available for the payment of distributions and whether or not distributions are authorized. Accrued but unpaid distributions on the Series C Preferred Shares will not bear interest, and holders of the Series C Preferred Shares will not be entitled to any distributions in excess of full cumulative distributions as described above. All of our distributions on the Series C Preferred Shares, including any capital gain distributions, will be credited first to the earliest accrued and unpaid distribution due.

We will not declare or pay any distributions, or set aside any funds for the payment of distributions (other than a distribution paid in common shares or in any other class of shares ranking junior to the Series C Preferred Shares), on common shares or other shares that rank on parity with or junior to the Series C Preferred Shares, or redeem or otherwise acquire common shares or other shares that rank on parity with or junior to the Series C Preferred Shares, unless we also have declared and either paid or set aside for payment the full cumulative distributions on the Series C Preferred Shares, for all past distribution periods. This restriction will not limit our acquisition of shares (i) by conversion into or exchange for common shares or junior shares, (ii) under incentive, benefit or share purchase plans for officers, trustees or employees or others performing or providing similar services, or (iii) for the purposes of enforcing restrictions upon ownership and transfer of our equity securities contained in our declaration of trust, for the purpose of preserving our status as a REIT.

We will not authorize the full cumulative distributions on any preferred shares unless we have authorized those distributions as are accrued on all of our outstanding preferred shares which are on a parity with the Series C Preferred Shares. If we do not declare and either pay or set aside for payment the full cumulative distributions on the Series C Preferred Shares and all shares that rank on a parity with Series C Preferred Shares, including our Series A and Series B preferred shares, the amount which we have declared will be allocated pro rata among the Series C Preferred Shares and each parity series of shares, including our Series A and Series B preferred shares, so that the amount declared for each Series C Preferred Share and for each share of each parity series is proportionate to the accrued and unpaid distributions on those shares.

### **Liquidation Rights**

In the event of our voluntary or involuntary liquidation, dissolution or winding up of our affairs, the holders of the Series C Preferred Shares will be entitled to be paid out of our assets legally available for distribution to our shareholders, liquidating distributions in cash or property at fair market value as determined by our board of

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trustees equal to a liquidation preference of \$25.00 per share, plus any accrued and unpaid distributions (whether or not declared) through the date of the payment. The holders of Series C Preferred Shares will be entitled to receive this liquidating distribution before we distribute any assets to holders of our common shares or any other shares of beneficial interest that rank junior to the Series C Preferred Shares as to payments upon our liquidation, dissolution or winding up. The rights of holders of Series C Preferred Shares to receive their liquidation preference would be subject to the proportionate rights of each parity series, including our Series A and Series B preferred shares, and the preferential rights of the holders of any series of shares which is senior to the Series C Preferred Shares.

Holders of the Series C Preferred Shares will be entitled to notice of any such liquidation. After payment of the full amount of the liquidating distributions to which they are entitled, holders of our Series C Preferred Shares will have no right or claim to any of our remaining assets. The consolidation or merger of us with or into any other corporation, trust or entity or of any other corporation with or into us, or the sale, lease or conveyance of all or substantially all of our assets or business, will not be deemed to constitute a liquidation, dissolution or winding up of us. In determining whether a distribution (other than upon voluntary or involuntary liquidation), by redemption or other acquisition of shares or otherwise, is permitted under Maryland law, amounts that would be needed, if we were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of the holders of Series C Preferred Shares will not be added to our total liabilities.

## **Voting Rights**

Holders of Series C Preferred Shares generally will have no voting rights, except as described below.

If distributions on our Series C Preferred Shares are due for six or more quarterly periods and remain unpaid, whether or not these quarterly periods are consecutive, holders of the Series C Preferred Shares, voting separately as a class with all other series of preferred shares which have similar voting rights, including our Series A and Series B preferred shares, will be entitled to vote for the election of two additional trustees to serve on our board of trustees until all distribution arrearages have been paid or declared and set aside for payment.

In addition, without the affirmative vote of the holders of at least two-thirds of the Series C Preferred Shares, we may not:

authorize, create or increase the authorized or issued amount of any class or series of shares ranking senior to the Series C Preferred Shares;

reclassify any shares into a series of shares ranking senior to that of the Series C Preferred Shares;

create, authorize or issue any security or obligation convertible into or evidencing the right to purchase any shares ranking senior to the Series C Preferred Shares; or

amend, alter or repeal the provisions of our Declaration of Trust or the Articles Supplementary for the Series C Preferred Shares, whether by merger, consolidation or otherwise, so as to materially and adversely affect any right, preference or voting power of the Series C Preferred Shares; provided, however, that any increase in the number of authorized preferred shares, any issuance of or increase in the number of Series C Preferred Shares or any creation or issuance of or increase in the number of authorized shares of any class or series of preferred shares which rank on parity with the Series C Preferred Shares shall not be deemed to materially and adversely affect the rights of the Series C Preferred Shares.

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

## **Conversion Rights**

The holders of the Series C Preferred Shares, at their option, may convert some or all of their outstanding Series C Preferred Shares initially at a Conversion Rate of \_\_\_\_\_ common shares per \$25.00 liquidation

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preference, which is equivalent to an initial conversion price of approximately \$ \_\_\_\_\_ per common share (subject to adjustment in certain events). The Series C Preferred Shares will be convertible, at our option, into either (1) a number of common shares equal to the applicable Conversion Rate, or (2) an amount of cash and common shares as described under Payment Upon Conversion below. In addition, at any time we may irrevocably waive, in our sole discretion, our right to satisfy our obligation to convert the Series C Preferred Shares (our conversion obligation ) solely into our common shares.

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

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

### **Company Conversion Option**

On or after January 15, 2012, we may, at our option, convert some or all of the Series C Preferred Shares into that number of common shares that are issuable at the then applicable Conversion Rate. We refer to this as the Company Conversion Option. We may exercise the Company Conversion Option only if the Closing Sale Price of our common shares equals or exceeds 130% of the then applicable conversion price of the Series C Preferred Shares for at least 20 Trading Days in a period of 30 consecutive Trading Days (including the last Trading Day of such period) ending on the Trading Day immediately prior to our issuance of a press release announcing our exercise of the Company Conversion Option as described below.

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

The Closing Sale Price of our common shares on any date means the closing sale price per share (or, if no closing sale price is reported, the average of the bid and asked prices or, if more than one in either case, the average of the average bid and the average asked prices) on such date as reported by the NYSE or, if our common shares are not reported by the NYSE, in composite transactions for the principal other U.S. national or regional securities exchange on which our common shares are traded. If our common shares are not listed for trading on a U.S. national or regional securities exchange on the relevant date, the Closing Sale Price will be the last quoted bid price for our common shares in the over-the-counter market on the relevant date as reported by the National Quotation Bureau Incorporated or similar organization. If our common shares are not so quoted, the Closing Sale Price will be the average of the mid-point of the last bid and asked prices for our common shares on the relevant date from each of at least three independent nationally recognized investment banking firms selected by us for this purpose.

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

To exercise our Company Conversion Option described above, we must issue a press release for publication on the Dow Jones & Company, Inc., Business Wire or Bloomberg Business News (or, if such organizations are

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not in existence at the time of issuance of such press release, such other news or press organization as is reasonably calculated to broadly disseminate the relevant information to the public) prior to the opening of business on the first Trading Day following any date on which the conditions described in the fourth preceding paragraph are met, announcing such conversion and our method of payment. We will also give notice by mail or by publication (with subsequent prompt notice by mail) to holders of our Series C Preferred Shares (not more than four Trading Days after the date of the press release) of our exercise of the Company Conversion Option announcing our intention to convert the Series C Preferred Shares. The effective date for any Company Conversion Option, or the Company Conversion Option Date, will be the date that is selected by us and will be no longer than five Trading Days after the date on which we issue such press release.

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

the Company Conversion Option Date;

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

the number of common shares to be issued upon conversion of each Series C Preferred Share;

the number of Series C Preferred Shares to be converted; and

that distributions on the Series C Preferred Shares to be converted will cease to accrue on the Company Conversion Option Date.

**Payment Upon Conversion**

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

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

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

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

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

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

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

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

We will deliver the form of payment we elect to deliver upon settlement of our conversion obligation in accordance with the procedures described under **Conversion Procedures** below.

## **Conversion Procedures**

Holders of Series C Preferred Shares may convert some or all of their shares by surrendering to us at our principal office or at the office of our transfer agent, as may be designated by our board of trustees, the certificate or certificates for the Series C Preferred Shares to be converted accompanied by a written notice stating that the holder of Series C Preferred Shares elects to convert all or a specified whole number of those shares in accordance with the provisions described in this prospectus supplement and the articles supplementary for the Series C Preferred Shares and specifying the name or names in which the holder of the Series C Preferred Shares wishes the certificate or certificates for any common shares to be issued. This conversion will be deemed to have been made at the close of business on the date of giving the notice and of surrendering the certificate or certificates evidencing the shares of the Series C Preferred Shares to be converted, or the Conversion Date, so that the rights of a holder of Series C Preferred Shares as to the shares being converted will cease except for the right to receive the conversion payment as described under **Payment Upon Conversion** above, and, if applicable, the person entitled to receive common shares will be treated for all purposes as having become the record holder of those common shares at that time. In case the notice specifies a name or names other than the name of a holder of Series C Preferred Shares, the notice must be accompanied by payment of all transfer taxes payable upon the issuance of any common shares in that name or names. Other than those taxes, we will pay any documentary, stamp or similar issue or transfer taxes that may be payable in respect of any issuance or delivery of common shares upon conversion of the Series C Preferred Shares. On settlement of our conversion obligation, we will deliver or cause to be delivered, depending upon the form of payment we elect to deliver upon settlement of our conversion obligation (a) certificates evidencing the number of validly issued, fully paid and non-assessable common shares, if any, and/or (b) cash, if any, in each case to which the holder of Series C Preferred Shares, or the transferee of a holder of Series C Preferred Shares, will be entitled as described under **Payment Upon Conversion** above. To the extent that we elect to settle our conversion obligation solely in common shares, we will deliver payment as promptly as practicable after the Company Conversion Option Date or the Conversion Date as the case may be (after giving of any requisite notice and surrender of the certificate or certificates evidencing the shares of the Series C Preferred Shares to be converted). To the extent that we elect to settle our conversion obligation in cash and/or common shares, we will deliver payment as promptly as practicable following the third Trading Day after the Cash Settlement Averaging Period (after giving of any requisite notice and surrender of the certificate or certificates evidencing the shares of the Series C Preferred Shares to be converted). If less than the full number of Series C Preferred Shares evidenced by the surrendered certificate or certificates being converted, a new certificate or certificates, of like tenor, for the number of shares evidenced by the surrendered certificate or certificates, less the number of shares being converted.

In lieu of the foregoing procedures, if the Series C Preferred Shares are held in global form, the holder of Series C Preferred Shares must comply with applicable procedures of The Depository Trust Company, or DTC, to convert such holder's Series C Preferred Shares.

Holders of Series C Preferred Shares are not eligible to exercise any rights of a common shareholder until they have converted their Series C Preferred Shares into common shares.

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

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

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

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

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

## **Payment of Distributions Upon Conversion**

### ***Optional Conversion***

*General.* If a holder of Series C Preferred Shares exercises its conversion rights, upon delivery of the Series C Preferred Shares for conversion, those Series C Preferred Shares will cease to cumulate distributions as of the end of the Conversion Date and the holder of those Series C Preferred Shares will not receive any cash payment representing accrued and unpaid distributions on the Series C Preferred Shares, except in those limited circumstances discussed below. Except as provided below, we will make no payment for accrued and unpaid distributions, whether or not in arrears, on Series C Preferred Shares converted at the election of the holder of Series C Preferred Shares, or for distributions on the common shares issued upon such conversion.

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

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

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

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

***Company Conversion Option***

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

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

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

**Conversion Rate Adjustments**

Subject to and in accordance with the terms of the articles supplementary establishing the Series C Preferred Shares, we will adjust the Conversion Rate for:

1. distributions on our common shares payable in our common shares, based on the following formula:

$$CR^1 = CR_o \times OS_1 / OS_o$$

where,

$CR_o$  = the Conversion Rate in effect immediately prior to such event

$CR^1$  = the Conversion Rate in effect immediately after such event

$OS_o$  = the number of our common shares outstanding immediately prior to such event

$OS_1$  = the number of our common shares outstanding immediately after such event;

2. subdivisions, combinations or reclassifications of our common shares, based on the following formula:

$$CR^1 = CR_o \times OS_1 / OS_o$$

where,

$CR_o$  = the Conversion Rate in effect immediately prior to such event  
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$CR^1$  = the Conversion Rate in effect immediately after such event

$OS_0$  = the number of our common shares outstanding immediately prior to such event

$OS_1$  = the number of our common shares outstanding immediately after such event;

3. distributions to all or substantially all holders of our common shares of certain rights or warrants entitling them, for a period expiring not more than 60 days immediately following the record date for the distribution, to purchase or subscribe for our common shares, or securities convertible into or exchangeable or exercisable for common shares, at a price per share that is less than the Closing Sale Price per share of our common shares on the record date for the distribution, based on the following formula:

$$CR^1 = CR_0 \times (OS_0 + X) / (OS_0 + Y)$$

where,

$CR_0$  = the Conversion Rate in effect immediately prior to such event

$CR^1$  = the Conversion Rate in effect immediately after such event

$OS_0$  = the number of our common shares outstanding immediately prior to such event

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

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

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

4. distributions to all or substantially all holders of our common shares of shares of our or any of our existing or future subsidiaries shares of beneficial interest (other than our common shares), evidences of indebtedness or other assets (other than distributions covered by paragraphs 5 and 6 below) or the distribution to all or substantially all holders of our common shares of certain rights or warrants (other than those covered in paragraph 3, or as described below, certain rights or warrants distributed pursuant to a shareholder rights plan) to purchase or subscribe for our securities; however, we will not adjust the Conversion Rate pursuant to this provision for distributions of certain rights or warrants, if we make certain arrangements for holders of Series C Preferred Shares to receive those rights and warrants upon conversion of the Series C Preferred Shares, based on the following formula:

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

where,

$CR_0$  = the Conversion Rate in effect immediately prior to such distribution

$CR^1$  = the Conversion Rate in effect immediately after such distribution

$SP_0$  = the average of the Closing Sale Prices of our common shares for the 10 consecutive Trading Days prior to the business day immediately preceding the ex-dividend date for such distribution

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

distribution

With respect to an adjustment pursuant to this paragraph 4 where there has been a payment or a distribution on our common shares or capital shares of any class or series, or similar equity interest, of or relating to a subsidiary or other business unit, which we refer to as a spin-off , the Conversion Rate

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in effect immediately before the close of business on the ex-dividend date will be increased, based on the following formula:

$$CR^1 = CR_0 \times (FMV_0 + MP_0) / MP_0$$

where,

$CR_0$  = the Conversion Rate in effect immediately prior to such distribution

$CR^1$  = the Conversion Rate in effect immediately after such distribution

$FMV_0$  = the average of the Closing Sale Prices of the capital shares or similar equity interest distributed to holders of our common shares applicable to one share of our common shares over the first 10 Trading Days after the effective date of the spin-off

$MP_0$  = the average of the Closing Sale Prices of our common shares over the first 10 consecutive Trading Days after the effective date of the spin-off

The adjustment to the Conversion Rate under the preceding paragraph with respect to a spin-off will occur on the tenth Trading Day from, and including, the effective date of the spin-off;

5. cash distributions by us to all or substantially all holders of our common shares in excess of \$0.6875, or the Initial Distribution Threshold, during any fiscal quarter other than distributions described in paragraph 6, based on the following formula:

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

where,

$CR_0$  = the Conversion Rate in effect immediately prior to the record date for such distribution

$CR^1$  = the Conversion Rate in effect immediately after the record date for such distribution

$SP_0$  = the average of the Closing Sale Prices of our common shares for the 10 consecutive Trading Days prior to the business day immediately preceding the record date of such distribution

$C$  = the amount in cash per share we distribute to holders of our common shares that exceeds the Initial Distribution Threshold, in the case of a regular quarterly distribution, or in the case of another distribution the full amount of such distribution; and

The Initial Distribution Threshold will be adjusted in a manner inversely proportional to adjustments to the Conversion Rate; provided that no adjustments will be made to the Initial Distribution Threshold for any adjustments made to the Conversion Rate pursuant to this paragraph 5.

6. distributions of cash or other consideration by us or any of our subsidiaries in respect of a tender offer or exchange offer for our common shares, where such cash and the value of any such other consideration per share of our common shares validly tendered or exchanged exceeds the Closing Sale Price per common share on the first trading day after expiration of the tender or exchange offer, based on the following formula:

$$CR^1 = CR_0 \times (AC + (SP_1 \times OS_1)) / (OS_0 \times SP_1)$$

where,

$CR_0$  = the Conversion Rate in effect on the date such tender or exchange offer expires

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$CR^1$  = the Conversion Rate in effect on the day next succeeding the date such tender or exchange offer expires

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

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

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$OS_1$  = the number of common shares outstanding immediately after the date such tender or exchange offer expires

$SP_1$  = the average of the Closing Sale Prices of our common shares for the 10 consecutive Trading Days commencing on the Trading Day next succeeding the date such tender or exchange offer expires

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

If we issue rights, options or warrants that are only exercisable upon the occurrence of certain triggering events, then:

we will not adjust the Conversion Rate pursuant to the numbered paragraphs above until the earliest of these triggering events occurs; and

we will readjust the Conversion Rate to the extent any of these rights, options or warrants are not exercised before they expire.

We will not adjust the Conversion Rate for any of the transactions described in the numbered paragraphs above if we make provision for each holder of the Series C Preferred Shares to participate in the transaction without conversion as if such holder held a number of shares equal to the Conversion Rate in effect on the ex date or effective date, as the case may be, for such transaction multiplied by the number of Series C Preferred Shares held by such holder.

We will not adjust the Conversion Rate pursuant to the numbered paragraphs above unless the adjustment would result in a change of at least 1% in the then effective Conversion Rate. However, we will carry forward any adjustment that we would otherwise have to make and take that adjustment into account in any subsequent adjustment. In addition, at the end of each fiscal year, beginning with the fiscal year ending on December 31, 2007, we will give effect to any adjustments that we have otherwise deferred pursuant to this provision, and those adjustments, if any, will no longer be carried forward and taken into account in any subsequent adjustment. Furthermore, if a Fundamental Change occurs, then we will give effect to all adjustments that we have otherwise deferred pursuant to this provision.

In no event will the conversion price be reduced below \$0.01, subject to adjustment for share splits and combinations, reclassifications and similar events.

In addition, the Conversion Rate will not be adjusted

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

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

for a change in the par value of the common shares; or

for accumulated and unpaid distributions.

In the case of the following events, each a Business Combination:

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

a consolidation, merger or combination involving us;

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

a statutory share exchange;

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

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

To the extent permitted by law and the continued listing requirements of the NYSE or any other securities exchange on which our common shares may then be listed, we may, from time to time, increase the Conversion Rate by any amount for a period of at least 20 days or any longer period required by law, so long as the increase is irrevocable during that period and our board of trustees determines that the increase is in our best interests. Such a determination by our board of trustees shall be conclusive. We will mail a notice of the increase to holders at least 15 days before the day the increase commences. In addition, we may also increase the Conversion Rate as we determine to be advisable in order to avoid taxes to recipients of certain distributions. However, we may not decrease the conversion price below \$0.01, subject to adjustment for share splits and combinations, reclassifications and similar events.

In the event of:

a taxable distribution to holders of common shares which results in an adjustment to the Conversion Rate; or

an increase in the Conversion Rate at our discretion,

the holders of the Series C Preferred Shares may, in certain circumstances, be deemed to have received a distribution subject to U.S. federal income tax as a distribution. This generally would occur, for example, if we adjust the Conversion Rate to compensate holders for cash distributions on our common shares and could also occur if we make other distributions of cash or property to our shareholders. See Additional Federal Income Tax Considerations.

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

If, on or prior to January 15, 2017, a Fundamental Change takes place (See Special Conversion Right of Series C Preferred Shares upon a Fundamental Change; Company Repurchase Right), and a holder converts the

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Series C Preferred Shares in connection with such Fundamental Change, we will increase, as described below under The Increase in the Conversion Rate, the Conversion Rate applicable to shares that are surrendered for conversion. A conversion of the Series C Preferred Shares will be deemed for these purposes to be in connection with a Fundamental Change if the notice of conversion of the Series C Preferred Shares is received by the conversion agent from and including the effective date of such Fundamental Change to, and including, the Fundamental Change Conversion Date (as defined below under Special Conversion Right of Series C Preferred Shares upon a Fundamental Change; Company Repurchase Right) for that Fundamental Change.

We will also give notice by mail or by publication (with subsequent prompt notice by mail) to holders of our Series C Preferred Shares of the anticipated effective date of any proposed Fundamental Change which will occur on or prior to January 15, 2017. We must make this mailing or publication at least 15 days before the anticipated effective date of the Fundamental Change. In addition, no later than the third business day after the completion of such Fundamental Change, we must make an additional notice announcing such completion.

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

### **The Increase in the Conversion Rate**

If a holder elects to convert in connection with a Fundamental Change on or prior to January 15, 2017, we will increase the Conversion Rate by reference to the table below, based on the date when the Fundamental Change becomes effective, which we refer to as the effective date, and the applicable price. If the Fundamental Change is a transaction or series of related transactions and the consideration (excluding cash payments for fractional shares or pursuant to statutory appraisal rights) for our common shares in the Fundamental Change consists solely of cash, then the applicable price will be the cash amount paid per share of our common shares in the transaction. If the transaction is an asset sale and the consideration paid for our property and assets (or for the property and assets of us and our subsidiaries on a consolidated basis) consists solely of cash, then the applicable price will be the cash amount paid for our property and assets, expressed as an amount per share of our common shares outstanding on the effective date of the asset sale. In all other cases, the applicable price will be the average of the Closing Sale Price per share of our common shares for the five consecutive Trading Days immediately preceding the effective date. Our board of trustees will make appropriate adjustments, in its good faith determination, to account for any adjustment to the Conversion Rate that becomes effective, or any event requiring an adjustment to the Conversion Rate where the ex date of the event occurs, at any time during those five consecutive Trading Days.

The following table sets forth the number of additional common shares per \$25.00 liquidation preference per Series C Preferred Share that will be added to the Conversion Rate applicable to Series C Preferred Shares that are converted in connection with a Fundamental Change, which we refer to as the Make-Whole Premium. If an event occurs that requires an adjustment to the Conversion Rate, we will, on the date we must adjust the Conversion Rate, adjust each applicable price set forth in the first column of the table below by multiplying the applicable price in effect immediately before the adjustment by a fraction:

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

whose denominator is the adjusted Conversion Rate.

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

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

Effective Date	Stock Price											
	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
December , 2006												
January 15, 2007												
January 15, 2008												
January 15, 2009												
January 15, 2010												
January 15, 2011												
January 15, 2012												
January 15, 2013												
January 15, 2014												
January 15, 2015												
January 15, 2016												
January 15, 2017												

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

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

if the actual applicable price is greater than \$ \_\_\_\_\_ per share (subject to adjustment), we will not increase the Conversion Rate as described above; and

if the actual applicable price is less than \$ \_\_\_\_\_ per share (subject to adjustment), we will not increase the Conversion Rate as described above.

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

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

**Special Conversion Right of Series C Preferred Shares upon a Fundamental Change; Company Repurchase Right**

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

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

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

Subject to the next sentence, the aggregate number of our common shares issuable in connection with the exercise of the Fundamental Change Conversion Right may not exceed \_\_\_\_\_ shares (or if the underwriters' over-allotment option is exercised, \_\_\_\_\_ shares) or such other number of common shares as shall then be authorized and available for issuance. If the number of common shares issuable upon such conversion would exceed \_\_\_\_\_ shares (or if the underwriters' over-allotment option is exercised, \_\_\_\_\_ shares) or such other number of common shares as shall then be authorized and available for issuance, we will have the option to satisfy the remainder of such conversion in common shares that are authorized for issuance in the future. We will use our best efforts to have any such additional number of common shares authorized for issuance within 180 days of the Fundamental Change Conversion Date.

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

the events constituting the Fundamental Change;

the date of the Fundamental Change;

the last date on which the holder of Series C Preferred Shares may exercise the Fundamental Change Conversion Right;

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

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

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

the Fundamental Change Conversion Date;

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

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

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

the procedures that the holder of Series C Preferred Shares must follow to exercise the Fundamental Change Conversion Right.

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

The Fundamental Change Conversion Date will be a date no less than 20 days nor more than 35 days after the date on which we give the above notice. To exercise the Fundamental Change Conversion Right, the holder of Series C Preferred Shares must deliver, on or before the close of business on the Fundamental Change Conversion Date, the Series C Preferred Shares to be converted, duly endorsed for transfer, together with a written conversion notice completed, to our transfer agent. The conversion notice will state:

the relevant Fundamental Change Conversion Date;

the number of Series C Preferred Shares to be converted; and

that the Series C Preferred Shares are to be converted pursuant to the applicable provisions of the Series C Preferred Shares.

If the Series C Preferred Shares are held in global form, the conversion notice must comply with applicable DTC procedures.

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

the number of withdrawn Series C Preferred Shares;

if certificated Series C Preferred Shares have been issued, the certificate numbers of the withdrawn Series C Preferred Shares; and

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

If the Series C Preferred Shares are held in global form, the holder of Series C Preferred Shares notice of withdrawal of the holder of Series C Preferred Shares must comply with applicable DTC procedures.

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

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

the Series C Preferred Shares will cease to be outstanding and distributions will cease to accrue (whether or not book-entry transfer of the Series C Preferred Shares is made or whether or not the Series C Preferred Shares Certificate is delivered to the transfer agent); and

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

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

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

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

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

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

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

individuals who on the first issue date of the Series C Preferred Shares constituted our board of trustees; and

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

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

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

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

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

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

This Fundamental Change conversion and repurchase feature may make more difficult or discourage a party from taking over our company and removing incumbent management. We are not aware, however, of any specific effort to accumulate our shares of beneficial interest with the intent to obtain control of our company by means of a merger, tender offer, solicitation or otherwise. In addition, the Fundamental Change repurchase feature is not

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part of a plan by management to adopt a series of anti-takeover provisions. Instead, the Fundamental Change conversion and repurchase feature is a result of negotiations between us and the underwriters.

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

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

### **Determination of Market Price**

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

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

### **No Maturity; Redemption**

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

The Series C Preferred Shares will not be subject to any sinking fund or mandatory redemption provisions.

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

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

Our Declaration of Trust restricts the number of shares which may be owned by shareholders. Generally, for us to qualify as a REIT under the Code, not more than 50% in value of our outstanding shares may be owned, directly or indirectly, by five or fewer individuals (defined in the Code to include certain entities and constructive ownership among specified family members) at any time during the last half of a taxable year. The shares must

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also be beneficially owned by 100 or more persons during at least 335 days of a taxable year. In order to maintain our qualification as a REIT, our Declaration of Trust contains restrictions on the acquisition of shares intended to ensure compliance with these requirements.

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

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

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

The Articles Supplementary for the Series C Preferred Shares and the Declaration of Trust contain provisions the allow our board of trustees to waive this ownership limit, subject to certain conditions.

## **Book-Entry System**

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

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

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**Exchange of Global Securities**

The Series C Preferred Shares, represented by one or more global securities, will be exchangeable for certificated securities with the same terms only if:

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

we decide to discontinue use of the system of book-entry transfer through DTC (or any successor depositary.)

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**ADDITIONAL FEDERAL INCOME TAX CONSIDERATIONS**

Please read the prospectus under the heading **U.S. FEDERAL INCOME TAX CONSEQUENCES** for additional United States federal income tax considerations that apply to this offering.

The following summary of certain material United States federal income tax considerations relating to the acquisition, ownership and disposition of the Series C Preferred Shares supplements and updates the more detailed description of these matters in the accompanying prospectus. Stinson Morrison Hecker LLP will render a legal opinion that the discussions in this section and in the section of the accompanying prospectus **Federal Income Tax Consequences** are accurate in all material respects and, taken together, fairly summarize the federal income tax consequences discussed in those sections, and Stinson Morrison Hecker LLP is of the opinion that those sections are accurate in all material respects. Specifically, subject to qualifications and assumptions contained in its opinion, Stinson Morrison Hecker LLP has given opinions to the effect that we have been organized and operated in conformity with the requirements for qualification and taxation as a REIT under the Code, for our 1997 through 2006 taxable years, and that our current and proposed plan of operation will enable us to continue to meet the requirements for qualification and taxation as a REIT under the Code. Investors should be aware, however, that opinions of counsel are not binding upon the Internal Revenue Service or any court.

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

This summary is based on current law and does not address all aspects of taxation that may be relevant to particular shareholders in light of their personal investment or tax circumstances, or to certain types of shareholders (including insurance companies, financial institutions and broker-dealers) subject to special treatment under U.S. federal income tax laws.

**You should consult your own tax advisor regarding the specific tax consequences of the purchase, ownership and sale or conversion of the Series C Preferred Shares.**

**Taxation of the Company**

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

***Asset Tests***

For purposes of compliance with the asset test, certain obligations, including loans to an individual or estate, certain loans to governments, tenant obligations to pay rent and certain contingent payment obligations, may now be disregarded if requirements are met. After initially meeting the asset tests at the close of any quarter, we will not lose our qualification as a REIT for failure to satisfy the asset tests at the end of a later quarter solely by reason of changes in asset values. If we fail to satisfy the asset tests because we acquire securities during a quarter, we can cure this failure by disposing of sufficient non-qualifying assets within 30 days after the close of that quarter. If we fail the 5% asset test, or the 10% vote or value asset tests at the end of any quarter and such failure is not cured within 30 days thereafter, we may dispose of sufficient assets (generally within six months after the last day of the quarter in which our identification of the failure to satisfy these asset tests occurred) to cure such a violation that does not exceed the lesser of 1% of our assets at the end of the relevant quarter or \$10,000,000. If we fail any of the other asset tests or our failure of the 5% and 10% asset tests is in excess of the de minimis amount described above, as long as such failure was due to reasonable cause and not willful neglect, we are permitted to avoid disqualification as a REIT, after the 30 day cure period, by taking steps including the disposition of sufficient assets to meet the asset test (generally within six months after the last day of the quarter

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in which our identification of the failure to satisfy the REIT asset test occurred) and paying a tax equal to the greater of \$50,000 or the highest corporate income tax rate (currently 35%) of the net income generated by the non-qualifying assets during the period in which we failed to satisfy the asset test.

### ***Gross Income Tests***

We intend to monitor our sources of income, including any non-qualifying income received by us, so as to ensure our compliance with the gross income tests. If we fail to satisfy one or both of the 75% or 95% gross income tests for any taxable year, we may still qualify as a REIT for the year if we are entitled to relief under applicable provisions of the Code. These relief provisions will generally be available if the failure of our company to meet these tests was due to reasonable cause and not due to willful neglect and, following the identification of such failure, we set forth a description of each item of our gross income that satisfies the gross income tests in a schedule for the taxable year filed in accordance with regulations prescribed by the Treasury. It is not possible to state whether we would be entitled to the benefit of these relief provisions in all circumstances. If these relief provisions are inapplicable to a particular set of circumstances involving us, we will not qualify as a REIT. Even where these relief provisions apply; a tax would be imposed upon the profit attributable to the amount by which we fail to satisfy the particular gross income test.

### ***Qualified REIT Subsidiaries***

The Company owns a number of wholly-owned subsidiaries, Code Section 856(i) provides that unless a REIT makes an election to treat the corporation as a taxable REIT subsidiary, a corporation which is a qualified REIT subsidiary, as defined in the Code, will not be treated as a separate corporation, and all assets liabilities and items of income, deduction and credit of a qualified REIT subsidiary will be treated as assets, liabilities and items of these kinds of the REIT. Thus, in applying the requirements described in this section, the Company qualified REIT subsidiaries will be ignored, and all assets, liabilities and items of income, deduction and credit of these subsidiaries will be treated as assets, liabilities and items of these kinds of the Company.

### ***Taxable REIT Subsidiaries***

A taxable REIT subsidiary is any corporation in which a REIT directly or indirectly owns stock, provided that the REIT and that corporation make a joint election to treat that corporation as a taxable REIT subsidiary. The election can be revoked at any time as long as the REIT and the taxable REIT subsidiary revoke such election jointly. In addition, if a taxable REIT subsidiary holds, directly or indirectly, more than 35% of the securities of any other corporation other than a REIT (by vote or by value), then that other corporation is also treated as a taxable REIT subsidiary. A corporation can be a taxable REIT subsidiary with respect to more than one REIT. The Company currently has only one taxable REIT subsidiary with ongoing operations.

A taxable REIT subsidiary is subject to Federal income tax at regular corporate rates (currently a maximum rate of 35%), and may also be subject to state and local taxation. Any dividends paid or deemed paid by any one of the Company's taxable REIT subsidiaries will also be taxable to the Company's stockholders to the extent the dividends received from the taxable REIT subsidiary are paid to the Company's stockholders. The Company may hold more than 10% of the stock of a taxable REIT subsidiary without jeopardizing its qualification as a REIT. However, as noted below, in order for the Company to qualify as a REIT, the securities of all of the taxable REIT subsidiaries in which it has invested either directly or indirectly may not represent more than 20% of the total value of its assets. The Company expects that the aggregate value of all of its interests in taxable REIT subsidiaries will represent less than 20% of the total value of its assets; however, the Company cannot assure that this will always be true.

## **Taxation of Shareholders**

### ***Taxation of Taxable Domestic Shareholders***

As used herein, the term "U.S. Shareholder" means a holder of Series C Preferred Shares who (for U.S. federal income tax purposes) (i) is a citizen or resident of the United States, (ii) is a corporation, partnership or other entity created or organized in or under the laws of the United States or any political subdivision thereof

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(except, in the case of a partnership, the Treasury provides otherwise by regulations), (iii) is an estate the income of which is subject to U.S. federal income taxation regardless of its source, or (iv) is a trust whose administration is subject to the primary supervision of a U.S. court and which has one or more U.S. persons who have the authority to control all substantial decisions of the trust, or has a valid election in effect under applicable U.S. Treasury regulations to be treated as a U.S. person.

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

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

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

***Redemption of Series C Preferred Shares***

Redemption of Series C Preferred Shares will be treated under Section 302 of the Code as a dividend taxable as a distribution (to the extent of our current and accumulated earnings and profits) unless the redemption satisfies one of the tests set forth in Section 302(b) of the Code and is therefore treated as a sale or exchange of the redeemable shares. The redemption will be treated as a sale or exchange if it (i) is substantially disproportionate with respect to you, (ii) results in a complete termination of your share interest in EPR, or (iii) is not essentially equivalent to a dividend with respect to you, all within the meaning of Section 302(b) of the Code. In determining whether any of these tests have been met, common shares considered to be owned by you by reason

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of certain constructive ownership rules set forth in the Code, as well as common shares actually owned by you, must generally be taken into account. If you do not own (actually or constructively) any common shares of EPR, or an insubstantial percentage of our outstanding common shares, a redemption of your Series C Preferred Shares is likely to qualify for sale or exchange treatment because the redemption would not be essentially equivalent to a dividend. However, because the determination as to whether any of the alternative tests of Section 302(b) of the Code will be satisfied with respect to your Series C Preferred Shares depends upon the facts and circumstances at the time the determination must be made, you are advised to consult your own tax advisor to determine such tax treatment.

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

***Disposition of Series C Preferred Shares***

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

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

***Conversion of Series C Preferred Shares***

If you receive a number of our common shares as a result of a conversion or repurchase of our Series C Preferred Shares, then the transaction will be treated as a recapitalization. As such, you would recognize income or gain only to the extent of the lesser of (1) the excess, if any, of the value of the cash and common shares you receive over your adjusted tax basis in your Series C Preferred Shares surrendered or (2) the cash you receive. Any cash you receive, up to the amount of income or gain recognized, would generally be characterized as a dividend to the extent that a surrender of your Series C Preferred Shares to us for cash only would be taxable as a dividend, taking into account your continuing actual or constructive ownership interest in our shares, if any, as discussed above, and the balance of the recognized amount, if any, will be gain. Your basis in your common shares received would be equal to your basis for your Series C Preferred Shares surrendered, less any cash received, plus any income or gain recognized. Your holding period in your common shares received would be the same as your holding period for the Series C Preferred Shares surrendered. Non-U.S. shareholders may not be eligible for the foregoing partial nonrecognition rules and may instead be subject to special rules discussed below.

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

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

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

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

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