SPIRIT FINANCE CORP
Form S-11/A
February 13, 2012
Table of Contents

As filed with the Securities and Exchange Commission on February 13, 2012

Registration No. 333-177904

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Amendment No. 2

to

Form S-11

REGISTRATION STATEMENT

UNDER

THE SECURITIES ACT OF 1933

Spirit Finance Corporation

(Exact Name of Registrant as Specified in Its Governing Instruments)

14631 North Scottsdale Road, Suite 200, Scottsdale, Arizona 85254

(480) 606-0820

(Address, Including Zip Code and Telephone Number, Including Area Code,

of Registrant s Principal Executive Offices)

Thomas H. Nolan, Jr., Chairman of the Board of Directors and Chief Executive Officer

Peter M. Mavoides, President and Chief Operating Officer

Spirit Finance Corporation 14631 North Scottsdale Road, Suite 200, Scottsdale, Arizona 85254

(480) 606-0820

(Name, Address, Including Zip Code and Telephone Number, Including Area Code, of Agent for Service)

Copies to:

Edward Sonnenschein, Esq. **Julian T.H. Kleindorfer, Esq.** **Latham & Watkins LLP** **885 Third Avenue** **New York, New York 10022** **(212) 906-1200**	**Craig E. Chapman, Esq.** **James O Connor, Esq.** **Bartholomew A. Sheehan, Esq.** **Sidley Austin LLP** **787 Seventh Avenue** **New York, New York 10019** **(212) 839-5599**

Approximate date of commencement of proposed sale to the public: As soon as practicable after this Registration Statement becomes effective.

If any of the Securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act, check the following box: ¨

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

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

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

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

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act. (Check One):

Large accelerated filer	¨	Accelerated filer	¨
Non-accelerated filer	x (Do not check if a smaller reporting company)	Smaller reporting company	¨

The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment that specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933, as amended, or until this registration statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

Table of Contents

The information in this preliminary prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This preliminary prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any jurisdiction where the offer or sale is not permitted.

PROSPECTUS (Subject to Completion)

Issued , 2012

Shares

Spirit Finance Corporation

Common Stock

Spirit Finance Corporation is a self-administered and self-managed real estate company. We invest in single-tenant, operationally essential real estate throughout the United States that is leased on a long-term, triple-net basis primarily to tenants engaged in retail, service and distribution industries.

We are selling shares of our common stock. This is our initial public offering and no public market currently exists for our common stock. We currently expect the initial public offering price of our common stock to be between $ and $ per share.

We intend to apply to have our common stock listed on the New York Stock Exchange under the symbol .

As described herein, concurrently with the completion of this offering, we will issue additional shares of our common stock to certain of our existing lenders in exchange for the extinguishment of $330 million of our outstanding term loan debt. We will use a portion of the net proceeds from this offering to repay an additional $399 million of our outstanding term loan debt.

We have elected to be taxed as a real estate investment trust, or REIT, for federal income tax purposes commencing with our taxable year ended December 31, 2003. To assist us in complying with certain federal income tax requirements applicable to REITs, our charter contains certain restrictions relating to the ownership and transfer of our capital stock, including an ownership limit of 9.8% of our outstanding common stock. See Description of Our Capital Stock Restrictions on Ownership and Transfer for a detailed description of the ownership and transfer restrictions applicable to our common stock.

Investing in our common stock involves risks. See Risk Factors beginning on page 15.

PRICE $ PER SHARE

	Price to Public	Underwriting Discounts and Commissions	Proceeds, before Expenses, to Us
Per Share	$	$	$
Total	$	$	$

We have granted the underwriters an option to purchase up to additional shares of our common stock from us, at the initial public offering price, less underwriting discounts and commissions, within 30 days from the date of this prospectus to cover over-allotments, if any.

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

The underwriters expect to deliver the shares of our common stock to purchasers on , 2012.

Morgan Stanley

Macquarie Capital

UBS Investment Bank

Deutsche Bank Securities

RBC Capital Markets

, 2012

Table of Contents

TABLE OF CONTENTS

Through and including , 2012 (the 25th day after the date of this prospectus), all dealers that buy, sell or trade the common stock may be required to deliver a prospectus, regardless of whether they are participating in this offering. This is in addition to a dealer s obligation to deliver a prospectus when acting as an underwriter and with respect to an unsold allotment or subscription.

You should rely only on the information contained in this prospectus, or in any free writing prospectus prepared by us. We have not, and the underwriters have not, authorized anyone to provide you with different information. If anyone provides you with different or inconsistent 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. You should assume that the information appearing in this prospectus and any free writing prospectus prepared by us is accurate only as of their respective dates or on the date or dates which are specified in these documents. Our business, financial condition, liquidity, results of operations and prospects may have changed since those dates.

We use market data and industry forecasts and projections throughout this prospectus, and in particular in the sections entitled Prospectus Summary, Market Opportunity and Business and Properties. We have obtained substantially all of this information from a market study prepared for us in connection with this offering by Rosen Consulting Group, or RCG, a nationally recognized real estate consulting firm. We have paid RCG a fee of $45,000 for that market study. Such information is included in this prospectus in reliance on RCG s

Table of Contents

authority as an expert on such matters. Any forecasts prepared by RCG are based on data (including third party data), models and experience of various professionals, and are based on various assumptions, all of which are subject to change without notice. See Experts. In addition, we have obtained certain market and industry data from publicly available industry publications. These sources generally state that the information they provide has been obtained from sources believed to be reliable, but that the accuracy and completeness of the information are not guaranteed. The forecasts and projections are based on industry surveys and the preparers experience in the industry, and there is no assurance that any of the projected amounts will be achieved. We believe that the surveys and market research others have performed are reliable, but we have not independently verified this information.

Certain Terms Used in This Prospectus

Unless the context suggests otherwise, references in this prospectus to we, our, us and our company are to Spirit Finance Corporation, a Maryland corporation, together with its consolidated subsidiaries, including Spirit Realty Finance, L.P., which we refer to as our operating partnership.

In this prospectus, we refer to our lessees as tenants and our mortgage and equipment loan obligors as borrowers.

As used in this prospectus, annual rent equals rental revenue for the quarter ended September 30, 2011 multiplied by four.

The term original gross investment means our (and for periods prior to our July 31, 2007 privatization, our predecessor s) initial purchase price for investments, without giving effect to any adjustment to the book basis of our investments arising from our privatization or accumulated depreciation.

As used in this prospectus, the occupancy of our owned properties is calculated by dividing (1) the total number of our owned properties minus the number of our owned properties that are vacant and from which we are not receiving any rental payment, by (2) the total number of our owned properties.

Table of Contents

PROSPECTUS SUMMARY

The following summary highlights information contained elsewhere in this prospectus. This summary is not complete and does not contain all of the information that you should consider before investing in our common stock. You should read the entire prospectus carefully, including the section entitled Risk Factors, as well as the financial statements and related notes included elsewhere in this prospectus, before making an investment decision. Unless otherwise indicated, the information contained in this prospectus assumes (1) that the underwriters over-allotment option is not exercised, (2) that the common stock to be sold in this offering is sold at $ per share, which is the mid-point of the price range set forth on the front cover of this prospectus, and (3) the issuance of shares of our common stock to certain lenders in exchange for the extinguishment of $330 million of our outstanding term loan debt. The actual number of shares of our common stock issued to certain of our lenders will vary as described herein. See Pricing Sensitivity Analysis.

Spirit Finance Corporation

Overview

We invest in single-tenant, operationally essential real estate throughout the United States that is leased on a long-term, triple-net basis primarily to tenants engaged in retail, service and distribution industries. Single-tenant, operationally essential real estate consists of properties that are generally free-standing, commercial real estate facilities where our tenants conduct retail, service or distribution activities that are essential to the generation of their sales and profits. Under a triple-net lease, the tenant is typically responsible for all improvements and is contractually obligated to pay all property operating expenses, such as real estate taxes, insurance premiums and repair and maintenance costs. In support of our primary business of owning and leasing real estate, we have also strategically originated or acquired long-term, commercial mortgage and equipment loans.

We generate our revenue primarily by leasing our properties to our tenants. As of September 30, 2011, our undepreciated gross investment in real estate and loans totaled approximately $3.6 billion, representing investment in 1,134 properties, including properties securing our mortgage loans. Of this amount, 98.1% consisted of our gross investment in real estate, representing ownership of 1,044 properties, and the remaining 1.9% consisted of commercial mortgage and equipment loans receivable secured by 90 properties or related assets. As of September 30, 2011, our owned properties were approximately 97.8% occupied (based on number of properties), and our leases had a weighted-average non-cancelable remaining lease term (based on annual rent) of approximately 12.0 years. Our leases are generally long-term, with non-cancelable initial terms typically of 15 to 20 years and tenant renewal options for additional terms. As of September 30, 2011, approximately 96% of our leases (based on annual rent) provided for increases in future annual base rent.

Table of Contents

Our portfolio of 1,044 owned properties was leased to approximately 160 tenants as of September 30, 2011. Of our approximately 160 tenants, no tenant, other than Shopko Stores Operating Co., LLC, or Shopko, contributed more than 7% of our annual rent. Our tenants operate in 18 different industries, including: general, specialty and discount retail; restaurants; movie theaters; automotive dealers; educational and recreational facilities; and supermarkets. Our properties are geographically diversified across 46 states, with only 4 states contributing more than 5.0% of our annual rent.

The diversity of our portfolio has contributed to its stable occupancy. As of September 30, 2011 and December 31, 2010, 2009, 2008, 2007 and 2006, our occupancy rate (based on number of properties) was 97.8%, 96.3%, 99.4%, 99.0%, 100% and 100%, respectively. We believe that the occupancy of our portfolio, particularly during the economic downturn of 2008 through 2010, reflects its strength. As illustrated in the chart below, since inception in 2003 our occupancy has never been below 96.1% (based on number of properties).

2

Table of Contents

As of September 30, 2011, one of our tenants, Shopko, contributed approximately 26.8% of our annual rent, with 112 properties leased pursuant to a master lease with an initial term that expires in June 2026 and two properties leased under individual leases. Recently, Shopko and Pamida Stores Operating Co., LLC, or Pamida, another one of our general merchandising tenants, completed a merger. The combined company will contribute approximately 30.5% of our annual rent. Based on financial information supplied to us by Shopko, the 112 properties that we lease to Shopko pursuant to a master lease had a property-level rent coverage ratio well in excess of our target underwriting standard of 2.0x for the fiscal year ended January 29, 2011. For a discussion of how we calculate property-level rent coverage, see Business and Properties Risk Management Tenant Financial Distress Risk Early Lease Termination Risk Measurement. Additionally, at the corporate level, Specialty Retail Shops Holding Corp., the guarantor of the Shopko leases, had corporate-level EBITDAR of $154.4 million for the fiscal year ended January 29, 2011 and a ratio of corporate-level EBITDAR to net interest and rent expense of 1.57x for that period. EBITDAR represents net income before net interest expense, depreciation and amortization, income tax expense (benefit) and rent. Shopko s operating performance has improved in recent years in a very competitive environment, and its shadow rating, as generated by a product licensed by us from Moody s Analytics, Inc., or Moody s Analytics, exceeds the targeted average for our portfolio. See Business and Properties Our Real Estate Investment Portfolio Investment Diversification Diversification by Tenant for a reconciliation of Specialty Retail Shops Holding Corp. s corporate-level EBITDAR to its net income.

As we look to selectively grow our portfolio, we will seek to leverage the experience of our senior management team and our existing underwriting, leasing, asset management and reporting infrastructure. We believe the acquisition of additional operationally essential retail, service and distribution properties, coupled with our $3.6 billion seasoned investment portfolio, will provide the opportunity to achieve superior risk-adjusted returns. We intend to continue to actively manage our existing portfolio and invest in real estate that produces stable rental revenue that increases over time pursuant to contractually specified rent increases.

Our History

We were formed in 2003 and became a public company in December 2004. We were subsequently taken private by a consortium of private investors in August 2007 in a transaction that was structured and led by an affiliate of Macquarie Capital (USA) Inc., one of the underwriters of this offering, which we refer to as our privatization. Following our privatization, we initially continued to execute our business plan and grow our portfolio. However, during 2008, in response to deteriorating economic conditions, we shifted our focus to reducing our indebtedness and managing our portfolio. From January 1, 2008 to December 31, 2010, we reduced our indebtedness by $519.1 million. The vast majority of the owned properties in our portfolio as of September 30, 2011 were acquired prior to our privatization. We have recently augmented our senior management team through the addition of executives with significant real estate, capital markets and net lease industry experience. Thomas H. Nolan, Jr., our new Chief Executive Officer, has been active in the real estate industry for over 25 years, holding numerous leadership positions in private and public real estate companies. Peter M. Mavoides, our new President and Chief Operating Officer, has been active in the single-tenant, net lease industry for over 13 years, holding leadership positions for the past 8 years. Under our new leadership, we have begun to pursue acquisition opportunities and have completed $51.4 million of acquisitions since September 2011.

We have elected to be taxed as a REIT for federal income tax purposes commencing with our taxable year ended December 31, 2003. We believe that we have been organized and have operated in a manner that has allowed us to qualify as a REIT for federal income tax purposes commencing with such taxable year, and we intend to continue operating in such a manner.

Table of Contents

Competitive Strengths

We believe the following competitive strengths contribute to the stability of our rental revenues and distinguish us from our competitors:

Large Scale and Diversified Portfolio. As of September 30, 2011, our portfolio consisted of 1,044 owned properties, with approximately 160 tenants operating in 46 states and diversified across 18 different industries, including: general, specialty and discount retail; restaurants; movie theaters; automotive dealers; educational and recreational facilities; and supermarkets. We believe it would be difficult for a new competitor to replicate such a diversified portfolio on a comparable scale. The diversity of our portfolio reduces the risks associated with adverse events affecting a particular tenant or an economic decline in any particular state or industry. Additionally, the scale of our portfolio allows us to make acquisitions without introducing additional concentration risks. In addition, our operating platform is scalable and will allow us to make new investments without the need for significant additional administrative or management costs.

Long-Term Triple-Net Leases. As of September 30, 2011, our owned properties were approximately 97.8% occupied (based on number of properties), with a weighted average non-cancelable remaining lease term (based on annual rent) of approximately 12.0 years. Due to the triple-net structure of over 95% of our leases (based on annual rent) as of September 30, 2011, we do not expect to incur significant capital expenditures, and the potential impact of inflation on our operating expenses is minimal. Additionally, as of September 30, 2011, approximately 96% of our leases (based on annual rent) provided for increases in future annual base rent.

Established Company with Proven Performance. Our company has been actively investing in triple-net leased real estate since 2003, is well-known within the industry and benefits from an established infrastructure supporting our underwriting, leasing, asset management and reporting functions. From our inception in 2003 through September 30, 2011, we have made gross investments in excess of $4.05 billion in properties and loans receivable. The vast majority of our owned properties as of September 30, 2011 were acquired prior to our privatization. Since our inception, our occupancy has never been below 96.1% (based on number of properties), despite the economic downturn of 2008 through 2010. We believe that our experience, in-depth knowledge of the triple-net lease market and extensive network of long-standing relationships in the real estate industry will contribute to the stability of our rental revenues and also provide us access to a pipeline of attractive investment opportunities to allow us to expand our revenue base.

Disciplined Underwriting and Risk Management Expertise. Our developed underwriting and risk management expertise enhances our ability to identify and structure investments that provide superior risk-adjusted returns, due to specific investment risks that we believe can be identified and mitigated through intensive credit and real estate analysis, tailored lease structures (such as master leases) and ongoing tenant monitoring. When underwriting new acquisitions we generally target property-level rent coverage ratios in excess of 2.0x. Since our inception in 2003 through November 30, 2011, our estimated cumulative loss resulting from properties and loans receivable experiencing financial distress, which we define as tenant bankruptcy or tenant non-performance resulting in our possession of the properties, was $128.7 million (of which we have realized $102.6 million of losses), or 3.2% of our original gross investment since inception. Our recovery rate on properties and loans receivable experiencing financial distress (including an estimate for properties in distress that have not yet been resolved) during that period is 69.8%. We believe our developed underwriting and risk management expertise has contributed to identifying and mitigating risk and our recovery rate. For a discussion of how we calculated estimated cumulative loss and our recovery rate, see Business and Properties Risk Management Tenant Financial Distress Risk Historical Summary of Tenant Financial Distress Portfolio.

Table of Contents

Experienced Management Team. Our senior management has significant experience in the real estate industry and in managing public companies. Our Chairman and Chief Executive Officer, Thomas H. Nolan, Jr., has been active in the real estate industry for over 25 years, holding numerous leadership positions in private and public real estate companies. Our President and Chief Operating Officer, Peter M. Mavoides, has been active in the single-tenant, net lease industry for over 13 years, holding leadership positions for the past 8 years. Our Chief Financial Officer, Michael A. Bender, has held leadership positions for over 20 years in finance and real estate. Our Senior Vice President, Gregg A. Seibert, who has been with us since our inception, has over 20 years of experience in real estate finance, including over 15 years of leadership responsibilities in credit, acquisitions and portfolio management in the sale-leaseback sector. Excluding these individuals, our asset management and leasing management have worked at our company for an average of 5 years and have a high level of familiarity with our portfolio and tenants.

Attractive In-Place Long-Term Indebtedness. Upon the completion of this offering and the debt conversion described below, we expect to have approximately $2.0 billion of outstanding non-recourse mortgage indebtedness on a pro forma basis, which had a weighted average maturity of 7.1 years as of September 30, 2011 and an average annual interest rate of approximately 6.12% for the nine months ended September 30, 2011 (excluding non-cash interest expense attributable to the amortization of deferred financing costs and debt discounts). Prior to January 1, 2016, we only have $138.8 million of balloon payments due at maturity. Approximately $1.7 billion of our pro forma indebtedness is partially amortizing, providing for an ongoing reduction in principal prior to maturity. In addition, we expect to have a $ million revolving credit facility in place upon the completion of this offering to help fund future acquisitions and for general corporate purposes.

Business and Growth Strategies

Our objective is to maximize stockholder value by seeking superior risk-adjusted returns, with an emphasis on stable rental revenue, by investing primarily in single-tenant, operationally essential real estate leased on a long-term, triple-net basis. Single-tenant, operationally essential real estate consists of properties that are generally free-standing, commercial real estate facilities where our tenants conduct retail, service or distribution activities that are essential to the generation of their sales and profits. As of September 30, 2011, we considered 99.5% of our occupied properties to be operationally essential. We intend to pursue our objective through the following business and growth strategies.

Focus on Small and Middle Market Companies. We primarily focus on investing in properties that we net lease to unrated small and middle market companies that we determine have attractive credit characteristics and stable operating histories. Properties leased to small and middle market companies may offer us the opportunity to achieve superior risk-adjusted returns, as a result of our intensive credit and real estate analysis, lease structuring and portfolio construction. Small and middle market companies are often willing to enter into leases with structures and terms that we consider attractive (such as master leases and leases that require ongoing tenant financial reporting) and that we believe increase the security of rental payments. For example, by acquiring multiple properties from a small or middle market company and leasing them back to the seller under a master lease, the leased properties may represent a meaningful percentage of the tenant s overall operations and increase the importance of the lease to the tenant s business. In addition to small and middle market companies, we selectively acquire properties leased to large companies where we believe that we can achieve superior risk-adjusted returns.

Table of Contents

The following chart highlights the tenants that we target based on company size and corporate credit equivalent:

Use Our Developed Underwriting and Risk Management Processes to Structure and Manage Our Portfolio. We seek to maintain the stability of our rental revenue and the long-term return on our investments by using our developed underwriting and risk management processes to structure and manage our portfolio. We believe the efficacy of our underwriting and risk management processes is illustrated by the historical performance of our portfolio. In particular, our underwriting and risk management processes emphasize the following:

- *Leases for Operationally Essential Real Estate with Relatively Long-Terms.* We seek to own properties that are operationally essential to our tenants, thereby reducing the risk that the tenant would choose not to renew an expiring lease or reject a lease in bankruptcy. In addition, we seek to enter into leases with relatively long-terms, typically with non-cancelable initial terms of 15 to 20 years and tenant renewal options for additional terms with attractive rent escalation provisions.

- *Use of the Master Lease Structure.* Where appropriate, we seek to enter into master leases, pursuant to which we lease multiple properties to a single tenant on an all or none basis. In a master lease structure, a tenant is responsible for a single lease payment relating to the entire portfolio of leased properties, as opposed to multiple lease payments relating to individually leased properties. The master lease structure prevents a tenant from cherry picking locations, where it unilaterally gives up underperforming properties while maintaining its leasehold interest in well-performing properties. As of September 30, 2011, we had 53 master leases that had an average non-cancellable remaining lease term (based on annual rent) of 13.5 years and contributed approximately 65.0% of our annual rent. Our largest master lease, consisting of 112 properties, contributed 26.7% of our annual rent, and our smallest master lease, consisting of two properties, contributed less than 1% of our annual rent. The average number of properties included under our master leases as of September 30, 2011 was 12.0.

- *Active Management and Monitoring of Risks Related to Our Investments.* When monitoring existing investments or evaluating new investments, we typically consider two broad categories of risk: (1) tenant financial distress risk; and (2) lease renewal risk. See Business and Properties Risk Management. We seek to measure these risks through various processes, including the use of a credit modeling product that we license from Moody s Analytics, estimates of the performance of the leased properties relative to rental payments due under the leases and review of current market data and our historical recovery rates on re-leased properties and property dispositions. Our underwriting and risk management processes are designed to structure new investments and manage existing investments to address and mitigate each of the above risks and preserve the long-term return on our invested capital.

Table of Contents

- *Portfolio Diversification.* We monitor and manage the diversification of our real estate investment portfolio in order reduce the risks associated with adverse developments affecting a particular tenant, property, industry or region. Our strategy emphasizes a portfolio that (1) derives no more than 10% of its annual rent from any single tenant or more than 2.5% of its annual rent from any single property, (2) is leased to tenants operating in various industries and (3) is located across the United States without significant geographic concentration. While we consider the foregoing when making investments, we have opportunistically made investments in the past that do not meet one or more of these criteria, and we may make additional investments that do not meet one or more of these criteria if we believe the opportunity is sufficiently attractive. As of September 30, 2011, one tenant, Shopko at 26.8%, contributed more than 10% of our annual rent (approximately 30.5%, assuming completion of Shopko s pending merger with another one of our tenants), and no one property contributed more than 2.1% of our annual rent.

Enhance Our Portfolio through Contractual Growth. Approximately 96% of our leases (based on annual rent) contain contractual provisions that increase the rental revenue over the term of the lease. Of these leases, 24% contain fixed contractual rental increases, and the remaining 76% contain increases based on the lesser of a fixed contractual percentage increase or the increase in the consumer price index, or CPI. Assuming the same CPI growth experienced during the 12 months ended September 30, 2011, our contractual rent growth for the 12 months ending September 30, 2012 would be $5.3 million. Approximately $2.7 million of this amount is attributable to an increase in rent under our master lease with Shopko in June 2011. The rents under our master lease with Shopko adjust every three years.

Selectively Grow Our Portfolio through Acquisitions. We plan to selectively make acquisitions that contribute to our portfolio s tenant, industry and geographic diversification. According to Rosen Consulting Group, or RCG, a nationally recognized real estate consulting firm, through September 2011 the 12-month trailing investment volume in single-tenant properties was $23.6 billion. Given this volume of transactions in the single-tenant market, we believe there will be ample acquisition opportunities fitting our acquisition criteria.

Since September 2011, we have completed $51.4 million of acquisitions consistent with our underwriting criteria. We believe our experience, in-depth market knowledge and extensive network of long-standing relationships in the real estate industry will provide us access to an ongoing pipeline of attractive investment opportunities.

Continue to Deleverage Our Portfolio. Upon the completion of this offering and the debt conversion described below, we will have approximately $2.0 billion of non-recourse mortgage indebtedness on a pro forma basis (this represents a decrease of approximately $1.4 billion of indebtedness from January 1, 2008). Additionally, most of our remaining debt will be partially amortizing, and its principal amount will be reduced prior to the balloon payments due at maturity. Contractual amortization payments are scheduled to reduce our outstanding principal amount of indebtedness by $184.7 million prior to January 1, 2016. We also may use any cash from operations in excess of the distributions that we expect to pay to selectively reduce our indebtedness.

We believe contractual rent growth, selective growth through acquisitions and the ongoing deleveraging of our portfolio will contribute to our cash available for distributions.

Financing Strategy

Our long-term financing strategy is to maintain a leverage profile that creates operational flexibility and generates superior risk-adjusted returns for our stockholders. It is our intention to pursue a long-term capital strategy that brings our leverage profile in line with that of our peers over time. Although we are not required to maintain a particular leverage ratio, we intend to employ prudent amounts of debt financing as a means of providing additional funds for the acquisition of assets, to refinance existing debt or for general corporate purposes.

Table of Contents

We anticipate using a number of different sources to finance our acquisitions and operations going forward, including cash from operations, issuance of debt securities, private financings (such as bank credit facilities, which may or may not be secured by our assets), property-level mortgage debt, common or preferred equity issuances or any combination of these sources, to the extent available to us, or other sources that may become available from time to time. To the extent practicable, we expect to maintain a debt profile with manageable near-term maturities.

Market Opportunity

According to a market study prepared for us in connection with this offering by RCG, the current outlook for the net leased real estate market is positive for the following reasons:

- the net lease market has historically provided investors with attractive returns across various economic cycles when compared to other types of real estate investments;
- increased single-tenant transaction volume reflects investors growing interest in single-tenant investment opportunities;
- the market is well positioned to accommodate increased investment activity given the $1.5 trillion to more than $2.0 trillion of U.S. real estate estimated to be held by corporate owner-occupiers; and
- strict lending guidelines, a reduced appetite for risk from both debt and equity investors and upcoming mortgage and corporate debt maturities should yield attractive pricing for many single-tenant, net leased properties and increased opportunities for sale-leaseback transactions.

Summary Risk Factors

You should carefully consider the matters discussed in the Risk Factors section beginning on page 15 of this prospectus prior to deciding whether to invest in our common stock. Some of these risks include:

- We are subject to risks related to commercial real estate ownership that could reduce the value of our properties.
- Global market and economic conditions may materially and adversely affect us and our tenants.
- Our business is dependent upon our tenants successfully operating their businesses and their failure to do so could materially and adversely affect us.
- A substantial number of our properties are leased to one tenant, which may result in increased risk due to tenant and industry concentrations.
- One tenant, operating in the building materials industry, leases a substantial number of our properties that contribute 6.8% of our annual rent and has been adversely affected by the current economic environment, which may result in increased risk of tenant default.
- Loss of our key personnel with long-standing business relationships could materially impair our ability to operate successfully.

We expect to have approximately $2.0 billion of indebtedness outstanding following this offering and the debt conversion described below on a pro forma basis, which may expose us to the risk of default under our debt obligations.

Current market conditions could adversely affect our ability to refinance existing indebtedness or obtain additional financing for growth on acceptable terms or at all, which could materially and adversely affect us.

Failure to qualify as a REIT would materially and adversely affect us and the value of our common stock.

Table of Contents

There can be no assurance that we will be able to make or maintain cash distributions, and certain agreements relating to our indebtedness may, under certain circumstances, limit or eliminate our ability to make distributions to our common stockholders.

Concurrent Debt Conversion

We currently have outstanding $729 million of term loan indebtedness, or the term loan, maturing in August 2013. The term loan is separated into two tranches: term loan B, or TLB, with an outstanding principal balance of $399 million and term loan C, or TLC, with an outstanding principal balance of $330 million. As described in further detail in Pricing Sensitivity Analysis, upon the completion of this offering, all $330 million of our currently outstanding TLC will be extinguished and converted into shares of our common stock. We refer to this transaction as the debt conversion. The number of shares of our common stock to be issued to TLC lenders in the debt conversion depends, in part, on the initial public offering price. See Pricing Sensitivity Analysis for a sensitivity analysis of the number of shares to be issued in the debt conversion. Assuming an initial public offering price of $ per share, which is the mid-point of the price range set forth on the front cover of this prospectus, we would issue shares of our common stock in the debt conversion.

Distribution Policy

We intend to pay cash distributions to our common stockholders out of assets legally available. We intend to make a pro rata distribution with respect to the period commencing upon the completion of this offering and ending on , 2012 based on a distribution rate of $ per share of our common stock for a full quarter. On an annualized basis, this would be $ per share of our common stock, or an annual distribution rate of approximately % based on the mid-point of the price range set forth on the front cover of this prospectus. We intend to maintain our initial distribution rate for the 12 months following the completion of this offering unless our results of operations, funds from operations, or FFO, liquidity, cash flows, financial condition, or prospects, economic conditions or other factors differ materially from the assumptions used in projecting our initial distribution rate. We intend to make distributions that will enable us to meet the distribution requirements applicable to REITs and to eliminate or minimize our obligation to pay corporate-level federal income and excise taxes. We may in the future also choose to meet such distribution requirements by distributing cash and shares of our common stock. See Federal Income Tax Considerations Taxation of Our Company Annual Distribution Requirements and Risk Factors Risks Related to Our Status as a REIT We may in the future choose to make distributions in shares of our common stock, in which case you may be required to pay tax in excess of the cash you receive. We do not intend to reduce the expected distribution per share if the underwriters over-allotment option is exercised.

Any distributions will be at the sole discretion of our board of directors, and their form, timing and amount, if any, will depend upon a number of factors, including our actual and projected results of operations, FFO, liquidity, cash flows and financial condition, the revenue we actually receive from our properties, our operating expenses, our debt service requirements, our capital expenditures, prohibitions and other limitations under our financing arrangements, our REIT taxable income, the annual REIT distribution requirements, applicable law and such other factors as our board of directors deems relevant.

Restrictions on Ownership and Transfer of Our Common Stock

Our charter, subject to certain exceptions, authorizes our directors to take such actions as are necessary or advisable to preserve our qualification as a REIT. Furthermore, our charter prohibits any person from actually or constructively owning more than 9.8% in value or in number, whichever is more restrictive, of the outstanding shares of our common stock or 9.8% in value of the aggregate of the outstanding shares of all classes and series of our stock. Our board of directors, in its sole discretion, may exempt a proposed transferee from the ownership limits if certain conditions are satisfied. However, our board of directors may not grant an exemption from the ownership limits to any proposed transferee whose ownership, direct or indirect, of in excess of 9.8% of the value or number of outstanding shares of our common stock or 9.8% in value of the aggregate of the outstanding shares of all classes or series of our stock, could jeopardize our status as a REIT. These restrictions on transferability and ownership will not apply if our board of directors determines that it is no longer in our best interests to continue to qualify as a REIT. The ownership limits may delay or impede a transaction or a change of control that might be in your best interest. See Description of Our Capital Stock Restrictions on Ownership and Transfer.

As permitted by our charter, our board of directors will, upon completion of this offering, grant to exemptions from the ownership limits, subject to various conditions and limitations, as described under Description of Our Capital Stock Restrictions on Ownership and Transfer.

Our Tax Status

We have elected to be taxed as a REIT for federal income tax purposes commencing with our taxable year ended December 31, 2003. We believe that we have been organized and have operated in a manner that has allowed us to qualify as a REIT for federal income tax purposes commencing with such taxable year, and we intend to continue operating in such a manner. To maintain REIT status, we must meet a number of organizational and operational requirements, including a requirement that we annually distribute to our stockholders at least 90% of our REIT taxable income, determined without regard to the dividends paid deduction and excluding any net capital gains. See Federal Income Tax Considerations.

Corporate Information

We were formed in 2003 and became a public company in December 2004. We were subsequently taken private in August 2007. Our principal executive office is located at 14631 North Scottsdale Road, Suite 200, Scottsdale, Arizona 85254. Our telephone number is (480) 606-0820.

Table of Contents

The Offering

Common stock offered by us	shares (plus up to an additional shares of our common stock that we may issue and sell upon the exercise of the underwriters over-allotment option in full).
Common stock to be outstanding after this offering	shares[(1)]
Use of proceeds	We estimate that the net proceeds to us from this offering, after deducting underwriting discounts and commissions and other estimated expenses payable by us, will be approximately $ million, based on an assumed initial public offering price of $ per share, which is the mid-point of the price range set forth on the front cover of this prospectus ($ million if the underwriters exercise their over-allotment option in full). We intend to use $399 million of the net proceeds from this offering to repay our outstanding TLB, $ million to pay expenses associated with securing lenders consents to this offering and related transactions and the remainder for general business and working capital purposes, including potential future acquisitions. See Use of Proceeds.
Risk Factors	Investing in our common stock involves risks. You should carefully read and consider the information set forth under the heading Risk Factors beginning on page 15 and other information included in this prospectus before investing in our common stock.
Proposed New York Stock Exchange symbol	

(1) Includes (1) shares of our common stock held by continuing investors, (2) shares of our common stock that we will issue to TLC lenders in the concurrent debt conversion, assuming an initial public offering price of $ per share, which is the mid-point of the price range set forth on the front cover of this prospectus, and (3) to be granted to our directors, executive officers and other employees pursuant to our equity incentive plan, or the Incentive Award Plan. See Pricing Sensitivity Analysis for a sensitivity analysis of the number of shares to be issued in the debt conversion. Excludes (1) shares of our common stock issuable upon the exercise of the underwriters over-allotment option in full and (2) shares of our common stock reserved for further issuance under the Incentive Award Plan, as more fully described in Executive Compensation Incentive Award Plan.

Table of Contents

Summary Selected Financial Data

Our historical consolidated balance sheet data as of December 31, 2010 and 2009 and consolidated operating data for the years ended December 31, 2010, 2009 and 2008 have been derived from our audited historical consolidated financial statements included elsewhere in this prospectus. Our historical consolidated balance sheet data as of December 31, 2008 has been derived from our audited historical consolidated financial statements not included in this prospectus. The below information also includes our unaudited consolidated balance sheet data as of September 30, 2011 and our consolidated operating data for the nine months ended September 30, 2011 and September 30, 2010 which have been derived from our historical unaudited consolidated financial statements included elsewhere in this prospectus. The unaudited consolidated financial statements were prepared on a basis consistent with our audited financial statements and include, in the opinion of management, all adjustments, consisting only of normal recurring adjustments, necessary for the fair statement of the financial information contained in those statements. Our historical consolidated financial data included below and set forth elsewhere in this prospectus are not necessarily indicative of our future performance.

Our unaudited summary selected pro forma consolidated financial and operating data as of and for the nine months ended September 30, 2011 and for the year ended December 31, 2010 assumes the completion of this offering, the debt conversion and related transactions as of the beginning of the periods presented for the operating data and as of the stated date for the balance sheet data. Our pro forma financial information is not necessarily indicative of what our actual financial position and results of operations would have been as of the date and for the periods indicated, nor does it purport to represent our future financial position or results of operations.

You should read the following summary selected financial and other data together with Management s Discussion and Analysis of Financial Condition and Results of Operations, Business and Properties and our consolidated financial statements and related notes appearing elsewhere in this prospectus.

Table of Contents

	Nine Months Ended September 30, (in thousands, except per share data)			Year Ended December 31, (in thousands, except per share data)			
	Pro forma 2011 (unaudited)	**Historical 2011 (unaudited)**	**Historical 2010 (unaudited)**	**Pro forma 2010 (unaudited)**	**Historical 2010**	**Historical 2009**	**Historical 2008**
Operating Data:							
Revenues:							
Rentals	$ 201,134	$ 201,134	$ 202,446	$ 269,209	$ 269,209	$ 266,072	$ 266,961
Interest income on loans receivable	5,120	5,120	7,237	9,572	9,572	10,098	13,364
Interest income and other	704	704	9,512	14,491	14,491	6,477	4,969
Total revenues	206,958	206,958	219,195	293,272	293,272	282,647	285,294
Expenses:							
General and administrative	14,000	22,668	15,982	13,972	19,631	19,864	23,058
Litigation	151	151	7,306	22,282	22,282		
Property costs	4,368	4,368	2,126	3,050	3,050	3,011	2,788
Interest	97,767	126,519	130,059	136,220	173,054	208,538	231,194
Depreciation and amortization	83,290	83,290	83,881	111,548	111,548	112,344	111,875
Impairments	5,409	5,409	15,113	26,439	26,439	7,715	5,521
Total expenses	204,985	242,405	254,467	313,511	356,004	351,472	374,436
Total other income (expense)			9,480	(9,855)	(3,110)	6,810	
Income (loss) from continuing operations before income tax expense	1,973	(35,447)	(25,792)	(30,094)	(65,842)	(62,015)	(89,142)
Income tax (benefit) expense	(37)	(37)	118	239	239	3,346	1,134
Income (loss) from continuing operations	$ 2,010	(35,410)	(25,910)	$ (30,333)	(66,081)	(65,361)	(90,276)
Loss from discontinued operations[(1)]		(10,145)	(10,489)		(20,456)	(57,322)	(64,243)
Net loss		$ (45,555)	$ (36,399)		$ (86,537)	$ (122,683)	$ (154,519)
Income (loss) per share of common stock from continuing operations:							
Basic	$			$			
Diluted	$			$			
Weighted average outstanding shares of common stock:							
Basic							
Diluted							

(1) Gains and losses from property dispositions during a period or expected losses from properties classified as held for sale at the end of the period, as well as all operations from those properties, are reclassified to and reported as part of discontinued operations.

Table of Contents

	Nine Months Ended September 30, (dollars in thousands)			Year Ended December 31, (dollars in thousands)			
	Pro forma 2011 (unaudited)	Historical 2011 (unaudited)	Historical 2010 (unaudited)	Pro forma 2010 (unaudited)	Historical 2010	Historical 2009	Historical 2008 (unaudited)
Balance Sheet Data (end of period):							
Gross investments including intangible lease assets	$ 3,567,040	$ 3,567,040	$ 3,708,694		$ 3,610,834	$ 3,740,261	$ 3,997,614
Real estate, net	2,880,366	2,880,366	3,025,913		2,982,303	3,118,806	3,429,155
Cash and cash equivalents	99,431	53,414	61,475		88,341	65,072	76,634
Total assets	3,284,544	3,244,395	3,492,655		3,396,842	3,618,507	4,012,914
Debt obligations	1,898,328	2,621,614	2,773,238		2,730,994	2,866,923	3,089,248
Total liabilities	1,977,431	2,700,717	2,853,775		2,806,741	2,948,828	3,217,235
Stockholders equity	1,307,113	543,678	638,880		590,101	669,679	795,679
Other Data:							
Cash NOI from continuing operations before lease termination fees[(1)]	$ 200,863	$ 200,863	$ 206,314	$ 274,005	$ 274,005	$ 271,515	$ 279,951
FFO[(1)]		$ 52,091	$ 72,903		$ 70,563	$ 58,112	$ 57,741
FFO from continuing operations, as adjusted[(1)]	$ 89,747	$ 52,327	$ 70,281	$ 138,099	$ 95,606	$ 41,210	$ 25,593
EBITDA from continuing operations[(1)]	$ 183,030	$ 174,362	$ 188,148	$ 217,674	$ 218,760	$ 258,867	$ 253,927
EBITDA from continuing operations, as adjusted[(1)]	$ 188,590	$ 179,922	$ 201,087	$ 276,250	$ 270,591	$ 259,772	$ 259,448
Number of properties in investment portfolio	1,134	1,134	1,155	1,161	1,161	1,157	1,291
Owned properties occupancy at period end (based on number of properties)	98%	98%	96%	96%	96%	99%	99%

(1) For definitions and reconciliations of Cash NOI from continuing operations before lease termination fees, FFO, FFO from continuing operations, as adjusted, EBITDA from continuing operations and EBITDA from continuing operations, as adjusted, see Selected Financial Data.

Table of Contents

RISK FACTORS

Investing in our common stock involves risks. Before you invest in our common stock, you should carefully consider the risk factors below together with all of the other information included in this prospectus. The occurrence of any of the following risks could materially and adversely affect our business, prospects, financial condition, liquidity, results of operations and our ability to service our debt and make or sustain distributions to our stockholders, which could result in a partial or complete loss of your investment in our common stock. Some statements in this prospectus, including statements in the following risk factors, constitute forward-looking statements. Please refer to the section in this prospectus entitled Special Note Regarding Forward-Looking Statements.

Risks Related to Our Business and Properties

We are subject to risks related to commercial real estate ownership that could reduce the value of our properties.

Our core business is the ownership of real estate that is leased to retail, service and distribution companies on a triple-net basis. Accordingly, our performance is subject to risks incident to the ownership of commercial real estate, including:

- inability to collect rents from tenants due to financial hardship, including bankruptcy;
- changes in local real estate conditions in the markets in which we operate, including the availability and demand for single-tenant retail space;
- changes in consumer trends and preferences that affect the demand for products and services offered by our tenants;
- inability to lease or sell properties upon expiration or termination of existing leases;
- environmental risks related to the presence of hazardous or toxic substances or materials on our properties;
- the subjectivity of real estate valuations and changes in such valuations over time;
- the illiquid nature of real estate compared to most other financial assets;
- changes in laws and governmental regulations, including those governing real estate usage and zoning;
- changes in interest rates and the availability of financing; and
- changes in the general economic and business climate.

The occurrence of any of the risks described above may cause the value of our real estate to decline, which could materially and adversely affect us.

Global market and economic conditions may materially and adversely affect us and our tenants.

In the United States, market and economic conditions continue to be challenging as a result of the recent economic crisis, which resulted in increased unemployment, large-scale business failures and tight credit markets. Our results of operations are sensitive to changes in the overall economic conditions that impact our tenants financial condition and leasing practices. Adverse economic conditions such as high unemployment levels, interest rates, tax rates and fuel and energy costs may have an impact on the results of operations and financial conditions of our tenants. During periods of economic slowdown, rising interest rates and declining demand for real estate may result in a general decline in rents or an increased incidence of defaults under existing leases. Rental rates and valuations for retail space, which have decreased over the past few years, have not fully recovered to pre-recession levels and we are unable to predict when they may do so. Continued volatility in the

Table of Contents

United States and global markets makes it difficult to determine the breadth and duration of the impact of the recent economic and financial market crises and the ways in which our tenants and our business may be affected. A continuation of the recent lack of demand for rental space could adversely affect our ability to maintain our current tenants and gain new tenants, which may affect our growth and profitability. Accordingly, the prolonged continuation or further worsening of recent financial conditions could materially and adversely affect us.

Our business is dependent upon our tenants successfully operating their businesses and their failure to do so could materially and adversely affect us.

Generally, each of our properties is operated and occupied by a single tenant. Therefore, the success of our investments is materially dependent on the financial stability of our tenants. The success of any one of our tenants is dependent on its individual business and its industry, which could be adversely affected by economic conditions in general, changes in consumer trends and preferences and other factors over which neither they nor we have control. Our portfolio consists primarily of properties leased to single tenants that operate in multiple locations, which means we own numerous properties operated by the same tenant. To the extent we finance numerous properties operated by one company, the general failure of that single tenant or a loss or significant decline in its business could materially and adversely affect us.

At any given time, any tenant may experience a downturn in its business that may weaken its operating results or the overall financial condition of individual properties or its business as whole. As a result, a tenant may delay lease commencement, fail to make rental payments when due, decline to extend a lease upon its expiration, become insolvent or declare bankruptcy. We depend on our tenants to operate the properties we own in a manner which generates revenues sufficient to allow them to meet their obligations to us, including their obligations to pay rent, maintain certain insurance coverage, pay real estate taxes and maintain the properties in a manner so as not to jeopardize their operating licenses or regulatory status. The ability of our tenants to fulfill their obligations under our leases may depend, in part, upon the overall profitability of their operations. Cash flow generated by certain tenant businesses may not be sufficient for a tenant to meet its obligations to us. Although we consider 99.5% of our occupied properties to be operationally essential to our tenants, meaning the property is essential to the tenant s generation of sales and profits, this does not guarantee that a tenant s operations at a particular property will be successful or that the tenant will meet all of its obligations to us. We could be materially and adversely affected if a number of our tenants were unable to meet their obligations to us.

Single-tenant leases involve significant risks of tenant default.

Our strategy focuses primarily on investing in single-tenant triple-net leased properties throughout the United States. The financial failure of, or default in payment by, a single tenant under its lease is likely to cause a significant or complete reduction in our rental revenue from that property and a reduction in the value of the property. We may also experience difficulty or a significant delay in re-leasing or selling such property. This risk is magnified in situations where we lease multiple properties to a single tenant under a master lease. A tenant failure or default under a master lease could reduce or eliminate rental revenue from multiple properties and reduce the value of such properties. Although the master lease structure may be beneficial to us because it restricts the ability of tenants to remove individual underperforming assets, there is no guarantee that a tenant will not default in its obligations to us or decline to renew its master lease upon expiration. The default of a tenant that leases multiple properties from us could materially and adversely affect us.

A substantial number of our properties are leased to one tenant, which may result in increased risk due to tenant and industry concentrations.

Approximately 26.8% of our annual rent was generated by properties leased to Shopko, which operates general merchandise retail locations under the Shopko name. Recently, Shopko and Pamida, another one of our general merchandising tenants, completed a merger. The combined company will contribute approximately 30.5% of our annual rent. Currently, 114 properties are leased to Shopko pursuant to the terms of one master lease and two individual leases. As a result of the completion of the Shopko-Pamida merger, we lease an

Table of Contents

additional 67 stores to the combined company, pursuant to our master lease with Pamida. Because a significant portion of our revenues are derived from rental revenues received from Shopko, defaults, breaches or delay in payment of rent by Shopko may materially and adversely affect us. Effective January 2009, we began deferring collection and recognition of a portion of Shopko s rent for a two-year period totaling $3.0 million in the aggregate and postponed scheduled contingent rent increases during this time. In September 2010, Shopko repaid, and we recognized, the total accumulated deferred amount ($2.6 million) plus interest before its contractual due dates. As agreed, the scheduled contingent rent increase from Shopko was postponed from its originally scheduled date of June 2009 to June 2011, at which time Shopko began to pay and we began to recognize the increased rent amount.

As a result of the significant number of properties leased to Shopko, our results of operations and financial condition will be closely tied to the performance of the Shopko stores and the retail industry in which they operate. Shopko operates as a multi-department general merchandise retailer and retail health services provider primarily in mid-size and larger communities in the Midwest, Pacific Northwest and Western Mountain states. Shopko is subject to the following risks, as well as other risks that we are not currently aware of, that could adversely affect its ability to pay rent to us:

- The retail industry in which Shopko operates is highly competitive, which could limit growth opportunities and reduce profitability for Shopko. Shopko competes with other discount retail merchants as well as mass merchants, catalog merchants, internet retailers and other general merchandise, apparel and household merchandise retailers. Shopko faces strong competition from large national discount retailers, such as Walmart, Kmart and Target, and mid-tier merchants such as Kohl s and JCPenney.

- Shopko stores are geographically located in a limited number of regions, particularly in the Midwest, Pacific Northwest and Western Mountain states. Adverse economic conditions in these regions may materially and adversely affect Shopko s results of operations, retail sales and ability to make payments to us under its leases.

- Fluctuations in quarterly performance and seasonality in retail operations may cause Shopko s results of operations to vary considerably from quarter to quarter and could adversely affect Shopko s cash flows.

- Shopko stores are dependent on the efficient functioning of their distribution networks. Problems that cause delays or interruptions in the distribution networks could materially and adversely affect Shopko s results of operations.

- Shopko stores depend on attracting and retaining quality employees. Many employees are entry level or part-time employees with historically high rates of turnover.

If Shopko experiences declines in its business, financial condition or result of operations, it may request discounts or deferrals on the rents it pays to us, seek to terminate its master lease with us or close certain of its stores, all of which could decrease the amount of revenue we receive from Shopko. Decreases in the amount of revenue received from Shopko could materially and adversely affect us.

One tenant, operating in the building materials industry, leases a substantial number of our properties that contribute 6.8% of our annual rent and has been adversely affected by the current economic environment, which may result in increased risk of tenant default.

Approximately $6.9 million of net annual cash flow, representing $18.4 million (6.8% of our annual rent) less non-cash revenue and non-recourse commercial mortgage-backed security, or CMBS, debt service, was generated by 101 properties that we master lease to 84 Properties, LLC and its affiliates. 84 Properties, LLC and

Table of Contents

its affiliates, which we collectively refer to as 84 Lumber, are privately held building materials and services suppliers to professional contractors and build-it-yourselfers that operate more than 280 stores, component plants, door shops, installation centers and engineered wood product shops in 33 states. Because a significant portion of our revenues is derived from rental revenues received from 84 Lumber, defaults, breaches or delay in payment of rent by 84 Lumber may materially and adversely affect us.

84 Lumber is currently meeting its rent payment obligations to us and based upon financial information supplied to us (which we cannot independently verify), the properties subject to the master lease generate sufficient EBITDAR to cover the rental payments due to us. However, 84 Lumber generated operating losses for the past three years and has historically used cash generated from the sale of surplus properties and loans from shareholders to fund these operating deficits. There can be no assurance that 84 Lumber will have the ability to continue to do this or that shareholders will continue to provide loans.

84 Lumber s operating losses have resulted in a triggering event under the loan agreement relating to our CMBS loan secured by the properties leased to 84 Lumber, as 84 Lumber s EBITDAR ratio (based on the information given to us by 84 Lumber, which we cannot independently verify) of 0.80:1.00 for the twelve months ended September 25, 2011 was less than 1.25:1.00. Accordingly, 84 Lumber is required to remit monthly tax and insurance deposits along with its monthly rent directly to an account controlled by the lender, whereupon amounts in excess of monthly tax and insurance costs are disbursed to us. If a monetary event of default were to occur under the 84 Lumber master lease or an event of default under the loan relating to the CMBS debt, then all funds, including those in excess of monthly tax and insurance costs, would be withheld by the lender. This would limit the amount of cash available for us to use in our business and could limit or eliminate our ability to make distributions to our common stockholders. See Management s Discussion and Analysis of Financial Condition and Results of Operation Liquidity and Capital Resources Description of Certain Debt CMBS Loan Secured by 84 Lumber Properties.

As a result of the significant number of properties leased to 84 Lumber, our results of operations and financial condition will be impacted by the performance of the 84 Lumber stores and the building materials supply industry in which they operate. 84 Lumber is subject to the following risks, as well as other risks that we are not currently aware of, that could adversely affect its ability to pay rent to us:

- 84 Lumber s financial performance depends significantly on the stability of the housing, residential construction and home improvement markets, as well as general economic conditions, including changes in gross domestic product. Adverse conditions in or sustained uncertainty about these markets or the economy could adversely impact consumer confidence, causing 84 Lumber s customers to delay purchasing or determine not to purchase home improvement products and services. Other factors (e.g., high levels of unemployment and foreclosures, interest rate fluctuations, fuel and other energy costs, labor and healthcare costs, the availability of financing, the state of the credit markets, including mortgages, home equity loans and consumer credit, weather, natural disasters and other conditions beyond our control) could further adversely affect demand for 84 Lumber s products and services, its costs of doing business and its ability to pay rent to us.

- 84 Lumber operates in markets that are highly competitive. In each market it serves, there are a number of other home improvement stores, electrical, plumbing and building materials supply houses and lumber yards. With respect to some products and services, 84 Lumber also competes with specialty design stores, showrooms, discount stores, local, regional and national hardware stores, mail order firms, warehouse clubs, independent building supply stores and other retailers, as well as with installers of home improvement products. Intense competitive pressures from one or more competitors could affect prices or demand for 84 Lumber s products and services and could adversely affect 84 Lumber and its ability to pay rent to us.

Table of Contents

The vast majority of our properties are leased to unrated tenants, and the tools we use to measure credit quality may not be accurate.

The vast majority of our properties are leased to unrated tenants whom we determine, through our internal underwriting and credit analysis, to be creditworthy. Substantially all of our tenants are required to provide corporate-level financial information, which includes balance sheet, income statement and cash flow statement data on an annual basis, and approximately 80.4% of our leases require the tenant to provide property-level performance information, which includes income statement data on an annual basis. To assist in our determination of a tenant s credit quality, we license a product from Moody s Analytics that provides an estimated default frequency, or EDF, and a shadow rating, and we evaluate a lease s property-level rent coverage ratio. An EDF is only an estimate of default probability based, in part, on assumptions incorporated into the product. A shadow rating does not constitute a published credit rating and lacks the extensive company participation that is typically involved when a rating agency publishes a rating; accordingly, a shadow rating may not be as indicative of creditworthiness as a rating published by Moody s Investment Services, Inc., or Moody s, Standard & Poor s, or S&P, or another nationally recognized statistical rating organization. Our calculations of EDFs, shadow ratings and rent coverage ratios are based on financial information provided to us by our tenants and prospective tenants without independent verification on our part, and we must assume the appropriateness of estimates and judgments that were made by the party preparing the financial information. If our assessment of credit quality proves to be inaccurate, we may be subject to defaults, and investors may view our cash flows as less stable. The ability of an unrated tenant to meet its obligations to us may not be considered as well assured as that of rated tenant.

The decrease in demand for retail and restaurant space may materially and adversely affect us.

As of September 30, 2011, leases representing approximately 38.9% and 17.9% of our annual rent were with tenants in the retail and restaurant industries, respectively. In the future we may acquire additional retail and restaurant properties. Accordingly, decreases in the demand for retail and/or restaurant spaces may have a greater adverse effect on us than if we had fewer investments in these industries. The market for retail and restaurant space has been, and could continue to be, adversely affected by weakness in the national, regional and local economies, the adverse financial condition of some large retail and restaurant companies, the ongoing consolidation in the retail and restaurant industries, the excess amount of retail and restaurant space in a number of markets and, in the case of the retail industry, increasing consumer purchases through catalogues or the internet. To the extent that these conditions continue, they are likely to negatively affect market rents for retail and restaurant space and could materially and adversely affect us.

We may be unable to renew leases, lease vacant space or re-lease space as leases expire on favorable terms or at all.

Our results of operations depend on our ability to continue to strategically lease space in our properties, including renewing expiring leases, leasing vacant space and re-leasing space in properties where leases are expiring, optimizing our tenant mix or leasing properties on more economically favorable terms. As of September 30, 2011, no leases were scheduled to expire during the remainder of 2011, and leases representing 1.2% of our annual rent will expire during 2012. As of September 30, 2011, 23 of our properties, representing approximately 2.2% of our total number of owned properties, were vacant. Current tenants may decline, or may not have the financial resources available, to renew current leases and we cannot assure you that leases that are renewed will have terms that are as economically favorable to us as the expiring lease terms. If tenants do not renew the leases as they expire, we will have to find new tenants to lease our properties and there is no guarantee that we will be able to find new tenants or that our properties will be re-leased at rental rates equal to or above the current average rental rates or that substantial rent abatements, tenant improvement allowances, early termination rights or below-market renewal options will not be offered to attract new tenants. We may experience significant costs in connection with re-leasing a significant number of our properties, which could materially and adversely affect us.

Table of Contents

Our ability to realize future rent increases will vary depending on changes in the CPI.

Most of our leases contain rent escalators, or provisions that periodically increase the base rent payable by the tenant under the lease. Although some of our rent escalators increase rent at a fixed amount on fixed dates, most of our rent escalators increase rent by the lesser of (1) 1 to 1.25 times any increase in the CPI over a specified period or (2) a fixed percentage. If the product of any increase in the CPI multiplied by the applicable factor is less than the fixed percentage, the increased rent we are entitled to receive will be less than what we otherwise would have been entitled to receive if the rent escalator was based solely on a fixed percentage. Therefore, during periods of low inflation or deflation, small increases or decreases in the CPI will subject us to the risk of receiving lower rental revenue than we otherwise would have been entitled to receive if our rent escalators were based solely on fixed percentages or amounts. Conversely, if the product of any increase in the CPI multiplied by the applicable factor is more than the fixed percentage, the increased rent we are entitled to receive will be less than what we otherwise would have been entitled to receive if the rent escalator was based solely on an increase in CPI. Therefore, periods of high inflation will subject us to the risk of receiving lower rental revenue than we otherwise would have been entitled to receive if our rent escalators were based solely on CPI increases.

The bankruptcy or insolvency of any of our tenants could result in the termination of such tenant s lease and material losses to us.

The occurrence of a tenant bankruptcy or insolvency could diminish the income we receive from that tenant s lease or leases. If a tenant becomes bankrupt or insolvent, federal law may prohibit us from evicting such tenant based solely upon such bankruptcy or insolvency. In addition, a bankrupt or insolvent tenant may be authorized to reject and terminate its lease or leases with us. Any claims against such bankrupt tenant for unpaid future rent would be subject to statutory limitations that would likely result in our receipt of rental revenues that are substantially less than the contractually specified rent we are owed under the lease or leases. In addition, any claim we have for unpaid past rent, if any, may not be paid in full. We may also be unable to re-lease a terminated or rejected space or to re-lease it on comparable or more favorable terms. As a result, tenant bankruptcies may materially and adversely affect us.

Tenants who are considering filing for bankruptcy protection may request that we agree to amendments of their master leases to remove certain of the properties they lease from us from such master leases. In 2010, two of the tenants with whom we have master leases filed for protection under federal bankruptcy law. During such bankruptcy filings, we entered into amendments to the master leases with both tenants, pursuant to which one tenant was permitted to remove from its master lease 15 of the 22 properties it leased from us in exchange for $6.25 million in termination fees and the other tenant was permitted to remove from its master lease three of the nine properties it leased from us for $6.0 million in termination fees. Although, as of November 30, 2011, we have sold or re-leased 14 of the 18 properties that were vacated in connection with these amendments, we cannot guarantee that we will be able to sell or re-lease the remaining properties on terms that are favorable to us, or at all. Currently, four of our properties with an original gross investment of $5.7 million are master leased to a tenant that has filed for bankruptcy protection. This proceeding is ongoing and we cannot predict its outcome with certainty. We cannot guarantee that we will be able to sell or re-lease properties that we agree to release from tenants leases in the future or that lease termination fees, if any, will be sufficient to make up for the rental revenues lost as a result of lease amendments.

There can be no assurance that future recoveries relating to properties leased to tenants experiencing financial distress will meet our historical recovery rate or that a larger percentage of our tenants will not experience financial distress.

Since our inception in 2003 through November 30, 2011, we have experienced or expect to experience $128.7 million of aggregate losses (of which $26.1 million are estimated losses as of November 30, 2011) due to tenant financial distress, or 3.2% of our gross investment of approximately $4.05 billion in properties and loans receivable. Included in our historical losses are estimated losses relating to 18 properties. See Business and

Table of Contents

Properties Risk Management Tenant Financial Distress Risk Historical Summary of Tenant Financial Distress Portfolio for a discussion of how we estimate losses based on our historical experience. Our actual losses on these properties could exceed our estimate by a material amount. It is also possible that a larger percentage of our tenants could experience financial distress in the future and cause us to incur significant additional losses. Furthermore, no assurance can be given that future recoveries relating to properties leased to tenants experiencing financial distress will match our historical recovery rate.

Property vacancies could result in significant capital expenditures.

The loss of a tenant, either through lease expiration or tenant bankruptcy or insolvency, may require us to spend significant amounts of capital to renovate the property before it is suitable for a new tenant and cause us to incur significant costs. Many of the leases we enter into or acquire are for properties that are specially suited to the particular business of our tenants. Because these properties have been designed or physically modified for a particular tenant, if the current lease is terminated or not renewed, we may be required to renovate the property at substantial costs, decrease the rent we charge or provide other concessions in order to lease the property to another tenant. In addition, in the event we are required to sell the property, we may have difficulty selling it to a party other than the tenant due to the special purpose for which the property may have been designed or modified. This potential illiquidity may limit our ability to quickly modify our portfolio in response to changes in economic or other conditions, including tenant demand. These limitations may materially and adversely affect us.

We may be unable to identify and complete acquisitions of suitable properties, which may impede our growth, and our future acquisitions may not yield the returns we expect.

Our ability to expand through acquisitions requires us to identify and complete acquisitions or investment opportunities that are compatible with our growth strategy and to successfully integrate newly acquired properties into our portfolio. We continually evaluate investment opportunities and may acquire properties when strategic opportunities exist. Our ability to acquire properties on favorable terms and successfully operate them may be constrained by the following significant risks:

- we face competition from other real estate investors with significant capital, including REITs and institutional investment funds, which may be able to accept more risk than we can prudently manage, including risks associated with paying higher acquisition prices;

- we face competition from other potential acquirers which may significantly increase the purchase price for a property we acquire, which could reduce our growth prospects;

- we may incur significant costs and divert management attention in connection with evaluating and negotiating potential acquisitions, including ones that we are subsequently unable to complete;

- we may acquire properties that are not accretive to our results upon acquisition, and we may be unsuccessful in managing and leasing such properties in accordance with our expectations;

- our cash flow from an acquired property may be insufficient to meet our required principal and interest payments with respect to debt used to finance the acquisition of such property;

- we may discover unexpected items, such as unknown liabilities, during our due diligence investigation of a potential acquisition or other customary closing conditions may not be satisfied, causing us to abandon an acquisition opportunity after incurring expenses related thereto;

- we may fail to obtain financing for an acquisition on favorable terms or at all;

we may spend more than budgeted amounts to make necessary improvements or renovations to acquired properties;

market conditions may result in higher than expected vacancy rates and lower than expected rental rates; or

Table of Contents

- we may acquire properties subject to liabilities and without any recourse, or with only limited recourse, with respect to unknown liabilities such as liabilities for clean-up of undisclosed environmental contamination, claims by tenants, vendors or other persons dealing with the former owners of the properties, liabilities incurred in the ordinary course of business and claims for indemnification by general partners, directors, officers and others indemnified by the former owners of the properties.

If any of these risks are realized, we may be materially and adversely affected.

Illiquidity of real estate investments could significantly impede our ability to respond to adverse changes in the performance of our properties and harm our financial condition.

The real estate investments made, and expected to be made, by us are relatively difficult to sell quickly. As a result, our ability to promptly sell one or more properties in our portfolio in response to changing economic, financial or investment conditions is limited. Return of capital and realization of gains, if any, from an investment generally will occur upon disposition or refinancing of the underlying property. We may be unable to realize our investment objective by sale, other disposition or refinancing at attractive prices within any given period of time or may otherwise be unable to complete any exit strategy. In particular, these risks could arise from weakness in or even the lack of an established market for a property, changes in the financial condition or prospects of prospective purchasers, changes in national or international economic conditions, such as the economic downturn of 2008 through 2010, and changes in laws, regulations or fiscal policies of the jurisdiction in which the property is located.

In addition, the Internal Revenue Code of 1986, as amended, or the Code, imposes restrictions on a REIT s ability to dispose of properties that are not applicable to other types of real estate companies. In particular, the tax laws applicable to REITs effectively require that we hold our properties for investment, rather than primarily for sale in the ordinary course of business, which may cause us to forgo or defer sales of properties that otherwise would be in our best interest. Therefore, we may not be able to vary our portfolio in response to economic or other conditions promptly or on favorable terms, which may materially and adversely affect us.

We face significant competition for tenants, which may decrease or prevent increases of the occupancy and rental rates of our properties, and competition for acquisitions may reduce the number of acquisitions we are able to complete and increase the costs of these acquisitions.

We compete with numerous developers, owners and operators of properties, many of which own properties similar to ours in the same markets in which our properties are located. If our competitors offer space at rental rates below current market rates or below the rental rates we currently charge our tenants, we may lose existing or potential tenants and we may be pressured to reduce our rental rates or to offer more substantial rent abatements, tenant improvements, early termination rights or below-market renewal options in order to retain tenants when our leases expire. Competition for tenants could decrease or prevent increases of the occupancy and rental rates of our properties, which could materially and adversely affect us.

We also face competition for acquisitions of real property from investors, including traded and non-traded public REITs, private equity investors and institutional investment funds, some of which have greater financial resources than we do, a greater ability to borrow funds to acquire properties and the ability to accept more risk than we can prudently manage. This competition may increase the demand for the types of properties in which we typically invest and, therefore, reduce the number of suitable acquisition opportunities available to us and increase the prices paid for such acquisition properties. This competition will increase if investments in real estate become more attractive relative to other types of investment. Accordingly, competition for the acquisition of real property could materially and adversely affect us.

Table of Contents

The loss of a borrower or the failure of a borrower to make loan payments on a timely basis will reduce our revenues, which could lead to losses on our investments and reduced returns to our stockholders.

We have originated or acquired long-term, commercial mortgage and equipment loans. The success of our loan investments is materially dependent on the financial stability of our borrowers. The success of our borrowers is dependent on each of their individual businesses and their industries, which could be affected by economic conditions in general, changes in consumer trends and preferences and other factors over which neither they nor we have control. A default of a borrower on its loan payments to us that would prevent us from earning interest or receiving a return of the principal of our loan could materially and adversely affect us. In the event of a default, we may also experience delays in enforcing our rights as lender and may incur substantial costs in collecting the amounts owed to us and in liquidating any collateral.

Foreclosure and other similar proceedings used to enforce payment of real estate loans are generally subject to principles of equity, which are designed to relieve the indebted party from the legal effect of that party s default. Foreclosure and other similar laws may limit our right to obtain a deficiency judgment against the defaulting party after a foreclosure or sale. The application of any of these principles may lead to a loss or delay in the payment on loans we hold, which in turn could reduce the amounts we have available to make distributions. Further, in the event we have to foreclose on a property, the amount we receive from the foreclosure sale of the property may be inadequate to fully pay the amounts owed to us by the borrower and our costs incurred to foreclose, repossess and sell the property which could materially and adversely affect us.

If we invest in mortgage loans, these investments may be affected by unfavorable real estate market conditions, including interest rate fluctuations, which could decrease the value of those loans.

If we invest in mortgage loans, we will be at risk of defaults by the borrowers and, in addition, will be subject to interest rate risks. To the extent we incur delays in liquidating defaulted mortgage loans, we may not be able to obtain all amounts due to us under such loans. Further, we will not know whether the values of the properties securing the mortgage loans will remain at the levels existing on the dates of origination of those mortgage loans or the dates of our investment in the loans. If the values of the underlying properties decline, the value of the collateral securing our mortgage loans will also decline and if we were to foreclose on any of the properties securing the mortgage loans, we may not be able to sell or lease them for an amount equal to the unpaid amounts due to us under the mortgage loans. As a result, defaults on mortgage loans in which we invest may materially and adversely affect us.

Inflation may materially and adversely affect us and our tenants.

Increased inflation could have a negative impact on variable rate debt we currently have or that we may incur in the future. During times when inflation is greater than the increases in rent provided by many of our leases, rent increases will not keep up with the rate of inflation. Increased costs may have an adverse impact on our tenants if increases in their operating expenses exceed increases in revenue, which may adversely affect the tenants ability to pay rent owed to us.

Our growth depends on external sources of capital that are outside of our control and may not be available to us on commercially reasonable terms or at all.

In order to maintain our qualification as a REIT, we are required under the Code, among other things, to distribute annually at least 90% of our REIT taxable income, determined without regard to the dividends paid deduction and excluding any net capital gain. In addition, we will be subject to income tax at regular corporate rates to the extent that we distribute less than 100% of our REIT taxable income, determined without regard to the dividends paid deduction and including any net capital gain. Because of these distribution requirements, we may not be able to fund future capital needs, including any necessary acquisition financing, from operating cash flow. Consequently, we may rely on third-party sources to fund our capital needs. We may not be able to obtain the financing on favorable terms or at all. Any additional debt we incur will increase our leverage and likelihood of default. Our access to third-party sources of capital depends, in part, on:

- general market conditions;
- the market s perception of our growth potential;
- our current debt levels;
- our current and expected future earnings;
- our cash flow and cash distributions; and
- the market price per share of our common stock.

Recently, the credit markets have been subject to significant disruptions. If we cannot obtain capital from third-party sources, we may not be able to acquire properties when strategic opportunities exist, meet the capital and operating needs of our existing properties, satisfy our debt service obligations or make the cash distributions to our stockholders necessary to maintain our qualification as a REIT.

Historically, we have raised a significant amount of debt capital through our master trust facility and the CMBS market. We have generally used the proceeds from these financings to repay debt and fund real estate acquisitions. As of September 30, 2011, we had issued notes under our master trust facility in three separate issuances with an aggregate outstanding principal balance of $967.7 million. These notes mature in March 2020, 2021 and 2022, respectively. As of September 30, 2011, we also had CMBS loans with an aggregate outstanding principal balance of $988.1 million and an average maturity of 4.8 years. See Management s Discussion and Analysis of Financial Condition and Results of Operations Liquidity and Capital Resources Description of Certain Debt Master Trust Facility and CMBS. Our obligations under these loans are generally secured by liens on certain of our properties. In the case of our master trust facility, subject to certain conditions, we may substitute real estate collateral from time to time. No assurance can be given that the CMBS market will be available to us in the future, whether to refinance existing debt or to raise additional debt capital. Moreover, we view our ability to substitute collateral under our master trust facility favorably, and no assurance can be given that financing facilities offering similar flexibility will be available to us in the future.

Failure to hedge effectively against interest rate changes may materially and adversely affect us.

We attempt to mitigate our exposure to interest rate volatility by using interest rate hedging arrangements. However, these arrangements involve risks and may not be effective in reducing our exposure to interest rate changes. In addition, the counterparties to our hedging arrangements may not honor their obligations. Failure to hedge effectively against changes in interest rates relating to the interest expense of our future borrowings may materially and adversely affect us.

Loss of our key personnel with long-standing business relationships could materially impair our ability to operate successfully.

Our continued success and our ability to manage anticipated future growth depend, in large part, upon the efforts of key personnel, particularly our Chief Executive Officer and Chairman of our board of directors, Thomas H. Nolan, Jr., and our President and Chief Operating Officer, Peter M. Mavoides, who have extensive market knowledge and relationships and exercise substantial influence over our operational, financing, acquisition and disposition activity. Among the reasons that they are important to our success is that each has a national or regional industry reputation that attracts business and investment opportunities and assists us in negotiations with lenders, existing and potential tenants and industry personnel.

Table of Contents

Many of our other key executive personnel, particularly our senior managers, also have extensive experience and strong reputations in the real estate industry and have been instrumental in setting our strategic direction, operating our business, identifying, recruiting and training key personnel and arranging necessary financing. In particular, the extent and nature of the relationships that these individuals have developed with financial institutions and existing and prospective tenants is critically important to the success of our business. The loss of services of one or more members of our senior management team, or our inability to attract and retain highly qualified personnel, could adversely affect our business, diminish our investment opportunities and weaken our relationships with lenders, business partners, existing and prospective tenants and industry personnel, which could materially and adversely affect us.

We have a limited operating history as a public company and our past experience may not be sufficient to allow us to successfully operate as a public company going forward.

We have a limited operating history as a publicly traded company, as we have not been publicly traded since 2007. We cannot assure you that our past experience will be sufficient to successfully operate our company as a publicly traded company, including the requirements to timely meet disclosure requirements of the Securities and Exchange Commission, or SEC, and comply with the Sarbanes-Oxley Act of 2002. Upon the completion of this offering, we will be required to develop and implement control systems and procedures in order to satisfy our periodic and current reporting requirements under applicable SEC regulations and comply with the New York Stock Exchange, or NYSE, listing standards, and this transition could place a significant strain on our management systems, infrastructure and other resources. Failure to operate successfully as a public company could materially and adversely affect us.

We may become subject to litigation, which could materially and adversely affect us.

In the future we may become subject to litigation, including claims relating to our operations, security offerings and otherwise in the ordinary course of business. Some of these claims may result in significant defense costs and potentially significant judgments against us, some of which are not, or cannot be, insured against. We generally intend to vigorously defend ourselves. However, we cannot be certain of the ultimate outcomes of any claims that may arise in the future. Resolution of these types of matters against us may result in our having to pay significant fines, judgments, or settlements, which, if uninsured, or if the fines, judgments, and settlements exceed insured levels, could adversely impact our earnings and cash flows, thereby materially and adversely affecting us. Certain litigation or the resolution of certain litigation may affect the availability or cost of some of our insurance coverage, which could materially and adversely impact us, expose us to increased risks that would be uninsured, and materially and adversely impact our ability to attract directors and officers.

We recently identified a material weakness in our internal control over financial reporting. If we fail to maintain an effective system of internal control over financial reporting and disclosure controls, we may not be able to accurately and timely report our financial results.

Subsequent to the initial filing of the registration statement of which this prospectus is a part, we determined that our previous classification of a $21.5 million interest rate swap termination payment in 2009 as a financing activity in our consolidated statement of cash flows for the year ended December 31, 2009 was in error and should have been reflected as an operating activity in that statement. We restated our consolidated statement of cash flows for the year ended December 31, 2009 to correct this classification error, which we determined revealed a material weakness in internal control over financial reporting as defined in Public Company Accounting Oversight Board Auditing Standard No. 5. This material weakness did not have a material impact on our consolidated statement of cash flows for any period other than the year ended December 31, 2009, although we cannot be certain that future material weaknesses or significant deficiencies will not develop or be identified.

Effective internal control over financial reporting and disclosure controls are necessary for us to provide reliable financial reports and effectively prevent fraud and to operate successfully as a public company. If we cannot provide reliable financial reports or prevent fraud, our reputation and operating results would be harmed. As of December 31, 2013, we expect we will be required to assess and report on the effectiveness of our internal control over financial reporting under the Sarbanes-Oxley Act of 2002, and we will be required to have our independent registered public accounting firm audit and report on the operating effectiveness of our internal control over financial reporting. As a result of material weaknesses or significant deficiencies that may be identified in our internal control over financial reporting, we may also identify certain deficiencies in some of our disclosure controls and procedures that we believe require remediation. If we discover weaknesses, we will make efforts to improve our internal control over financial reporting and disclosure controls. However, there is no assurance that we will be successful. Any failure to maintain effective controls or timely effect any necessary improvement of our internal control over financial reporting and disclosure controls could harm operating results or cause us to fail to meet our reporting obligations, which could affect the listing of our common stock on the NYSE. Ineffective internal control over financial reporting and disclosure controls could also cause investors to lose confidence in our reported financial information, which would likely have a negative effect on the per share trading price of our common stock.

The costs of compliance with or liabilities related to environmental laws may materially and adversely affect us.

The properties we own or have owned in the past may subject us to known and unknown environmental liabilities. Under various federal, state and local laws and regulations relating to the environment, as a current or former owner or operator of real property, we may be liable for costs and damages resulting from the presence or discharge of hazardous or toxic substances, waste or petroleum products at, on, in, under or migrating from such property, including costs to investigate, clean up such contamination and liability for harm to natural resources. We may face liability regardless of:

- our knowledge of the contamination;
- the timing of the contamination;
- the cause of the contamination; or
- the party responsible for the contamination of the property.

There may be environmental liabilities associated with our properties of which we are unaware. We obtain Phase I environmental site assessments on all properties we finance or acquire. The Phase I environmental site assessments are limited in scope and therefore may not reveal all environmental conditions affecting a property. Therefore, there could be undiscovered environmental liabilities on the properties we own. Some of our properties use, or may have used in the past, underground tanks for the storage of petroleum-based products or waste products that could create a potential for release of hazardous substances or penalties if tanks do not comply with legal standards. If environmental contamination exists on our properties, we could be subject to strict, joint and/or several liability for the contamination by virtue of our ownership interest. Some of our properties may contain asbestos-containing materials, or ACM. Strict environmental laws govern the presence, maintenance and removal of ACM and such laws may impose fines and penalties for failure to comply with these requirements or expose us to third-party liability (e.g., liability for personal injury associated with exposure to asbestos). Strict environmental laws also apply to other activities that can occur on a property, such as air emissions and water discharges, and such laws may impose fines and penalties for violations.

The presence of hazardous substances on a property may adversely affect our ability to sell, lease or improve the property or to borrow using the property as collateral. In addition, environmental laws may create liens on contaminated properties in favor of the government for damages and costs it incurs to address such contamination. Moreover, if contamination is discovered on our properties, environmental laws may impose restrictions on the manner in which they may be used or businesses may be operated, and these restrictions may require substantial expenditures.

Table of Contents

In addition, although our leases generally require our tenants to operate in compliance with all applicable laws and to indemnify us against any environmental liabilities arising from a tenant s activities on the property, we could be subject to strict liability by virtue of our ownership interest. We cannot be sure that our tenants will, or will be able to, satisfy their indemnification obligations, if any, under our leases. Furthermore, the discovery of environmental liabilities on any of our properties could lead to significant remediation costs or to other liabilities or obligations attributable to the tenant of that property, which may affect such tenant s ability to make payments to us, including rental payments and, where applicable, indemnification payments.

Our environmental liabilities may include property damage, personal injury, investigation and clean-up costs. These costs could be substantial. Although we may obtain insurance for environmental liability for certain properties that are deemed to warrant coverage, our insurance may be insufficient to address any particular environmental situation and we may be unable to continue to obtain insurance for environmental matters, at a reasonable cost or at all, in the future. If our environmental liability insurance is inadequate, we may become subject to material losses for environmental liabilities. Our ability to receive the benefits of any environmental liability insurance policy will depend on the financial stability of our insurance company and the position it takes with respect to our insurance policies. If we were to become subject to significant environmental liabilities, we could be materially and adversely affected.

Most of the environmental risks discussed above refer to properties that we own or may acquire in the future. However, each of the risks identified also applies to the owners (and potentially, the lessees) of the properties that secure each of the loans we have made and any loans we may acquire or make in the future. Therefore, the existence of environmental conditions could diminish the value of each of the loans and the abilities of the borrowers to repay the loans and could materially and adversely affect us and our ability to make distributions to you.

Our properties may contain or develop harmful mold, which could lead to liability for adverse health effects and costs of remediation.

When excessive moisture accumulates in buildings or on building materials, mold growth may occur, particularly if the moisture problem remains undiscovered or is not addressed over a period of time. Some molds may produce airborne toxins or irritants. Concern about indoor exposure to mold has been increasing, as exposure to mold may cause a variety of adverse health effects and symptoms, including allergic or other reactions. As a result, should our tenants or their employees or customers be exposed to mold at any of our properties we could be required to undertake a costly remediation program to contain or remove the mold from the affected property. In addition, exposure to mold by our tenants or others could subject us to liability if property damage or health concerns arise. If we were to become subject to significant mold-related liabilities, we could be materially and adversely affected.

Insurance on our properties may not adequately cover all losses and uninsured losses could materially and adversely affect us.

Our tenants are required to maintain liability and property insurance coverage for the properties they lease from us pursuant to triple-net leases. Pursuant to such leases, our tenants are required to name us (and any of our lenders that have a mortgage on the property leased by the tenant) as additional insureds on their liability policies and additional named insured and/or loss payee (or mortgagee, in the case of our lenders) on their property policies. All tenants are required to maintain casualty coverage and most carry limits at 100% of replacement cost. Depending on the location of the property, losses of a catastrophic nature, such as those caused by earthquakes and floods, may be covered by insurance policies that are held by our tenant with limitations such as large deductibles or co-payments that a tenant may not be able to meet. In addition, losses of a catastrophic nature, such as those caused by wind/hail, hurricanes, terrorism or acts of war, may be uninsurable or not economically insurable. In the event there is damage to our properties that is not covered by insurance and such properties are subject to recourse indebtedness, we will continue to be liable for the indebtedness, even if these properties are irreparably damaged.

Table of Contents

Inflation, changes in building codes and ordinances, environmental considerations, and other factors, including terrorism or acts of war, may make any insurance proceeds we receive insufficient to repair or replace a property if it is damaged or destroyed. In that situation, the insurance proceeds received may not be adequate to restore our economic position with respect to the affected real property. Furthermore, in the event we experience a substantial or comprehensive loss of one of our properties, we may not be able to rebuild such property to its existing specifications without significant capital expenditures which may exceed any amounts received pursuant to insurance policies, as reconstruction or improvement of such a property would likely require significant upgrades to meet zoning and building code requirements. The loss of our capital investment in or anticipated future returns from our properties due to material uninsured losses could materially and adversely affect us.

Compliance with the Americans with Disabilities Act and fire, safety and other regulations may require us to make unanticipated expenditures that materially and adversely affect us.

Our properties are subject to the Americans with Disabilities Act, or ADA. Under the ADA, all public accommodations must meet federal requirements related to access and use by disabled persons. Compliance with the ADA requirements could require removal of access barriers and non-compliance could result in imposition of fines by the U.S. government or an award of damages to private litigants, or both. While our tenants are obligated by law to comply with the ADA and typically obligated under our leases and financing agreements to cover costs associated with compliance, if required changes involve greater expenditures than anticipated or if the changes must be made on a more accelerated basis than anticipated, the ability of our tenants to cover costs could be adversely affected. We could be required to expend our own funds to comply with the provisions of the ADA, which could materially and adversely affect us.

In addition, we are required to operate our properties in compliance with fire and safety regulations, building codes and other land use regulations, as they may be adopted by governmental agencies and bodies and become applicable to our properties. We may be required to make substantial capital expenditures to comply with those requirements and may be required to obtain approvals from various authorities with respect to our properties, including prior to acquiring a property or when undertaking renovations of any of our existing properties. There can be no assurance that existing laws and regulatory policies will not adversely affect us or the timing or cost of any future acquisitions or renovations, or that additional regulations will not be adopted that increase such delays or result in additional costs. Additionally, failure to comply with any of these requirements could result in the imposition of fines by governmental authorities or awards of damages to private litigants. While we intend to only acquire properties that we believe are currently in substantial compliance with all regulatory requirements, these requirements may change and new requirements may be imposed which would require significant unanticipated expenditures by us and could materially and adversely affect us.

As a result of acquiring C corporations in carry-over basis transactions, we may inherit material tax liabilities and other tax attributes from such acquired corporations, and we may be required to distribute earnings and profits.

From time to time, we have and may continue to acquire C corporations in transactions in which the basis of the corporations assets in our hands is determined by reference to the basis of the assets in the hands of the acquired corporations, or carry-over basis transactions. In June 2005, we acquired Camelback Ski Corporation in a cash merger treated as a stock purchase followed by a liquidation of such corporation for federal income tax purposes. In May 2006, we acquired Shopko Stores, Inc. in a stock purchase and immediately thereafter dissolved such corporation. In December 2008, we revoked the election to treat Spirit Management Company, our former taxable REIT subsidiary, as a taxable REIT subsidiary for federal income tax purposes. In each such transaction, we acquired the assets of such corporations in a carry-over basis transaction for federal income tax purposes.

In connection with the completion of this offering, Redford Australian Investment Trust, or RAIT, an Australian investment trust through which our non-U.S. investors have indirectly owned shares of our common stock, will transfer substantially all of its assets (including shares of our common stock) to our company in exchange for newly issued shares of our common stock, and RAIT will then liquidate and distribute such shares to its owners. RAIT is treated as a C corporation for federal income tax purposes, and such transactions are intended to qualify as a tax-free reorganization for federal income tax purposes. We do not expect to acquire any earnings and profits of RAIT as a result of such transactions.

In the case of assets we acquire from a C corporation in a carry-over basis transaction, if we dispose of any such asset in a taxable transaction (including by deed in lieu of foreclosure) during the ten-year period beginning on the date of the carry-over basis transaction, then we will be required to pay tax at the highest regular corporate tax rate on the gain recognized to the extent of the excess of (1) the fair market value of the asset over (2) our adjusted tax basis in the asset, in each case determined as of the date of the carry-over basis transaction. Any taxes we pay as a result of such gain would reduce the amount available for distribution to our stockholders. The imposition of such tax may require us to forgo an otherwise attractive disposition of any assets we acquire from a C corporation in a carry-over basis transaction, and as a result may reduce the liquidity of our portfolio of investments. In addition, in such a carry-over basis transaction, we will succeed to any tax liabilities and earnings and profits of the acquired C corporation. To qualify as a REIT, we must distribute any non-REIT earnings and profits by the close of the taxable year in which such transaction occurs. Any adjustments to the acquired corporation s income for taxable years ending on or before the date of the transaction, including as a result of an examination of the corporation s tax returns by the Internal Revenue Service, or the IRS, could affect the calculation of the corporation s earnings and profits. If the IRS were to determine that we acquired non-REIT earnings and profits from a corporation that we failed to distribute prior to the end of the taxable year in which the carry-over basis transaction occurred, we could avoid disqualification as a REIT by paying a deficiency dividend. Under these procedures, we generally would be required to distribute any such non-REIT earnings and profits to our stockholders within 90 days of the determination and pay a statutory interest charge at a specified rate to the IRS. Such a distribution would be in addition to the distribution of REIT taxable income necessary to satisfy the REIT distribution requirement and may require that we borrow funds to make the distribution even if the then-prevailing market conditions are not favorable for borrowings. In addition, payment of the statutory interest charge could materially and adversely affect us.

Changes in accounting standards may materially and adversely affect us.

From time to time the Financial Accounting Standards Board, or FASB, and the SEC, who create and interpret appropriate accounting standards, may change the financial accounting and reporting standards or their interpretation and application of these standards that will govern the preparation of our financial statements. These changes could materially and adversely affect our reported financial condition and results of operations. In some cases, we could be required to apply a new or revised standard retroactively, resulting in restating prior period financial statements. Similarly, these changes could materially and adversely affect our tenants reported financial condition or results of operations and affect their preferences regarding leasing real estate.

The SEC is currently considering whether issuers in the United States should be required to prepare financial statements in accordance with International Financial Reporting Standards, or IFRS, instead of U.S. generally accepted accounting principles, or GAAP. IFRS is a comprehensive set of accounting standards promulgated by the International Accounting Standards Board, or IASB, which are rapidly gaining worldwide acceptance. If the SEC decides to require IFRS, it expects that U.S. issuers would first report under the new standards beginning as early as 2015 or 2016, although the timeframe has not been finalized. If IFRS is adopted, the potential issues associated with lease accounting, along with other potential changes associated with the adoption or convergence with IFRS, may materially and adversely affect us.

Additionally, the FASB is considering various changes to GAAP, some of which may be significant, as part of a joint effort with the IASB to converge accounting standards. In particular, FASB has proposed accounting rules that would require companies to capitalize all leases on their balance sheets by recognizing a lessee s rights and obligations. If the proposal is adopted in its current form, many companies that account for certain leases on an off balance sheet basis would be required to account for such leases on balance sheet. This change would

Table of Contents

remove many of the differences in the way companies account for owned property and leased property, and could have a material effect on various aspects of our tenants businesses, including their credit quality and the factors they consider in deciding whether to own or lease properties. If the proposal is adopted in its current form, it could cause companies that lease properties to prefer shorter lease terms, in an effort to reduce the leasing liability required to be recorded on the balance sheet. The proposal could also make lease renewal options less attractive, as, under certain circumstances, the rule would require a tenant to assume that a renewal right will be exercised and accrue a liability relating to the longer lease term.

In the future, we may choose to acquire properties or portfolios of properties through tax deferred contribution transactions, which could result in stockholder dilution and limit our ability to sell such assets.

In the future we may acquire properties or portfolios of properties through tax deferred contribution transactions in exchange for partnership interests in our operating partnership, which may result in stockholder dilution. This acquisition structure may have the effect of, among other things, reducing the amount of tax depreciation we could deduct over the tax life of the acquired properties, and may require that we agree to protect the contributors ability to defer recognition of taxable gain through restrictions on our ability to dispose of the acquired properties and/or the allocation of partnership debt to the contributors to maintain their tax bases. These restrictions could limit our ability to sell an asset at a time, or on terms, that would be favorable absent such restrictions.

Risks Related to Our Indebtedness

We expect to have approximately $2.0 billion of indebtedness outstanding following this offering and the debt conversion on a pro forma basis, which may expose us to the risk of default under our debt obligations.

Upon the completion of this offering and the debt conversion, we anticipate that our total consolidated indebtedness will be approximately $2.0 billion on a pro forma basis, of which $11.4 million (or approximately 0.6%) is variable rate debt, and we may incur significant additional debt to finance future investment activities. In addition, upon the completion of this offering, we expect to enter into a revolving credit facility. Payments of principal and interest on borrowings may leave us with insufficient cash resources to meet our cash needs or make the distributions to our common stockholders currently contemplated or necessary to maintain our REIT qualification. Our level of debt and the limitations imposed on us by our debt agreements could have significant adverse consequences, including the following:

- our cash flow may be insufficient to meet our required principal and interest payments;
- cash interest expense and financial covenants relating to our indebtedness may limit or eliminate our ability to make distributions to our common stockholders;
- we may be unable to borrow additional funds as needed or on favorable terms, which could, among other things, adversely affect our ability to capitalize upon acquisition opportunities or meet operational needs;
- we may be unable to refinance our indebtedness at maturity or the refinancing terms may be less favorable than the terms of our original indebtedness;
- because a portion of our debt bears interest at variable rates, increases in interest rates could increase our interest expense;
- we may be unable to hedge floating rate debt, counterparties may fail to honor their obligations under any hedge agreements we enter into, such agreements may not effectively hedge interest rate fluctuation risk, and, upon the expiration of any hedge agreements we enter into, we would be exposed to then-existing market rates of interest and future interest rate volatility;

we may be forced to dispose of properties, possibly on unfavorable terms or in violation of certain covenants to which we may be subject;

Table of Contents

- we may default on our obligations and the lenders or mortgagees may foreclose on our properties or our interests in the entities that own the properties that secure their loans and receive an assignment of rents and leases;
- we may be restricted from accessing some of our excess cash flow after debt service if certain of our tenants fail to meet certain financial performance metric thresholds;
- we may violate restrictive covenants in our loan documents, which would entitle the lenders to accelerate our debt obligations; and
- our default under any loan with cross default provisions could result in a default on other indebtedness.

The occurrence of any of these events could materially and adversely affect us. Furthermore, foreclosures could create taxable income without accompanying cash proceeds, which could hinder our ability to meet the REIT distribution requirements imposed by the Code.

Current market conditions could adversely affect our ability to refinance existing indebtedness or obtain additional financing for growth on acceptable terms or at all, which could materially and adversely affect us.

Over the last few years, the credit markets have experienced significant price volatility, displacement and liquidity disruptions, including the bankruptcy, insolvency or restructuring of certain financial institutions. These circumstances have materially impacted liquidity in the financial markets, making financing terms for borrowers less attractive, and in certain cases, have resulted in the unavailability of various types of debt financing. As a result, we may be unable to obtain debt financing on favorable terms or at all or fully refinance maturing indebtedness with new indebtedness. Reductions in our available borrowing capacity or inability to obtain credit, including the proposed revolving credit facility that we expect to establish upon the completion of this offering, when required or when business conditions warrant could materially and adversely affect us.

Furthermore, if prevailing interest rates or other factors at the time of refinancing result in higher interest rates upon refinancing, then the interest expense relating to that refinanced indebtedness would increase. Higher interest rates on newly incurred debt may negatively impact us as well. If interest rates increase, our interest costs and overall costs of capital will increase, which could materially and adversely affect us and our ability to make distributions to our stockholders.

Scheduled debt amortization payments for the three months ending December 31, 2011 total $9.8 million. Total debt payments for 2012 and 2013 are $48.1 million (including $40.4 million of scheduled amortization) and $47.5 million (including $42.7 million of scheduled amortization), respectively. We expect to meet these repayment requirements primarily through net cash from operating activities.

Some of our financing arrangements involve balloon payment obligations, which may materially and adversely affect us.

Some of our financings require us to make a lump-sum or balloon payment at maturity. Our ability to make any balloon payment is uncertain and may depend on our ability to obtain additional financing or our ability to sell our properties. At the time the balloon payment is due, we may or may not be able to refinance the balloon payment on terms as favorable as the original loan or sell our properties at a price sufficient to make the balloon payment, if at all. If the balloon payment is refinanced at a higher rate, it will reduce or eliminate any income from our properties. Our inability to meet a balloon payment obligation, through refinancing or sale proceeds, or refinancing on less attractive terms could materially and adversely affect us. We have balloon maturities of $565.1 million in 2016. If we are unable to refinance these maturities or otherwise retire the indebtedness by that time, we could be materially adversely affected, and could be forced to relinquish the related collateral, consisting of 178 properties, including the 112 properties subject to our master lease with Shopko.

Table of Contents

Our debt financing agreements, including the proposed revolving credit facility, contain or will contain restrictions and covenants which may limit our ability to enter into or obtain funding for certain transactions, operate our business or make distributions to our common stockholders.

The agreements governing our borrowings, including the proposed revolving credit facility that we expect to enter into upon the completion of this offering, contain or will contain financial and other covenants with which we are or will be required to comply and that limit or will limit our ability to operate our business. These covenants, as well as any additional covenants to which we may be subject in the future because of additional borrowings, could cause us to have to forego investment opportunities, reduce or eliminate distributions to our common stockholders or obtain financing that is more expensive than financing we could obtain if we were not subject to the covenants. In addition, the agreements governing our borrowing may have cross default provisions, which provide that a default under one of our debt financing agreements would lead to a default on all of our debt financing agreements.

If an event of default occurs under certain of our CMBS loans, if the master tenants at the properties which secure the CMBS loans fail to maintain certain EBITDAR ratios or if an uncured monetary default exists under the master leases, then a portion of or all of the cash which would otherwise be distributed to us may be restricted by the lenders and unavailable to us. This would limit the amount of cash available to us for use in our business and could limit or eliminate our ability to make distributions to our common stockholders.

The covenants and other restrictions under our debt agreements affect, among other things, our ability to:

- incur indebtedness;
- create liens on assets;
- sell or substitute assets;
- modify certain terms of our leases;
- manage our cash flows; and
- make distributions to equity holders, including our common stockholders.

Additionally, these restrictions may adversely affect our operating and financial flexibility and may limit our ability to respond to changes in our business or competitive environment, all of which may materially and adversely affect us.

As of September 30, 2011, due to the occurrence of an 84 Lumber Triggering Event under the 84 Lumber CMBS loan and a related provision in the 84 Lumber master lease, 84 Lumber is required to deposit its monthly tax and insurance payments (currently $0.2 million per month) into an account rather than making such payments itself. The monthly tax and insurance payments are held by the CMBS lender in reserve to pay the taxes and insurance as they come due. See Management s Discussion and Analysis of Financial Condition and Results of Operations Liquidity and Capital Resources Description of Certain Debt CMBS Loan Secured by 84 Lumber Properties Cash Management.

Risks Related to Our Organizational Structure

Our charter and bylaws and Maryland law contain provisions that may delay, defer or prevent a change of control transaction, even if such a change in control may be in your interest, and as a result may depress the market price of our common stock.

Our charter contains certain restrictions on ownership and transfer of our stock. Our charter contains various provisions that are intended to preserve our qualification as a REIT and, subject to certain exceptions, authorize our directors to take such actions as are necessary or appropriate to preserve our qualification as a REIT. For example, our charter prohibits the actual, beneficial or constructive ownership by any person of more

than 9.8% in value or number of shares, whichever is more restrictive, of the outstanding shares of our common stock or more than 9.8% in value of the aggregate of the outstanding shares of all classes and series of our stock. Our board of directors, in its sole and absolute discretion, may exempt a person, prospectively or retroactively, from these ownership limits if certain conditions are satisfied. Our board of directors will, upon completion of this offering, grant to exemptions from the ownership limits, subject to various conditions and limitations. See Description of Our Capital Stock Restrictions on Ownership and Transfer. The restrictions on ownership and transfer of our stock may:

- discourage a tender offer or other transactions or a change in management or of control that might involve a premium price for our common stock or that our stockholders otherwise believe to be in their best interests; or

- result in the transfer of shares acquired in excess of the restrictions to a trust for the benefit of a charitable beneficiary and, as a result, the forfeiture by the acquirer of the benefits of owning the additional shares.

We could increase the number of authorized shares of stock, classify and reclassify unissued stock and issue stock without stockholder approval. Our board of directors, without stockholder approval, has the power under our charter to amend our charter to increase the aggregate number of shares of stock or the number of shares of stock of any class or series that we are authorized to issue, to authorize us to issue authorized but unissued shares of our common stock or preferred stock and to classify or reclassify any unissued shares of our common stock or preferred stock into one or more classes or series of stock and to set the terms of such newly classified or reclassified shares. See Description of Our Capital Stock Common Stock and Preferred Stock. As a result, we may issue one or more series or classes of common stock or preferred stock with preferences, dividends, powers and rights, voting or otherwise, that are senior to, or otherwise conflict with, the rights of our common stockholders. Although our board of directors has no such intention at the present time, it could establish a class or series of common stock or preferred stock that could, depending on the terms of such series, delay, defer or prevent a transaction or a change of control that might involve a premium price for our common stock or otherwise be in the best interest of our stockholders.

Certain provisions of Maryland law could inhibit changes in control, which may discourage third parties from conducting a tender offer or seeking other change of control transactions that could involve a premium price for our common stock or that our stockholders otherwise believe to be in their best interest. Certain provisions of the Maryland General Corporation Law, or MGCL, may have the effect of inhibiting a third party from making a proposal to acquire us or of impeding a change of control under circumstances that otherwise could provide our common stockholders with the opportunity to realize a premium over the then-prevailing market price of such shares, including:

- business combination provisions that, subject to certain limitations, prohibit certain business combinations between us and an interested stockholder (defined generally as any person who beneficially owns 10% or more of the voting power of our shares or an affiliate thereof or an affiliate or associate of ours who was the beneficial owner, directly or indirectly, of 10% or more of the voting power of our then outstanding voting stock at anytime within a two-year period immediately prior to the date in question) or any affiliate of an interested stockholder for five years after the most recent date on which the stockholder becomes an interested stockholder, and thereafter impose fair price and/or supermajority and stockholder voting requirements on these combinations; and

- control share provisions that provide that a holder of control shares of our company (defined as shares that, when aggregated with other shares controlled by the stockholder, entitle the stockholder to exercise one of three increasing ranges of voting power in electing directors) acquired in a control share acquisition (defined as the direct or indirect acquisition of ownership or control of outstanding control shares) has no voting rights with respect to those shares except to the extent approved by our stockholders by the affirmative vote of at least two-thirds of all the votes entitled to be cast on the matter, excluding all interested shares.

Table of Contents

As permitted by the MGCL, we have elected, by resolution of our board of directors, to opt out of the business combination provisions of the MGCL and, pursuant to a provision in our bylaws, to exempt any acquisition of our stock from the control share provisions of the MGCL. However, our board of directors may by resolution elect to repeal the exemption from the business combination provisions of the MGCL and may by amendment to our bylaws opt into the control share provisions of the MGCL at any time in the future, whether before or after an acquisition of control shares.

Certain provisions of the MGCL permit our board of directors, without stockholder approval and regardless of what is currently provided in our charter or bylaws, to implement certain corporate governance provisions, some of which (for example, a classified board) are not currently applicable to us. These provisions may have the effect of limiting or precluding a third party from making an unsolicited acquisition proposal for us or of delaying, deferring or preventing a change in control of us under circumstances that otherwise could be in the best interests of our stockholders. Our charter contains a provision whereby we elect, at such time as we become eligible to do so, to be subject to the provisions of Title 3, Subtitle 8 of the MGCL relating to the filling of vacancies on our board of directors. See Certain Provisions of Maryland Law and of Our Charter and Bylaws.

Termination of the employment agreements with certain members of our senior management team could be costly and prevent a change in control of our company.

The employment agreements with certain members of our senior management team provide that if their employment with us terminates under certain circumstances (including in connection with a change in control of our company), we may be required to pay them significant amounts of severance compensation, thereby making it costly to terminate their employment. Furthermore, these provisions could delay or prevent a transaction or a change in control of our company that might involve a premium paid for shares of our common stock or otherwise be in the best interests of our stockholders.

Our board of directors may change our investment and financing policies without stockholder approval and we may become more highly leveraged, which may increase our risk of default under our debt obligations.

Our investment and financing policies are exclusively determined by our board of directors. Accordingly, our stockholders do not control these policies. Further, our organizational documents do not limit the amount or percentage of indebtedness, funded or otherwise, that we may incur. Our board of directors may alter or eliminate our current policy on borrowing at any time without stockholder approval. If this policy changed, we could become more highly leveraged, which could result in an increase in our debt service. Higher leverage also increases the risk of default on our obligations. In addition, a change in our investment policies, including the manner in which we allocate our resources across our portfolio or the types of assets in which we seek to invest, may increase our exposure to interest rate risk, real estate market fluctuations and liquidity risk. Changes to our policies with regards to the foregoing could materially and adversely affect us.

Our rights and the rights of our stockholders to take action against our directors and officers are limited.

Upon the completion of this offering, as permitted by Maryland law, our charter will limit the liability of our directors and officers to us and our stockholders for money damages, except for liability resulting from:

- actual receipt of an improper benefit or profit in money, property or services; or
- active and deliberate dishonesty by the director or officer that was established by a final judgment as being material to the cause of action adjudicated.

As a result, we and our stockholders may have more limited rights against our directors and officers than might otherwise exist. Accordingly, in the event that actions taken in good faith by any of our directors or officers impede the performance of our company, your and our ability to recover damages from such director or officer will be limited. In addition, our charter will authorize us to obligate our company, and our bylaws will require us, to indemnify our directors and officers for actions taken by them in those and certain other capacities to the maximum extent permitted by Maryland law.

Table of Contents

Upon the completion of this offering, we will be a holding company with no direct operations and will rely on funds received from our operating partnership to pay liabilities.

Upon the completion of this offering, we will be a holding company and will conduct substantially all of our operations through our operating partnership. We will not have, apart from an interest in our operating partnership, any independent operations. As a result, we will rely on distributions from our operating partnership to pay any dividends we might declare on shares of our common stock. We will also rely on distributions from our operating partnership to meet any of our obligations, including any tax liability on taxable income allocated to us from our operating partnership. In addition, because we will be a holding company, your claims as stockholders will be structurally subordinated to all existing and future liabilities and obligations (whether or not for borrowed money) of our operating partnership and its subsidiaries. Therefore, in the event of our bankruptcy, liquidation or reorganization, our assets and those of our operating partnership and its subsidiaries will be able to satisfy the claims of our stockholders only after all of our and our operating partnership s and its subsidiaries liabilities and obligations have been paid in full.

After giving effect to this offering, we will own directly or indirectly 100% of the interests in our operating partnership. However, in connection with our future acquisition of properties or otherwise, we may issue units of our operating partnership to third parties. Such issuances would reduce our ownership in our operating partnership. Because you will not directly own units of our operating partnership, you will not have any voting rights with respect to any such issuances or other partnership level activities of our operating partnership.

Conflicts of interest could arise in the future between the interests of our stockholders and the interests of holders of units in our operating partnership, which may impede business decisions that could benefit our stockholders.

Conflicts of interest could arise in the future as a result of the relationships between us and our affiliates, on the one hand, and our operating partnership or any future partner thereof, on the other. Our directors and officers have duties to our company under applicable Maryland law in connection with their management of our company. At the same time, one of our wholly-owned subsidiaries, Spirit General OP Holdings, LLC, as the general partner of our operating partnership, will have fiduciary duties and obligations to our operating partnership and its future limited partners under Delaware law and the partnership agreement of our operating partnership in connection with the management of our operating partnership. The fiduciary duties and obligations of Spirit General OP Holdings, LLC, as general partner of our operating partnership, and its future partners may come into conflict with the duties of our directors and officers to our company.

Under the terms of the partnership agreement of our operating partnership, if there is a conflict between the interests of our stockholders on one hand and any future limited partners on the other, we will endeavor in good faith to resolve the conflict in a manner not adverse to either our stockholders or any future limited partners; provided, however, that for so long as we own a controlling interest in our operating partnership, any conflict that cannot be resolved in a manner not adverse to either our stockholders or any future limited partners shall be resolved in favor of our stockholders.

The partnership agreement will also provide that the general partner will not be liable to our operating partnership, its partners or any other person bound by the partnership agreement for monetary damages for losses sustained, liabilities incurred or benefits not derived by our operating partnership or any future limited partner, except for liability for the general partner s intentional harm or gross negligence. Moreover, the partnership agreement will provide that our operating partnership is required to indemnify the general partner and its members, managers, managing members, officers, employees, agents and designees from and against any and all claims that relate to the operations of our operating partnership, except (1) if the act or omission of the person was material to the matter giving rise to the action and either was committed in bad faith or was the result of active or deliberate dishonesty, (2) for any transaction for which the indemnified party received an improper personal benefit, in money, property or services or otherwise in violation or breach of any provision of the partnership agreement or (3) in the case of a criminal proceeding, if the indemnified person had reasonable cause to believe that the act or omission was unlawful.

Table of Contents

Risks Related to Our Status as a REIT

Failure to qualify as a REIT would materially and adversely affect us and the value of our common stock.

We believe that we have been organized and have operated in a manner that has allowed us to qualify as a REIT for federal income tax purposes commencing with our taxable year ended December 31, 2003, and we intend to continue operating in such a manner. We have not requested and do not plan to request a ruling from the IRS that we qualify as a REIT, and the statements in this prospectus are not binding on the IRS or any court. Therefore, we cannot assure you that we have qualified as a REIT, or that we will remain qualified as such in the future. If we lose our REIT status, we will face significant tax consequences that would substantially reduce our cash available for distribution to you for each of the years involved because:

- we would not be allowed a deduction for distributions to stockholders in computing our taxable income and would be subject to federal income tax at regular corporate rates;
- we also could be subject to the federal alternative minimum tax and increased state and local taxes; and
- unless we are entitled to relief under applicable statutory provisions, we could not elect to be taxed as a REIT for four taxable years following the year during which we were disqualified.

Any such corporate tax liability could be substantial and would reduce our cash available for, among other things, our operations and distributions to stockholders. In addition, if we fail to qualify as a REIT, we will not be required to make distributions to our stockholders. As a result of all these factors, our failure to qualify as a REIT also could impair our ability to expand our business and raise capital, and could materially and adversely affect the trading price of our common stock.

Qualification as a REIT involves the application of highly technical and complex Code provisions for which there are only limited judicial and administrative interpretations. The determination of various factual matters and circumstances not entirely within our control may affect our ability to qualify as a REIT. In order to qualify as a REIT, we must satisfy a number of requirements, including requirements regarding the ownership of our stock, requirements regarding the composition of our assets and a requirement that at least 95% of our gross income in any year must be derived from qualifying sources, such as rents from real property. Also, we must make distributions to stockholders aggregating annually at least 90% of our REIT taxable income, determined without regard to the dividends paid deduction and excluding any net capital gains. In addition, legislation, new regulations, administrative interpretations or court decisions may materially and adversely affect our investors, our ability to qualify as a REIT for federal income tax purposes or the desirability of an investment in a REIT relative to other investments.

Even if we qualify as a REIT for federal income tax purposes, we may be subject to some federal, state and local income, property and excise taxes on our income or property and, in certain cases, a 100% penalty tax, in the event we sell property as a dealer. In addition, our taxable REIT subsidiaries will be subject to tax as regular corporations in the jurisdictions in which they operate.

If our operating partnership fails to qualify as a disregarded entity or partnership for federal income tax purposes, we would cease to qualify as a REIT and suffer other adverse consequences.

We believe that our operating partnership will be treated as a disregarded entity for federal income tax purposes. If a property contributor or other third party is admitted to our operating partnership as a limited partner and, as a result, we cease to be the 100% owner (directly or indirectly) of the interests in our operating partnership, our operating partnership would cease to be treated as a disregarded entity, and instead would be treated as a partnership, for federal income tax purposes. As a disregarded entity or partnership, our operating partnership would not be subject to federal income tax on its income. Instead, for federal income tax purposes, if our operating partnership is treated as a disregarded entity, we would be treated as directly earning its income, or if our operating partnership is treated as a partnership, each of its partners, including us, would be allocated, and

Table of Contents

may be required to pay tax with respect to, such partner s share of its income. We cannot assure you that the IRS will not challenge the status of our operating partnership or any other subsidiary partnership in which we own an interest as a disregarded entity or partnership for federal income tax purposes, or that a court would not sustain such a challenge. If the IRS were successful in treating our operating partnership or any such other subsidiary partnership as an entity taxable as a corporation for federal income tax purposes, we would fail to meet the gross income tests and certain of the asset tests applicable to REITs and, accordingly, we would likely cease to qualify as a REIT. Also, the failure of our operating partnership or any subsidiary partnerships to qualify as a disregarded entity or partnership could cause it to become subject to federal and state corporate income tax, which would reduce significantly the amount of cash available for debt service and for distribution to its partners, including us.

Our ownership of taxable REIT subsidiaries is subject to certain restrictions, and we will be required to pay a 100% penalty tax on certain income or deductions if our transactions with our taxable REIT subsidiaries are not conducted on arm s length terms.

We currently own an interest in one taxable REIT subsidiary and may acquire securities in additional taxable REIT subsidiaries in the future. A taxable REIT subsidiary is a corporation, other than a REIT, in which a REIT directly or indirectly holds stock, and that has made a joint election with such REIT to be treated as a taxable REIT subsidiary. If a taxable REIT subsidiary owns more than 35% of the total voting power or value of the outstanding securities of another corporation, such other corporation will also be treated as a taxable REIT subsidiary. Other than some activities relating to lodging and health care facilities, a taxable REIT subsidiary may generally engage in any business, including the provision of customary or non-customary services to tenants of its parent REIT. A taxable REIT subsidiary is subject to federal income tax as a regular C corporation. In addition, a 100% excise tax will be imposed on certain transactions between a taxable REIT subsidiary and its parent REIT that are not conducted on an arm s length basis.

A REIT s ownership of securities of a taxable REIT subsidiary is not subject to the 5% or 10% asset tests applicable to REITs. Not more than 25% of the value of our total assets may be represented by securities (including securities of taxable REIT subsidiaries), other than those securities includable in the 75% asset test. We anticipate that the aggregate value of the stock and securities of any taxable REIT subsidiaries and other nonqualifying assets that we own will be less than 25% of the value of our total assets, and we will monitor the value of these investments to ensure compliance with applicable ownership limitations. In addition, we intend to structure our transactions with any taxable REIT subsidiaries that we own to ensure that they are entered into on arm s length terms to avoid incurring the 100% excise tax described above. There can be no assurance, however, that we will be able to comply with the 25% limitation or to avoid application of the 100% excise tax discussed above.

To maintain our REIT status, we may be forced to borrow funds during unfavorable market conditions, and the unavailability of such capital on favorable terms at the desired times, or at all, may cause us to curtail our investment activities and/or to dispose of assets at inopportune times, which could materially and adversely affect us and the per share trading price of our common stock.

To qualify as a REIT, we generally must distribute to our stockholders at least 90% of our REIT taxable income each year, determined without regard to the dividends paid deduction and excluding any net capital gains, and we will be subject to regular corporate income taxes on our undistributed taxable income to the extent that we distribute less than 100% of our REIT taxable income, determined without regard to the dividends paid deduction and including any net capital gains, each year. In addition, we will be subject to a 4% nondeductible excise tax on the amount, if any, by which distributions paid by us in any calendar year are less than the sum of 85% of our ordinary income, 95% of our capital gain net income and 100% of our undistributed income from prior years. In order to maintain our REIT status and avoid the payment of income and excise taxes, we may need to borrow funds to meet the REIT distribution requirements even if the then prevailing market conditions are not favorable for these borrowings. These borrowing needs could result from, among other things, differences in timing between the actual receipt of cash and recognition of income for federal income tax purposes, or the effect of non-deductible capital expenditures, the creation of reserves or required debt or amortization payments. These sources, however, may not be available on favorable terms or at all. Our access to third-party sources of capital depends on a number of factors, including the market s perception of our growth potential, our current debt levels, the market price of our common stock, and our current and potential future earnings. We cannot assure you that we will have access to such capital on favorable terms at the desired times, or at all, which may cause us to curtail our investment activities and/or to dispose of assets at inopportune times, and could materially and adversely affect us and the per share trading price of our common stock.

The IRS may treat sale-leaseback transactions as loans, which could jeopardize our REIT status or require us to make an unexpected distribution.

The IRS may take the position that specific sale-leaseback transactions that we treat as leases are not true leases for federal income tax purposes but are, instead, financing arrangements or loans. If a sale-leaseback transaction were so re-characterized, we might fail to satisfy the REIT asset tests, the income tests or distribution requirements and consequently lose our REIT status effective with the year of re-characterization unless we elect to make an additional distribution to maintain our REIT status. The primary risk relates to our loss of previously incurred depreciation expenses, which could affect the calculation of our REIT taxable income and could cause us to fail the REIT distribution test that requires a REIT to distribute at least 90% of its REIT taxable income, determined without regard to the dividends paid deduction and excluding any net capital gain. In this circumstance, we may elect to distribute an additional dividend of the increased taxable income so as not to fail the REIT distribution test. This distribution would be paid to all stockholders at the time of declaration rather than the stockholders existing in the taxable year affected by the re-characterization.

We may in the future choose to make distributions in shares of our common stock, in which case you may be required to pay tax in excess of the cash you receive.

We may make taxable distributions that are payable in our stock. Pursuant to guidance issued by the IRS, up to 90% of any such taxable distribution with respect to calendar years 2008 through 2011, and in some cases declared as late as December 31, 2012, could be payable in our stock. Taxable stockholders receiving such distribution will be required to include the full amount of the distribution as ordinary income to the extent of our current and accumulated earnings and profits, as determined for federal income tax purposes. As a result, a U.S. stockholder may be required to pay tax with respect to such distributions in excess of the cash received. If a U.S. stockholder sells the stock it receives as a distribution in order to pay this tax, the sales proceeds may be less than the amount included in income with respect to the distribution, depending on the market price of our stock at the time of the sale. For more information on the tax consequences of distributions with respect to our common stock, see Federal Income Tax Considerations Federal Income Tax Considerations for Our Common Stockholders. Furthermore, with respect to non-U.S. stockholders, we may be required to withhold U.S. tax with respect to such distributions, including in respect of all or a portion of such distribution that is payable in stock. In addition, if a significant number of our stockholders determine to sell shares of our stock in order to pay taxes owed on distributions, such sales may materially and adversely affect the per share trading price of our common stock.

Dividends payable by REITs do not qualify for the reduced tax rates available for some dividends.

The maximum tax rate applicable to income from qualified dividends payable to U.S. stockholders that are individuals, trusts and estates is 15% through the end of 2012. Dividends payable by REITs, however, generally are not eligible for the 15% rate. Although these rules do not adversely affect the taxation of REITs or dividends payable by REITs, to the extent that the 15% rate continues to apply to regular corporate qualified dividends, investors who are individuals, trusts and estates may perceive investments in REITs to be relatively less attractive than investments in the stocks of non-REIT corporations that pay dividends, which could materially and adversely affect the value of the shares of REITs, including the per share trading price of our common stock.

Table of Contents

The tax imposed on REITs engaging in prohibited transactions may limit our ability to engage in transactions which would be treated as sales for federal income tax purposes.

A REIT s net income from prohibited transactions is subject to a 100% penalty tax. In general, prohibited transactions are sales or other dispositions of property, other than foreclosure property, held primarily for sale to customers in the ordinary course of business. Although we do not intend to hold any properties that would be characterized as held for sale to customers in the ordinary course of our business, unless a sale or disposition qualifies under certain statutory safe harbors, such characterization is a factual determination and no guarantee can be given that the IRS would agree with our characterization of our properties or that we will always be able to make use of the available safe harbors.

Complying with REIT requirements may affect our profitability and may force us to liquidate or forgo otherwise attractive investments.

To qualify as a REIT, we must continually satisfy tests concerning, among other things, the nature and diversification of our assets, the sources of our income and the amounts we distribute to our stockholders. We may be required to liquidate or forgo otherwise attractive investments in order to satisfy the asset and income tests or to qualify under certain statutory relief provisions. We also may be required to make distributions to stockholders at disadvantageous times or when we do not have funds readily available for distribution. As a result, having to comply with the distribution requirement could cause us to: (1) sell assets in adverse market conditions; (2) borrow on unfavorable terms; or (3) distribute amounts that would otherwise be invested in future acquisitions, capital expenditures or repayment of debt. Accordingly, satisfying the REIT requirements could materially and adversely affect us. Moreover, if we are compelled to liquidate our investments to meet any of these asset, income or distribution tests, or to repay obligations to our lenders, we may be unable to comply with one or more of the requirements applicable to REITs or may be subject to a 100% tax on any resulting gain if such sales constitute prohibited transactions.

Legislative or other actions affecting REITs could have a negative effect on us.

The rules dealing with federal income taxation are constantly under review by persons involved in the legislative process and by the IRS and the U.S. Department of the Treasury. Changes to the tax laws, with or without retroactive application, could materially and adversely affect our investors or us. We cannot predict how changes in the tax laws might affect our investors or us. New legislation, Treasury Regulations, administrative interpretations or court decisions could significantly and negatively affect our ability to qualify as a REIT or the federal income tax consequences of such qualification.

Risks Related to this Offering and Ownership of Our Common Stock

There has been no recent public market for our common stock prior to this offering and an active trading market for our common stock may not develop following this offering.

Prior to this offering, there had not been public market for our common stock since 2007, and there can be no assurance that an active trading market will develop or be sustained or that shares of our common stock will be resold at or above the initial public offering price. We intend to apply to have our common stock listed on the NYSE. The initial public offering price of our common stock will be determined by agreement among us and the underwriters, but there can be no assurance that our common stock will not trade below the initial public offering price following the completion of this offering. See Underwriting. The market value of our common stock could be substantially affected by general market conditions, including the extent to which a secondary market develops for our common stock following the completion of this offering, the extent of institutional investor interest in us, the general reputation of REITs and the attractiveness of their equity securities in comparison to other equity securities (including securities issued by other real estate-based companies), our financial performance and general stock and bond market conditions.

Table of Contents

The market price and trading volume of shares of our common stock may be volatile following this offering.

The market price of shares of our common stock may fluctuate widely. In addition, the trading volume in shares of our common stock may fluctuate and cause significant price variations to occur. If the market price of shares of our common stock declines significantly, you may be unable to resell your shares of our common stock at or above the public offering price. We cannot assure you that the market price of shares of our common stock will not fluctuate or decline significantly, including a decline below the public offering price, in the future.

Some of the factors that could negatively affect our share price or result in fluctuations in the market price or trading volume of shares of our common stock include:

- actual or anticipated declines in our quarterly operating results or distributions;
- reductions in our FFO or earnings estimates;
- publication of research reports about us or the real estate industry;
- increases in market interest rates that lead purchasers of shares of our common stock to demand a higher yield;
- changes in market valuations of similar companies;
- adverse market reaction to any increased indebtedness we incur in the future;
- additions or departures of key management personnel;
- actions by institutional stockholders;
- speculation in the press or investment community; and
- the realization of any of the other risk factors presented in this prospectus.

There can be no assurance that we will be able to make or maintain cash distributions, and certain agreements relating to our indebtedness may, under certain circumstances, limit or eliminate our ability to make distributions to our common stockholders.

We intend to make quarterly cash distributions to our stockholders in amounts such that all or substantially all of our taxable income in each year, subject to adjustments, is distributed. Our ability to continue to make distributions in the future may be adversely affected by the risk factors described in this prospectus. We can give no assurance that we will be able to make or maintain distributions and certain agreements relating to our indebtedness may, under certain circumstances, limit or eliminate our ability to make distributions to our common stockholders. We can give no assurance that rents from our properties will increase, or that future acquisitions of real properties, mortgage loans or other investments will increase our cash available for distributions to stockholders. In addition, all distributions are made at the discretion of our board of directors and depend on our earnings, our financial condition, maintaining our REIT status and other factors our board of directors deems relevant from time to time.

Distributions are expected to be based upon our FFO, financial condition, cash flows and liquidity, debt service requirements, capital expenditure requirements for our properties. If we do not have sufficient cash available for distributions, we may need to fund the shortage out of working capital or borrow to provide funds for such distributions, which would reduce the amount of proceeds available for real estate investments and increase our future interest costs. Our inability to make distributions, or to make distributions at expected levels, could result in a decrease in per share trading price of our common stock.

Table of Contents

We may use a portion of the net proceeds from this offering to make distributions to our stockholders, which would, among other things, reduce our cash available to acquire properties and may reduce the returns on your investment in our common stock.

Prior to the time we have fully invested the net proceeds from this offering, we may fund distributions to our stockholders out of the net proceeds of these offerings, which would reduce the amount of cash we have available to acquire properties and may reduce the returns on your investment in our common stock. The use of these net proceeds for distributions to stockholders could materially and adversely affect us. In addition, funding distributions from the net proceeds from this offering may constitute a return of capital to our stockholders, which would have the effect of reducing each stockholder s tax basis in our common stock.

Increases in market interest rates may result in a decrease in the value of shares of our common stock.

One of the factors that will influence the price of shares of our common stock will be the distribution yield on shares of our common stock (as a percentage of the price of shares of our common stock) relative to market interest rates. An increase in market interest rates, which are currently at low levels relative to historical rates, may lead prospective purchasers of shares of our common stock to expect a higher distribution yield and higher interest rates would likely increase our borrowing costs and potentially decrease funds available for distribution. Thus, higher market interest rates could cause the per share trading price of our common stock to decrease.

Broad market fluctuations could negatively impact the market price of shares of our common stock.

The stock market has experienced extreme price and volume fluctuations that have affected the market price of many companies in industries similar or related to ours and that have been unrelated to these companies operating performances. These broad market fluctuations could reduce the market price of shares of our common stock. Furthermore, our operating results and prospects may be below the expectations of public market analysts and investors or may be lower than those of companies with comparable market capitalizations. Either of these factors could lead to a material decline in the per share trading price of our common stock.

This offering is expected to be dilutive to earnings, and there may be future dilution to earnings related to shares of our common stock.

Giving effect to the issuance of shares of our common stock in this offering, which may include shares issued pursuant to a full or partial exercise by the underwriters of their over-allotment option, the receipt of the expected net proceeds and the use of those proceeds and the debt conversion, we expect that this offering will have a dilutive effect on our expected earnings per share and FFO per share. The actual amount of dilution cannot be determined at this time and will be based upon numerous factors. The market price of shares of our common stock could decline as a result of issuances or sales of a large number of shares of our common stock in the market after this offering or the perception that such issuances or sales could occur. Additionally, future issuances or sales of substantial amounts of shares of our common stock may be at prices below the initial public offering price of the shares of our common stock offered by this prospectus and may result in further dilution in our earnings and FFO per share and/or materially and adversely impact the per share trading price of our common stock.

The conversion of our TLC indebtedness into shares of our common stock may materially and adversely affect the per share trading price of our common stock.

Upon the completion of this offering, $330 million of our currently outstanding TLC indebtedness will be extinguished and converted into shares of our common stock. The number of shares of our common stock to be issued in the debt conversion depends in part on the initial public offering price. The issuance of shares of our common stock to the holders of TLC indebtedness may be dilutive to our expected earnings per share and expected FFO per share and may also dilute your ownership percentage of our common stock. As a result, the issuance of shares of our common stock in the debt conversion could materially and adversely affect the per share trading price of our common stock. See Pricing Sensitivity Analysis.

Table of Contents

Future offerings of debt, which would be senior to shares of our common stock upon liquidation, and/or preferred equity securities that may be senior to shares of our common stock for purposes of distributions or upon liquidation, may materially and adversely affect the market price of shares of our common stock.

In the future, we may attempt to increase our capital resources by making additional offerings of debt or preferred equity securities (or causing our operating partnership to issue debt securities). Upon liquidation, holders of our debt securities and preferred stock and lenders with respect to other borrowings will receive distributions of our available assets prior to our common stockholders. Additionally, any convertible or exchangeable securities that we issue in the future may have rights, preferences and privileges more favorable than those of our common stock and may result in dilution to owners of our common stock. Our common stockholders are not entitled to preemptive rights or other protections against dilution. Our preferred stock, if issued, could have a preference on liquidating distributions or a preference on distribution payments that could limit our ability to make distributions to our common stockholders. Because our decision to issue securities in any future offering will depend on market conditions and other factors beyond our control, we cannot predict or estimate the amount, timing or nature of our future offerings. Our common stockholders bear the risk of our future offerings reducing per share trading price of our common stock.

Sales of substantial amounts of our common stock in the public markets, or the perception that they might occur, could reduce the price of our common stock and may dilute your voting power and your ownership interest in us.

Sales of substantial amounts of our common stock in the public market following our initial public offering, or the perception that such sales could occur, could adversely affect the market price of our common stock and may make it more difficult for you to sell your common stock at a time and price that you deem appropriate. Based on the number of shares outstanding as of September 30, 2011, upon the completion of this offering and the debt conversion, we will have outstanding shares of our common stock (or shares of our common stock if the underwriters exercise in full their over-allotment option). The shares of our common stock that we are selling in this offering may be resold immediately in the public market unless they are held by affiliates, as that term is defined in Rule 144 of the Securities Act of 1933, as amended, or the Securities Act.

Subject to applicable law, our board of directors has the authority, without further stockholder approval, to issue additional shares of our common stock and preferred shares on the terms and for the consideration it deems appropriate.

Subject to certain exceptions, we and all of our directors, director nominees and officers, substantially all of our continuing investors and the TLC lenders, have agreed that, without the prior written consent of the representatives on behalf of the underwriters (and, in the case of the stock subject to the 270 day restricted period referenced below, the majority of the TLC lenders), we and they will not, during the period ending (1) 180 days, in the case of us and the TLC lenders, or (2) 270 days, in the case of our directors, director nominees and officers and substantially all of our continuing investors, from the date of the completion of this offering, will not offer, sell or agree to sell, directly or indirectly, any shares of our common stock. When the lock-up period expires, our locked- up security holders will be able to sell our shares in the public market. Sales of a substantial number of such shares upon expiration, or the perception that such sales may occur, or early release of the lock-up could cause our per share trading price to fall or make it more difficult for you to sell your common stock at a time and price that you deem appropriate.

Holders of shares of our common stock, which includes shares of our common stock to be issued in the debt conversion, shares of our common stock held by continuing investors and to be granted to our directors, executive officers and other employees, will have rights, subject to some conditions, to require us to file registration statements covering the sale of their shares or to include their shares in registration statements that we may file for ourselves or other stockholders. We also intend to register the offer and sale of all shares of our common stock that we may issue under our equity compensation plans. We intend to file with the SEC a registration statement on Form S-8 covering the shares of our common stock issuable under our equity

Table of Contents

compensation plans. Once we register the offer and sale of shares for the holders of registration rights, they can be freely sold in the public market upon issuance, subject to the lock-up agreements described in the preceding paragraph and in the section of this prospectus captioned Underwriting or unless they are held by affiliates, as that term is defined in Rule 144 of the Securities Act. We also may issue from time to time additional shares of our common stock or operating partnership units (which are exchangeable into our common stock) in connection with property acquisitions and may grant additional registration rights in connection with such issuances, pursuant to which we would agree to register the resale of such securities under the Securities Act. The market price of our common stock may decline significantly upon the registration of additional shares of our common stock pursuant to the registration rights described above or future issuances of equity in connection with property acquisitions.

In addition to the underwriting discounts and commissions to be received by the underwriters, they may receive other benefits from this offering.

In addition to the underwriting discounts and commissions to be received by the underwriters, we expect that affiliates of the underwriters will act as lenders under the proposed $ million revolving credit facility that we expect to enter into upon the completion of this offering. This transaction creates a potential conflict of interest because the underwriters have an interest in the successful completion of this offering beyond the underwriting discounts and commissions they will receive.

Upon completion of this offering, Macquarie Group (US) Holdings No. 1 Pty Limited, an affiliate of Macquarie Capital (USA) Inc., will own approximately % of our common stock. See Certain Relationships and Related Transactions Relationships with Macquarie Capital (USA) Inc.

The underwriters and/or their affiliates may engage in commercial and investment banking transactions with us and/or our affiliates in the ordinary course of their business. They expect to receive customary compensation and expense reimbursement for these commercial and investment banking transactions.

A lack of research analyst coverage or restrictions on the ability of analysts associated with the co-managers of this offering to publish during certain time periods, including when we report our results of operations, could materially and adversely affect the trading price and liquidity of our common stock.

We cannot assure you that research analysts, including those associated with the underwriters of this offering, will initiate or maintain research coverage of us or our common stock. In addition, regulatory rules prohibit research analysts associated with the co-managers of this offering from publishing or otherwise distributing a research report or from making a public appearance regarding us for 15 days prior to and after the expiration, waiver or termination of any lock-up agreement that we or certain of our stockholders have entered into with the underwriters of this offering. Accordingly, it could be the case that research concerning our results of operations or the possible effects on us of significant news or a significant event will not be published or will be published on a delayed basis. A lack of research or the inability of certain research analysts to publish research relating to our results of operations or significant news or a significant event in a timely manner could materially and adversely affect the trading price and liquidity of our common stock.

Table of Contents

SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus contains forward-looking statements within the meaning of the federal securities laws. In particular, statements pertaining to our business and growth strategies, investment and leasing activities and trends in our business, including trends in the market for long-term, triple-net leases of freestanding, single-tenant properties, contain forward-looking statements. When used in this prospectus, the words estimate, anticipate, expect, believe, intend, may, will, should, seek, approximately or plan, or the negative of these words and phrases phrases which are predictions of or indicate future events or trends and which do not relate solely to historical matters are intended to identify forward-looking statements. You can also identify forward-looking statements by discussions of strategy, plans or intentions of management.

Forward-looking statements involve numerous risks and uncertainties and you should not rely on them as predictions of future events. Forward-looking statements depend on assumptions, data or methods which may be incorrect or imprecise and we may not be able to realize them. We do not guarantee that the transactions and events described will happen as described (or that they will happen at all). The following factors, among others, could cause actual results and future events to differ materially from those set forth or contemplated in the forward-looking statements:

- general business and economic conditions;
- continued volatility and uncertainty in the credit markets and broader financial markets, including potential fluctuations in the CPI;
- other risks inherent in the real estate business, including tenant defaults, potential liability relating to environmental matters, illiquidity of real estate investments, and potential damages from natural disasters;
- availability of suitable properties to acquire and our ability to acquire and lease those properties on favorable terms;
- ability to renew leases, lease vacant space or re-lease space as existing leases expire;
- the degree and nature of our competition;
- our failure to generate sufficient cash flows to service our outstanding indebtedness;
- access to debt and equity capital markets;
- fluctuating interest rates;
- availability of qualified personnel and our ability to retain our key management personnel;
- the outcome of any legal proceedings to which we are a party;
- changes in, or the failure or inability to comply with, government regulation, including Maryland laws;

- failure to maintain our status as a REIT;
- changes in the U.S. tax law and other U.S. laws, whether or not specific to REITs; and
- additional factors discussed in the sections entitled Business and Properties, Risk Factors and Management s Discussion and Analysis of Financial Condition and Results of Operations in this prospectus.

You are cautioned not to place undue reliance on forward-looking statements, which speak only as of the date of this prospectus. While forward-looking statements reflect our good faith beliefs, they are not guarantees of future performance. We undertake no obligation to publicly release the results of any revisions to these forward-looking statements that may be made to reflect events or circumstances after the date of this prospectus or to reflect the occurrence of unanticipated events. In light of these risks and uncertainties, the forward-looking events discussed in this prospectus might not occur.

Table of Contents

USE OF PROCEEDS

We estimate that the net proceeds to us from this offering will be approximately $ million, or $ million if the underwriters exercise their over-allotment option in full, after deducting underwriting discounts and commissions and other estimated expenses, in each case, based on the mid-point of the price range set forth on the front cover of this prospectus.

We intend to use $399.0 million of the net proceeds from this offering to repay our outstanding TLB, which matures in August 2013. The TLB requires interest payments based on either (1) LIBOR in effect at the beginning of each interest period plus a spread of 3% or (2) a base rate as defined in the loan agreement. As of September 30, 2011, the rate on the TLB was 3.43%, based on a 6-month LIBOR rate of 0.43% in effect until February 1, 2012.

We intend to use $ million of net proceeds to pay expenses associated with securing lenders consents to this offering and related transactions. Remaining net proceeds will be used for general business and working capital purposes, including potential future acquisitions.

Pending the permanent use of the net proceeds from this offering, we intend to invest the net proceeds in interest-bearing, short-term investment-grade securities, money-market accounts or other investments that are consistent with our intention to maintain our qualification as a REIT for federal income tax purposes.

Table of Contents

DISTRIBUTION POLICY

We intend to make a pro rata distribution with respect to the period commencing upon the completion of this offering and ending on , 2012, based on a distribution rate of $ per share of our common stock for a full quarter. On an annualized basis, this would be $ per share of our common stock, or an annualized distribution rate of approximately % based on the mid-point of the price range set forth on the front cover of this prospectus. We estimate that this initial annual distribution rate will represent approximately % of estimated cash available for distribution for the 12 months ending September 30, 2012. We do not intend to reduce the annualized distribution per share of our common stock if the underwriters exercise their over-allotment option. Our intended initial annual distribution rate has been established based on our estimate of cash available for distribution for the 12 months ending September 30, 2012, which we have calculated based on adjustments to our pro forma net loss from continuing operations for the 12 months ended December 31, 2010. This estimate was based on our pro forma operating results and does not take into account our long-term business and growth strategies, nor does it take into account any unanticipated expenditures we may have to make or any financings for such expenditures. In estimating our cash available for distribution for the 12 months ending September 30, 2012, we have made certain assumptions as reflected in the table and footnotes below.

Our estimate of cash available for distribution does not include the effect of any changes in our working capital resulting from changes in our working capital accounts. It also does not reflect the amount of cash estimated to be used for investing activities, financing activities or other activities, other than scheduled loan principal payments on mortgage indebtedness that will be outstanding upon the completion of this offering, the use of the net proceeds and the debt conversion and reductions in interest expense associated with loan amortization. Any such investing and/or financing activities may have a material and adverse effect on our estimate of cash available for distribution. Because we have made the assumptions set forth above in estimating cash available for distribution, we do not intend this estimate to be a projection or forecast of our actual results of operations, FFO, liquidity or financial condition and have estimated cash available for distribution for the sole purpose of determining our estimated initial annual distribution amount. Our estimate of cash available for distribution should not be considered as an alternative to cash flow from operating activities (computed in accordance with GAAP) or as an indicator of our liquidity or our ability to make distributions. In addition, the methodology upon which we made the adjustments described below is not necessarily intended to be a basis for determining future distributions.

We intend to maintain our initial distribution rate for the 12 months following the completion of this offering unless our results of operations, FFO, liquidity, cash flows, financial condition or prospects, economic conditions or other factors differ materially from the assumptions used in projecting our initial distribution rate. We believe that our estimate of cash available for distribution constitutes a reasonable basis for setting the initial distribution rate, as substantially all of the properties in our portfolio have been in operation for a significant period of time. However, we cannot assure you that our estimate will prove accurate, and actual distributions may therefore be significantly below the expected distributions. Our actual results of operations will be affected by a number of factors, including the revenue received from our properties, our operating expenses, interest expense (including the effect of variable rate debt), and unanticipated capital expenditures. We may, from time to time, be required, or elect, to borrow under our proposed revolving credit facility or otherwise to pay distributions.

We cannot assure you that our estimated distributions will be made or sustained or that our board of directors will not change our distribution policy in the future. Any distributions will be at the sole discretion of our board of directors, and their form, timing and amount, if any, will depend upon a number of factors, including our actual and projected results of operations, FFO, liquidity, cash flows and financial condition, the revenue we actually receive from our properties, our operating expenses, our debt service requirements, our capital expenditures, prohibitions and other limitations under our financing arrangements, our REIT taxable income, the annual REIT distribution requirements, applicable law and such other factors as our board of directors deems relevant. For more information regarding risk factors that could materially and adversely affect us, see Risk Factors. If our operations do not generate sufficient cash flow to enable us to pay our intended or required distributions, we may be required either to fund distributions from working capital, borrow or raise equity or to reduce such distributions. In addition, our charter allows us to issue preferred stock that could have a preference on distributions. Additionally, under certain circumstances, agreements relating to our indebtedness could limit our ability to make distributions to our common stockholders. We intend to redeem all of our currently outstanding preferred stock shortly after the completion of this offering, and we currently have no intention to issue any new shares of preferred stock, but if we do, the distribution preference on the preferred stock could limit our ability to make distributions to our common stockholders. We may in the future also choose to make distributions in shares of our common stock. See Federal Income Tax Considerations Taxation of Our Company Annual Distribution Requirements and Risk Factors Risks Related to Our Status as a REIT We may in the future choose to make distributions in shares of our common stock, in which case you may be required to pay tax in excess of the cash you receive.

We anticipate that, at least initially, approximately % of our distributions will exceed our then current and accumulated earnings and profits as determined for federal income tax purposes due to non-cash expenses, primarily depreciation and amortization charges that we expect to incur. Distributions in excess of our current and accumulated earnings and profits will not be treated as a dividend and will not be taxable to a taxable U.S. stockholder under current federal income tax law to the extent those distributions do not exceed the stockholder s adjusted tax basis in his or her shares, but rather will reduce the adjusted tax basis of the shares. In that case, the gain (or loss) recognized on the sale of those shares or upon our liquidation will be increased (or decreased) accordingly. To the extent any non-dividend distributions exceed a taxable U.S. stockholder s adjusted tax basis in his or her shares, such excess distributions generally will be treated as a capital gain realized from the taxable disposition of those shares. The percentage of distributions to our stockholders that exceeds our current and accumulated earnings and profits, if any, may vary substantially from year to year. For a more complete discussion of the tax treatment of distributions to our common stockholders, see Federal Income Tax Considerations.

Federal income tax law requires that a REIT distribute annually at least 90% of its REIT taxable income, determined without regard to the dividends paid deduction and excluding any net capital gains, and that it pay tax at regular corporate rates to the extent that it annually distributes less than 100% of its REIT taxable income, determined without regard to the dividends paid deduction and including any net capital gains. In addition, a REIT will be required to pay a 4% nondeductible excise tax on the amount, if any, by which the distributions it makes in a calendar year are less than the sum of 85% of its ordinary income, 95% of its capital gain net income and 100% of its undistributed income from prior years. For more information, see Federal Income Tax Considerations. We anticipate that our estimated cash available for distribution will be sufficient to enable us to meet the annual distribution requirements applicable to REITs and to avoid or minimize the imposition of corporate and excise taxes. However, under some circumstances, we may be required to make distributions in excess of cash available for distribution in order to meet these distribution requirements or to avoid or minimize the imposition of tax and we may need to borrow funds to make certain distributions. We may also choose to meet such distribution requirements by distributing cash and shares of our common stock, which may require our common stockholders to pay tax in excess of the cash received. See Federal Income Tax Considerations Federal Income Tax Considerations for Our Common Stockholders Taxation of Taxable U.S. Stockholders, and Risk Factors Risks Related to Our Status as a REIT We may in the future choose to make distributions in shares of our common stock, in which case you may be required to pay tax in excess of the cash you receive.

Table of Contents

The following table sets forth calculations relating to the intended initial distribution based on our pro forma financial data for the 12 months ended December 31, 2010 and is provided solely for the purpose of illustrating the initial distribution and is not intended to be a basis for determining future distributions. All dollar amounts are in thousands.

Pro forma loss from continuing operations for the 12 months ended December 31, 2010	**$**	
Less: pro forma income from continuing operations for the nine months ended September 30, 2010		
Add: pro forma income from continuing operations for the nine months ended September 30, 2011		
Pro forma loss from continuing operations for the 12 months ended September 30, 2011	$	
Add: estimated net increases in contractual rental revenue(1)		
Less: net decreases in contractual rent income due to tenant lease expirations and other vacancies, assuming no lease renewals(2)		
Add: real estate depreciation and amortization		
Add: other depreciation and amortization		
Add: non-cash impairment charges(3)		
Add: amortization of debt discount and deferred financing costs(4)		
Less: net effect of non-cash rental revenue(5)		
Add: net effect of non-cash interest income on loans receivable(6)		
Add: reduction to interest expense associated with the amortization of mortgages and notes payable(7)		
Less: reduction in interest income associated with the amortization of loans receivable(8)		
Add: non-cash loss on sale of loans receivable(9)		
Add: litigation expense(10)		
Add: non-cash compensation expense(11)		
Estimated cash flows from operating activities for the 12 months ending September 30, 2012	**$**	
Add: contractually scheduled cash flows from collections of principal amortization payments on loans receivable(12)		
Less: cash disbursement obligations for property and tenant improvements(13)		
Less: scheduled principal payments on mortgages and notes payable(14)		
Estimated cash available for distribution for the 12 months ending September 30, 2012	**$**	
Total estimated initial annual distribution to stockholders(15)	**$**	
Estimated initial annual distribution per share	$	
Payout ratio(16)		%

(1) Represents contractual increases in rental revenue from:

contractual increases based on changes in the CPI (including (a) increases that have already occurred but were not in effect for the entire 12 months ended September 30, 2011, (b) actual increases that have occurred from October 1, 2011 through November 30, 2011 and (c) an estimated amount for increases scheduled to occur between December 1, 2011 and September 30, 2012 based on an assumed change in the CPI of 3.87% (the same rate of change as occurred in the CPI between September 30, 2010 and September 30, 2011));

scheduled fixed rent increases; and

net increases from new leases or renewals that were not in effect for the entire 12 months ended September 30, 2011 or that will go into effect during the 12 months ending September 30, 2012 based upon leases entered into through November 30, 2011;

Table of Contents

net of the effects of contractual rent deferrals and abatements in effect for existing leases and the restructure of master leases primarily related to tenant bankruptcies.

(2) Represents decreases in rental revenue due to leases that expired or were terminated during the 12 months ended September 30, 2011 or that will expire during the 12 months ending September 30, 2012, assuming no new leases for vacant properties existing as of September 30, 2011 and no lease renewals for leases expiring or terminated after September 30, 2011, unless the property had been re-leased as of November 30, 2011.

(3) Represents non-cash impairment charges recognized on properties and other assets that were included in continuing operations for the 12 months ended September 30, 2011.

(4) Represents one year of non-cash interest expense associated with the amortization of the debt discount on our mortgages and notes payable that was recognized as part of our privatization and one year of non-cash interest expense associated with the amortization of deferred financing costs on our mortgages and notes payable.

(5) Represents one year of net non-cash rental revenues associated with the net straight-line adjustment to rental revenue, the amortization of above- and below-market lease intangibles and the amortization of lease origination costs.

(6) Represents one year of non-cash interest income adjustments associated with the amortization of fair value adjustments to our loan receivable portfolio recognized as part of our privatization and the amortization of net loan origination costs.

(7) Represents reductions in contractual interest expense for the 12 months ending September 30, 2012 due to reductions in outstanding principal amount of indebtedness arising from principal amortization payments on our mortgages and notes payable.

(8) Represents reductions in contractually due interest income for the 12 months ending September 30, 2012 due to reductions in outstanding principal amount of loans receivable arising from principal amortization payments on our loans receivable.

(9) Represents the non-cash loss recognized on the sale of loans receivable in 2010 and included in loss from continuing operations for the 12 months ended September 30, 2011.

(10) Represents net litigation costs included in the pro forma loss from continuing operations for the 12 months ended September 30, 2011 associated with two lawsuits brought by former members of our senior management. All claims associated with these lawsuits have been resolved through a final settlement, and we do not expect to incur any other costs relating to these lawsuits.

(11) Represents non-cash stock-based compensation expense related to equity based awards granted to certain members of our management and included in the pro forma loss from continuing operations for the 12 months ended September 30, 2011.

(12) Reflects expected cash flows from contractually scheduled collections of principal on our loans receivable portfolio for the 12 months ending September 30, 2012.

(13) Reflects the expected cash disbursements associated with all known property and tenant improvement obligations projected to be completed during the 12 months ending September 30, 2012.

(14) Represents scheduled principal amortization on outstanding indebtedness during the 12 months ending September 30, 2012.

(15) Based on a total of shares of our common stock to be outstanding after this offering and the debt conversion, based on the mid-point of the price range set forth on the front cover of this prospectus.

(16) Calculated as total estimated initial annual distribution to stockholders divided by estimated cash available for distribution for the 12 months ending September 30, 2012.

Table of Contents

CAPITALIZATION

The following table sets forth our historical capitalization as of September 30, 2011 and our pro forma capitalization as of September 30, 2011 to give effect to this offering, the debt conversion and the use of net proceeds as set forth in Use of Proceeds, based on the mid-point of the price range set forth on the front cover of this prospectus. This table should be read in conjunction with the sections entitled Use of Proceeds, Selected Financial Data, Management s Discussion and Analysis of Financial Condition and Results of Operations and our historical and pro forma financial statements and related notes included elsewhere in this prospectus.

	As of September 30, 2011	
	Historical	Pro Forma
	(In thousands, except per share amounts)	
Debt(1):		
Term loan payable, net(2)	$ 723,286	$
Mortgage notes payable, net	1,898,328	1,898,328
Stockholders Equity:		
Preferred stock, $.01 par value per share; 20,000,000 shares authorized, 125 shares issued and outstanding, actual; shares authorized, 125 shares issued and outstanding, pro forma(3)	84	
Common stock, $.01 par value per share; 100,000,000 shares authorized, 200 shares issued and outstanding, actual; shares authorized and issued and outstanding, pro forma(4)		
Capital in excess of par value	1,004,324	
Accumulated deficit	(452,180)	
Accumulated other comprehensive loss	(8,550)	
Total stockholders equity	543,678	
Total Capitalization	**$ 3,165,292**	

(1) We expect to enter into a proposed $ revolving credit facility, which we expect to be undrawn at the completion of this offering.

(2) Upon the completion of this offering, the $330 million of TLC will be extinguished and converted into shares of our common stock. In addition, we intend to use a significant portion of the net proceeds from this offering to repay the remaining balance outstanding under the term loan. See Management s Discussion and Analysis of Financial Condition and Results of Operations Liquidity and Capital Resources Description of Certain Debt Term Loan and Debt Conversion and Pricing Sensitivity Analysis.

(3) As of September 30, 2011, we had 125 shares of 12.5% Series A Cumulative Non-Voting Preferred Stock outstanding. We intend to redeem all shares of such preferred stock shortly after the completion of this offering. See Description of Our Capital Stock Preferred Stock Series A Preferred Stock.

(4) Pro forma common stock outstanding gives effect to the for 1 stock dividend to be paid prior to the completion of this offering and includes (a) shares to be held by continuing investors, (b) shares to be issued in this offering, (c) shares to be issued in the debt conversion (based on the mid-point of the price range set forth on the front cover of this prospectus) and (d) to be granted to our directors, executive officers and other employees, and excludes (a) shares of our common stock issuable upon the exercise of the underwriters over-allotment option in full and (b) shares of our common stock reserved for future issuance under the Incentive Award Plan, as more fully described in Executive Compensation Incentive Award Plan.

Table of Contents

As described in further detail in Pricing Sensitivity Analysis, the number of shares of our common stock to be issued in the debt conversion depends, in part, on our initial public offering price. Assuming an initial public offering price of $ per share (which is the mid-point of the price range set forth on the front cover of this prospectus), we expect to issue shares of our common stock to the TLC lenders. The following table sets forth the total number of shares to be issued in the debt conversion, assuming different initial public offering prices within the price range set forth on the front cover of this prospectus:

Assumed Initial Public Offering Price Per Share