

NATIONAL RETAIL PROPERTIES, INC.
Form 424B5
June 28, 2011
Table of Contents

Filed Pursuant to Rule 424(b)(5)
Registration File No. 333-157583

This preliminary prospectus supplement relates to an effective registration statement under the Securities Act of 1933, as amended, but is not complete and may be changed. This preliminary prospectus supplement and the accompanying prospectus are not an offer to sell these securities and are not soliciting an offer to buy these securities in any jurisdiction where the offer or sale is not permitted.

SUBJECT TO COMPLETION, DATED JUNE 28, 2011

PROSPECTUS SUPPLEMENT

(To Prospectus dated February 27, 2009)

\$250,000,000

% Notes due 2021

We are offering \$250,000,000 aggregate principal amount of % notes due 2021.

The notes will have the following terms:

Interest on the notes will be payable semi-annually on and , beginning on .

The notes will mature on , 2021. The notes are redeemable in whole or in part at any time or from time to time at the redemption price described in the section entitled Description of Notes Optional Redemption.

There is no sinking fund.

The notes will be our senior unsecured obligations and will rank equally with all of our other from time to time outstanding senior unsecured indebtedness. The notes will also be subordinated to our secured indebtedness to the extent of the assets securing such debt and will be effectively subordinated to all liabilities of our subsidiaries to the extent of the assets of those subsidiaries.

The notes will not be listed on any securities exchange or automated quotation system.

Investing in the notes involves risks. See Risk Factors beginning on page S-3 of this prospectus supplement and beginning on page 8 of our Annual Report on Form 10-K for the fiscal year ended December 31, 2010, which is incorporated herein by reference.

	Per Note	Total
Public Offering Price ⁽¹⁾	%	\$
Underwriting Discount	%	\$
Proceeds to National Retail Properties, Inc. (before expenses)	%	\$

⁽¹⁾ Plus accrued interest, if any, from _____, 2011 if settlement occurs after that date.

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

We expect that delivery of the notes will be made to investors through the book-entry delivery system of The Depository Trust Company for the accounts of its participants, including Clearstream Banking, société anonyme, and Euroclear Bank, S.A./N.V., as operator for the Euroclear System, against payment in New York, New York on or about _____, 2011.

Joint Book-Running Managers

BofA Merrill Lynch

The date of this prospectus supplement is

Wells Fargo Securities

, 2011

Table of Contents

TABLE OF CONTENTS

	Page
Prospectus Supplement	
<u>About this Prospectus Supplement</u>	S-i
<u>Forward-Looking Statements</u>	S-ii
<u>Summary</u>	S-1
<u>Risk Factors</u>	S-3
<u>Use of Proceeds</u>	S-5
<u>Ratio of Earnings to Fixed Charges and Combined Fixed Charges and Preferred Stock Dividends</u>	S-5
<u>Description of Notes</u>	S-6
<u>Certain Federal Income Tax Considerations</u>	S-15
<u>Underwriting</u>	S-20
<u>Legal Matters</u>	S-23
<u>Experts</u>	S-23
<u>Where You Can Find More Information</u>	S-23
Prospectus	
<u>About this Prospectus</u>	1
<u>Risk Factors</u>	1
<u>Forward-Looking Statements</u>	1
<u>Where You Can Find More Information</u>	2
<u>National Retail Properties, Inc.</u>	3
<u>Use of Proceeds</u>	4
<u>Ratios of Earnings to Fixed Charges and Preferred Stock Dividends</u>	4
<u>Description of Debt Securities</u>	5
<u>Description of Preferred Stock</u>	16
<u>Description of Depositary Shares</u>	22
<u>Description of Common Stock</u>	25
<u>Description of Warrants</u>	28
<u>Federal Income Tax Considerations</u>	29
<u>Plan of Distribution</u>	46
<u>Legal Matters</u>	47
<u>Experts</u>	47

Table of Contents

ABOUT THIS PROSPECTUS SUPPLEMENT

You should rely only on the information contained in or incorporated by reference into this prospectus supplement, the accompanying prospectus and any free writing prospectus we may authorize to be delivered to you. We have not, and the underwriters have not, authorized anyone to provide you with different or additional information. If anyone provides you with different or inconsistent information, you should not rely on it. We and the underwriters are offering to sell, and seeking offers to buy, the securities only in jurisdictions where offers and sales are permitted. You should not assume that the information appearing in this prospectus supplement, the accompanying prospectus, any free writing prospectus or the documents incorporated by reference is accurate as of any date other than their respective dates. Our business, financial condition, results of operations and prospects may have changed since those dates.

This document is in two parts. The first part is this prospectus supplement, which adds to and updates information contained in the accompanying prospectus and the documents incorporated by reference into the accompanying prospectus. The second part is the accompanying prospectus, which gives more general information, some of which may not apply to this offering. This prospectus supplement adds, updates and changes information contained in the accompanying prospectus and the information incorporated by reference. To the extent the information contained in this prospectus supplement differs or varies from the information contained in the accompanying prospectus or any document incorporated by reference, the information in this prospectus supplement shall control.

In this prospectus supplement, the words *we*, *our*, *ours* and *us* refer to National Retail Properties, Inc. and its subsidiaries and joint ventures, unless the context indicates otherwise.

Table of Contents

FORWARD-LOOKING STATEMENTS

Statements contained in this prospectus supplement and the accompanying prospectus, including the documents that are incorporated by reference, that are not historical facts are forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended (the Securities Act), and Section 21E of the Securities Exchange Act of 1934, as amended (the Exchange Act). Also, when we use any of the words anticipate, assume, believe, estimate, expect, intend or similar expressions, we are making forward-looking statements. These forward-looking statements are not guaranteed and are based on our present intentions and on our present expectations and assumptions. These statements, intentions, expectations and assumptions involve risks and uncertainties, some of which are beyond our control, that could cause actual results or events to differ materially from those we anticipate or project, such as:

the ability of our tenants to make payments under their respective leases, including our reliance on certain major tenants and our ability to re-lease properties that are currently vacant or that become vacant;

our ability to locate suitable tenants for our properties;

changes in real estate market conditions and general economic conditions that could adversely impact our occupancy or rental rates;

the inherent risks associated with owning real estate (including local real estate market conditions, governing laws and regulations and illiquidity of real estate investments);

our ability to sell properties at an attractive price;

the ability of borrowers to make payments of principal and interest under structured finance investments we make to such borrowers;

our ability to gain access to the underlying collateral for any structured finance investments to borrowers;

our ability to repay debt financing obligations;

our ability to refinance amounts outstanding under our credit facilities at maturity on terms favorable to us;

the loss of any member of our management team;

our ability to be in compliance with certain debt covenants;

our ability to successfully implement our selective acquisition strategy or to fully realize the anticipated benefits of renovation or development projects;

Edgar Filing: NATIONAL RETAIL PROPERTIES, INC. - Form 424B5

changes in laws, the impact of future laws and regulations, and litigation risks; and

our ability to qualify as a real estate investment trust for federal income tax purposes.

You should not place undue reliance on these forward-looking statements, as events described or implied in such statements may not occur. We undertake no obligation to update or revise any forward-looking statements as a result of new information, future events or otherwise.

S-ii

Table of Contents

SUMMARY

The following summary is qualified in its entirety by the more detailed information and consolidated financial statements and notes thereto appearing elsewhere in, or incorporated by reference into, this prospectus supplement and the accompanying prospectus.

The Company

General

We are a leading owner, operator, acquirer and developer of retail properties that are leased primarily to retail tenants under long-term net leases. As of March 31, 2011, we owned 1,223 such investment properties with an aggregate gross leasable area of approximately 13.3 million square feet, located in 46 states.

Additionally, we acquire, develop, own and operate an inventory of retail properties, directly or indirectly, in our taxable real estate investment trust (REIT) subsidiary entities for the purpose of selling the real estate to third-party purchasers. As of March 31, 2011, we owned 16 such inventory properties.

We are a fully integrated REIT for U.S. federal tax purposes, formed in 1984. Prior to our name change on May 1, 2006, we were known as Commercial Net Lease Realty, Inc.

Our executive offices are located at 450 S. Orange Avenue, Suite 900, Orlando, Florida 32801, and our telephone number is (407) 265-7348.

Recent Developments

On May 25, 2011, we entered into an Amended and Restated Credit Agreement (the Credit Agreement) with Wells Fargo Bank, National Association, as Administrative Agent, and a syndicate of lenders named therein. The Credit Agreement amends and restates our prior credit agreement dated as of November 3, 2009.

The Credit Agreement amended the terms under the prior credit agreement by (a) increasing the borrowing capacity to \$450 million from \$400 million; (b) increasing the accordion feature to up to \$200 million from \$100 million, thus increasing the maximum borrowing capacity to \$650 million from \$500 million; (c) reducing the interest rates under the tiered rate structure with the maximum interest rate being reduced to 195 basis points above LIBOR from 340 basis points above LIBOR; (d) removing the LIBOR floor, which was 1.0% under the prior credit agreement; and (e) extending the termination date to May 24, 2015 from November 2, 2012. The termination date of the Credit Agreement remains subject to a one-year extension exercisable at our option.

The Credit Agreement contains certain (a) restrictive covenants, including, but not limited to, restrictions on the incurrence of additional indebtedness and liens, the ability to make certain payments and investments and the ability to enter into certain merger, consolidation, asset sale and affiliate transactions and (b) financial maintenance covenants, including, but not limited to, a maximum leverage ratio, a minimum fixed charge coverage ratio and a maximum secured indebtedness ratio. The Credit Agreement also contains representations and warranties, affirmative covenants and events of default, including certain cross defaults with our other indebtedness, customary for an agreement of its type. As is customary, certain events of default could result in an acceleration of our obligations under the Credit Agreement.

Table of Contents

The Offering

Issuer	National Retail Properties, Inc.
Notes Offered	\$250,000,000 aggregate principal amount.
Maturity	The notes will mature on _____, 2021, unless previously redeemed in accordance with their terms prior to such date.
Interest Rate and Payment Dates	The notes will bear interest at a rate of _____ % per year. Interest will be payable semi-annually on _____ and _____, commencing _____.
Ranking of Notes	The notes will be our senior unsecured obligations and will rank equally with all of our other senior unsecured indebtedness from time to time outstanding. However, the notes will be subordinated to all of our secured indebtedness (to the extent of the assets securing the same). As of March 31, 2011, we had approximately \$1.1 billion of senior unsecured indebtedness and \$24.0 million of secured debt. The notes will also be effectively subordinated to the indebtedness and other liabilities of our subsidiaries (to the extent of the assets of those subsidiaries).
Optional Redemption	We may redeem the notes prior to _____, 2021 (three months prior to their maturity date), at any time in whole or from time to time in part, at the redemption price set forth in the section entitled Description of the Notes Optional Redemption ; provided, however, that if we redeem the notes on or after _____, 2021, the redemption price will equal 100% of the principal amount of the notes to be redeemed plus accrued interest thereon to the redemption date.
Covenants	<p>We will issue the notes under an indenture with U.S. Bank National Association, as successor trustee. The indenture will, among other things, restrict our ability, and the ability of our subsidiaries, to:</p> <p style="padding-left: 40px;">incur debt without meeting certain financial tests; and</p> <p style="padding-left: 40px;">secure debt with our assets and the assets of our subsidiaries.</p> <p>For more details, see Description of Notes Certain Covenants.</p>
Use of Proceeds	We intend to use the net proceeds from this offering of notes to repay borrowings under our credit facility, to fund future property acquisitions and for general corporate purposes. See Use of Proceeds in this prospectus supplement.

Edgar Filing: NATIONAL RETAIL PROPERTIES, INC. - Form 424B5

Sinking Fund

The notes will not have the benefit of a sinking fund.

Risk Factors

You should carefully read the Risk Factors beginning on page S-3 of this prospectus supplement, as well as the risk factors relating to our business that are incorporated by reference into this prospectus supplement and the accompanying prospectus, for certain considerations relevant to an investment in the notes.

S-2

Table of Contents

RISK FACTORS

In addition to the other information contained in or incorporated by reference into this prospectus supplement and the accompanying prospectus, including the Risk Factors beginning on page 8 of our Annual Report on Form 10-K for the fiscal year ended December 31, 2010, you should carefully review the following considerations in determining whether to purchase the notes.

An adverse credit rating of the notes may cause their trading price to fall.

A rating assigned to the notes reflects the applicable rating agency's assessment of the likelihood that the holders of the notes will receive the payments of interest and principal required to be made. A rating reflects only the view of a rating agency and is not a recommendation to buy, sell or hold the notes. Any rating can be revised upward or downward or withdrawn at any time by a rating agency if it decides the circumstances warrant that change. A rating agency rating the notes may assign a rating that is lower than the ratings assigned to our other debt. If rating agencies assign a lower-than-expected rating or reduce, or indicate that they may reduce, their ratings in the future, the trading price of the notes could significantly decline.

We may incur additional debt and may not be able to repay our obligations under the notes.

It is our current policy to maintain a ratio of total indebtedness to total assets (before accumulated depreciation) of not more than 60%. However, this policy is subject to reevaluation and modification by our board of directors without the approval of our security holders. If the board of directors modifies this policy to permit a higher degree of leverage and we incur additional indebtedness, debt service requirements would increase accordingly. Such an increase could adversely affect our financial condition and results of operations, as well as our ability to pay principal and interest on the notes. In addition, increased leverage could increase the risk that we may default on our other debt obligations.

We are subject to the risks associated with debt financing. These risks include our possible inability to generate cash through our operating activities sufficient to meet our required payments of principal and interest and that rising interest rates may cause the rate on our variable rate indebtedness to rise. In addition, we may not be able to repay or refinance existing indebtedness, which generally will not have been fully amortized at maturity, on favorable terms. In the event that we are unable to refinance our indebtedness on acceptable terms, we may be forced to resort to alternatives that may adversely affect our ability to generate cash to pay our debt service obligations, including payments on the notes, such as disposing of properties on disadvantageous terms (which may also result in losses) and accepting financing on unfavorable terms.

The effective subordination of the notes may limit our ability to satisfy our obligations under the notes.

The notes will be our senior unsecured obligations and will rank equally with all of our other senior unsecured indebtedness. However, the notes will be subordinated to all of our secured indebtedness to the extent of the value of the collateral securing such indebtedness. As of March 31, 2011, we had outstanding \$24.0 million of secured indebtedness. The provisions of the indenture governing the notes do not prohibit us from incurring additional secured indebtedness in the future, provided that certain conditions are satisfied. Consequently, in the event of a bankruptcy, liquidation, dissolution, reorganization or similar proceeding with respect to us, the holders of any secured indebtedness will be entitled to proceed directly against the collateral that secures such secured indebtedness. Therefore, such collateral will not be available for satisfaction of any amounts owed under our unsecured indebtedness, including the notes, until such secured indebtedness is satisfied in full. The notes will also be effectively subordinated to the indebtedness and other liabilities of our subsidiaries (to the extent of the assets of those subsidiaries). See Description of Notes Ranking.

Table of Contents

There is currently no trading market for the notes, and an active liquid trading market for the notes may not develop or, if it develops, be maintained.

The notes are a new issue of securities, and there is currently no existing trading market for them. We do not intend to apply for listing of the notes on any securities exchange. Although the underwriters have advised us that they intend to make a market in the notes, they are not obligated to do so and may discontinue any market-making at any time without notice. Accordingly, an active public trading market may not develop for the notes and, even if one develops, may not be maintained. If an active public trading market for the notes does not develop or is not maintained, the market price and liquidity of the notes is likely to be adversely affected, and holders may not be able to sell their notes at desired times and prices or at all. If any of the notes are traded after their purchase, they may trade at a discount from their purchase price.

The liquidity of the trading market, if any, and future trading prices of the notes will depend on many factors, including, among other things, the market price of our common stock; prevailing interest rates; our financial condition, results of operations, business, prospects and credit quality relative to our competitors; the market for similar securities and the overall securities market, and may be adversely affected by unfavorable changes in any of these factors, some of which are beyond our control.

Table of Contents**USE OF PROCEEDS**

We estimate that the net proceeds from this offering will be approximately \$ million, after deducting the underwriting discount and other estimated expenses of this offering payable by us. We intend to use the net proceeds from this offering to repay all of our outstanding borrowings under our credit facility, which, as of June 27, 2011, was \$213.1 million. Borrowings under the credit facility accrued interest at a rate of 1.69%, as of June 27, 2011. The credit facility expires on May 24, 2015. Affiliates of Merrill Lynch, Pierce, Fenner & Smith Incorporated and Wells Fargo Securities, LLC are lenders under our credit facility and will receive their proportionate share of the amount repaid under the credit facility with the net proceeds from this offering. In addition, we intend to use the remainder of the net proceeds from this offering to fund future property acquisitions and for general corporate purposes. Pending application of the net proceeds, we will invest the net proceeds in short-term income-producing investments.

RATIO OF EARNINGS TO FIXED CHARGES AND**COMBINED FIXED CHARGES AND PREFERRED STOCK DIVIDENDS**

The following table sets forth our historical ratio of earnings to fixed charges and ratio of earnings to combined fixed charges and preferred stock dividends for the periods indicated:

	For the Three Months Ended March 31,		For the Years Ended December 31,				
	2011	2010	2010	2009	2008	2007	2006(1)
Ratio of earnings to fixed charges	2.05x	1.90x	1.99x	1.76x	2.55x	3.45x	4.37x
Ratio of earnings to combined fixed charges and preferred stock dividends	1.89x	1.74x	1.82x	1.60x	2.34x	3.11x	3.94x

(1) Earnings for the year ended December 31, 2006 include a \$59.5 million gain on the disposition of two office buildings and related parking garage (the DC Office Buildings) which were sold in May 2006. The ratio of earnings to fixed charges for the year ended December 31, 2006 excluding the gain from the sale of the DC Office Buildings was 3.25x.

For the purposes of computing these ratios, earnings have been calculated by adding fixed charges (excluding capitalized interest) to income (loss) before taxes and extraordinary items. Fixed charges consist of interest costs, whether expensed or capitalized, and the amortization of debt expense and discount or premium relating to any indebtedness, whether expensed or capitalized.

Table of Contents

DESCRIPTION OF NOTES

The following description of the particular terms of the notes offered hereby supplements, and to the extent inconsistent therewith replaces, the description of the general terms and provisions of the debt securities set forth in the accompanying prospectus under "Description of Debt Securities," to which reference is hereby made.

General

The notes constitute a separate series of debt securities (which are more fully described in the accompanying prospectus) to be issued under an Indenture, dated as of March 25, 1998 (the "Original Indenture"), as supplemented by Supplemental Indenture No. 10 dated as of _____, 2011 (the "Supplemental Indenture" and together with the Original Indenture, the "Indenture"), between us and U.S. Bank National Association, as successor trustee (the "Trustee"). The Original Indenture has been filed with the Securities and Exchange Commission (the "SEC") as an exhibit to the Registration Statement of which this prospectus supplement is a part and is available for inspection at our offices or at the SEC's Internet site at <http://www.sec.gov>. The Indenture is subject to, and governed by, the Trust Indenture Act of 1939, as amended. The statements made hereunder relating to the Indenture and the notes to be issued thereunder are summaries of certain provisions thereof, do not purport to be complete and are subject to, and are qualified in their entirety by reference to, all provisions of the Indenture and the notes. You should carefully read the Indenture and the notes as they, and not this prospectus supplement and accompanying prospectus, govern your rights as a noteholder. All capitalized terms used but not defined herein shall have the respective meanings set forth in the Indenture.

The notes will initially be limited to an aggregate principal amount of \$250.0 million. We may re-open this series of notes in the future to issue additional identical notes. The notes will be issued only in fully registered form in denominations of \$2,000 and integral multiples of \$1,000 in excess thereof.

Ranking

The notes will be direct, senior unsecured obligations and will rank equally with all of our other unsecured and unsubordinated indebtedness from time to time outstanding. The notes will be effectively subordinated to our mortgages and other secured indebtedness and to the indebtedness and other liabilities of our subsidiaries. Accordingly, such indebtedness must be satisfied in full before holders of the notes will be able to realize any value from encumbered or indirectly-held properties.

As of March 31, 2011, on a pro forma basis after giving effect to the offering and the application of the proceeds therefrom, we would have had approximately \$ _____ million of indebtedness, of which approximately \$24.0 million would have been secured by 10 of our properties with a book value of \$39.7 million. We may incur additional indebtedness, including secured indebtedness, subject to the provisions described below under "Certain Covenants - Limitations on Incurrence of Indebtedness."

Principal and Interest

The notes will bear interest at _____ % per annum and will mature on _____, 2021. The notes will bear interest from _____, 2011 or from the immediately preceding Interest Payment Date (as defined below) to which interest has been paid, payable semi-annually in arrears on _____ and _____ of each year, commencing _____ (each, an "Interest Payment Date"), to the persons in whose name the applicable notes are registered in the Security Register on the preceding _____ or _____ (whether or not a Business Day, as defined below), as the case may be (each, a "Regular Record Date"). Interest on the notes will be computed on the basis of a 360-day year of twelve 30-day months.

Table of Contents

If any Interest Payment Date or Stated Maturity falls on a day that is not a Business Day, the required payment shall be made on the next Business Day as if it were made on the date such payment was due and no interest shall accrue on the amount so payable for the period from and after such Interest Payment Date or Stated Maturity, as the case may be. Business Day means any day, other than a Saturday or Sunday, that is neither a legal holiday nor a day on which banks in the City of New York are authorized or required by law, regulation or executive order to close.

The principal of and interest on the notes will be payable at the corporate trust office of the agent of the Trustee (the Paying Agent), currently located at 60 Livingston Avenue, St. Paul, MN 55107, *provided* that, at our option, payment of interest may be made by check mailed to the address of the Person entitled thereto as it appears in the Security Register or by wire transfer of funds to such Person at an account maintained within the United States.

Optional Redemption

We may redeem the notes prior to _____, 2021 (three months prior to their maturity date), at any time in whole or from time to time in part, at a redemption price equal to the sum of (i) the principal amount of the notes being redeemed plus accrued interest thereon to the redemption date and (ii) the Make-Whole Amount, if any, with respect to such notes; provided, however, that if we redeem the notes on or after _____, 2021, the redemption price will equal 100% of the principal amount of the notes to be redeemed plus accrued interest thereon to the redemption date (the Redemption Price).

If notice has been given as provided in the Indenture and funds for the redemption of any notes called for redemption shall have been made available on the redemption date referred to in such notice, such notes will cease to bear interest on the date fixed for such redemption specified in such notice and the only right of the Holders of the notes will be to receive payment of the Redemption Price.

Notice of any optional redemption of any notes will be given to Holders at their addresses, as shown in the Security Register, not less than 30 days nor more than 60 days prior to the date fixed for redemption. The notice of redemption will specify, among other items, the Redemption Price and the principal amount of the notes held by such Holder to be redeemed.

If we redeem less than all the notes, we will notify the Trustee at least 45 days prior to the giving of the redemption notice (or such shorter period as is satisfactory to the Trustee) of the aggregate principal amount of notes to be redeemed and their redemption date. The Trustee shall select, in such manner as it shall deem fair and appropriate, notes to be redeemed in whole or in part. Notes may be redeemed in part in the minimum authorized denomination for notes or in any integral multiple thereof.

Make-Whole Amount means, in connection with any optional redemption or accelerated payment of any note, the excess, if any, of (i) the aggregate present value as of the date of such redemption or accelerated payment of each dollar of principal being redeemed or paid and the amount of interest (exclusive of interest accrued to the date of redemption or accelerated payment) that would have been payable in respect of such dollar if such redemption or accelerated payment had not been made, determined by discounting, on a semi-annual basis, such principal and interest at the Reinvestment Rate (determined on the third Business Day preceding the date such notice of redemption is given or declaration of acceleration is made) from the respective dates on which such principal and interest would have been payable if such redemption or accelerated payment had not been made, over (ii) the aggregate principal amount of the notes being redeemed or paid.

Reinvestment Rate means percent () plus the arithmetic mean of the yields under the respective headings This Week and Last Week published in the Statistical Release under the caption Treasury Constant Maturities for the maturity (rounded to the nearest month) corresponding to the remaining life to maturity, as of the payment date of the principal being redeemed or paid. If no maturity exactly

Table of Contents

corresponds to such maturity, yields for the two published maturities most closely corresponding to such maturity shall be calculated pursuant to the immediately preceding sentence, and the Reinvestment Rate shall be interpolated or extrapolated from such yields on a straight-line basis, rounding in each of such relevant periods to the nearest month. For such purposes of calculating the Reinvestment Rate, the most recent Statistical Release published prior to the date of determination of the Make-Whole Amount shall be used.

Statistical Release means the statistical release designated H.15(519) or any successor publication which is published weekly by the Federal Reserve System and which establishes yields on actively traded United States government securities adjusted to constant maturities or, if such statistical release is not published at the time of any determination of the Make-Whole Amount, then such other reasonably comparable index as we shall designate.

Certain Covenants

Limitations on Incurrence of Indebtedness. We will not, and will not permit any Subsidiary to, incur any Indebtedness (as defined below) if, immediately after giving effect to the incurrence of such additional Indebtedness and the application of the proceeds thereof, the aggregate principal amount of all of our outstanding Indebtedness and our Subsidiaries' outstanding Indebtedness (determined on a consolidated basis in accordance with GAAP) is greater than 60% of the sum of (without duplication) (i) our Total Assets (as defined below) and those of our Subsidiaries, as of the end of the calendar quarter covered in our Annual Report on Form 10-K or Quarterly Report on Form 10-Q, as the case may be, most recently filed with the SEC (or, if such filing is not permitted under the Exchange Act, with the Trustee) prior to the incurrence of such additional Indebtedness and (ii) the purchase price of any real estate assets or mortgages receivable acquired, and the amount of any securities offering proceeds received (to the extent that such proceeds were not used to acquire real estate assets or mortgages receivable or used to reduce Indebtedness), by us or any Subsidiary since the end of such calendar quarter, including those proceeds obtained in connection with the incurrence of such additional Indebtedness.

In addition to the foregoing limitation on the incurrence of Indebtedness, we will not, and will not permit any Subsidiary to, incur any Indebtedness secured by any Encumbrance (as defined below) upon any of our properties or the properties of any Subsidiary if, immediately after giving effect to the incurrence of such additional Indebtedness and the application of the proceeds thereof, the aggregate principal amount of all of our outstanding Indebtedness and our Subsidiaries' outstanding Indebtedness (determined on a consolidated basis in accordance with GAAP) which is secured by any Encumbrance on our properties or any Subsidiary is greater than 40% of the sum of (without duplication) (i) our Total Assets, and those of our Subsidiaries, as of the end of the calendar quarter covered in our Annual Report on Form 10-K or Quarterly Report on Form 10-Q, as the case may be, most recently filed with the SEC (or, if such filing is not permitted under the Exchange Act, with the Trustee) prior to the incurrence of such additional Indebtedness and (ii) the purchase price of any real estate assets or mortgages receivable acquired, and the amount of any securities offering proceeds received (to the extent that such proceeds were not used to acquire real estate assets or mortgages receivable or used to reduce Indebtedness), by us or any Subsidiary since the end of such calendar quarter, including those proceeds obtained in connection with the incurrence of such additional Indebtedness.

We and our Subsidiaries will not at any time own Total Unencumbered Assets (as defined below) equal to less than 150% of the aggregate outstanding principal amount of Unsecured Indebtedness (as defined below) on a consolidated basis.

In addition to the foregoing limitations on the incurrence of Indebtedness, we will not, and will not permit any Subsidiary to, incur any Indebtedness if the ratio of Consolidated Income Available for Debt Service (as defined below) to the Annual Debt Service Charge (as defined below) for the four consecutive fiscal quarters most recently ended prior to the date on which such additional Indebtedness is to be incurred shall have been less than 1.5:1 on a pro forma basis after giving effect thereto and to the application of the proceeds therefrom, and calculated on the assumption that (i) such Indebtedness and any other Indebtedness incurred by us and our

Table of Contents

Subsidiaries since the first day of such four-quarter period and the application of the proceeds therefrom, including to refinance other Indebtedness, had occurred at the beginning of such period; (ii) the repayment or retirement of any other Indebtedness by us and our Subsidiaries since the first day of such four-quarter period had been repaid or retired at the beginning of such period (except that, in making such computation, the amount of Indebtedness under any revolving credit facility shall be computed based upon the average daily balance of such Indebtedness during such period); (iii) in the case of Acquired Indebtedness (as defined below) or Indebtedness incurred in connection with any acquisition since the first day of such four-quarter period, the related acquisition had occurred as of the first day of such period with the appropriate adjustments with respect to such acquisition being included in such pro forma calculation; and (iv) in the case of any acquisition or disposition by us or our Subsidiaries of any asset or group of assets since the first day of such four-quarter period, whether by merger, stock purchase or sale, or asset purchase or sale, such acquisition or disposition or any related repayment of Indebtedness had occurred as of the first day of such period with the appropriate adjustments with respect to such acquisition or disposition being included in such pro forma calculation.

Provision of Financial Information. Whether or not we are subject to Section 13 or 15(d) of the Exchange Act, we will, within 15 days after each of the respective dates by which we would have been required to file annual reports, quarterly reports and other documents with the SEC if we were so subject, (1) transmit by mail to all Holders, as their names and addresses appear in the Security Register, without cost to such Holders, copies of the annual reports, quarterly reports and other documents which we would have been required to file with the SEC pursuant to Section 13 or 15(d) of the Exchange Act, if we were subject to such Sections, and (2) file with the Trustee copies of the annual reports, quarterly reports and other documents which we would have been required to file with the SEC pursuant to Section 13 or 15(d) of the Exchange Act, if we were subject to such Sections, and (3) promptly upon written request and payment of the reasonable cost of duplication and delivery, supply copies of such documents to any prospective Holder.

Waiver of Certain Covenants. We may omit to comply with any term, provision or condition of the foregoing covenants, and with any other term, provision or condition with respect to the notes, as the case may be (except any such term, provision or condition which could not be amended without the consent of all Holders of notes), if before or after the time for such compliance the Holders of at least a majority in principal amount of all of the outstanding notes, as the case may be, by act of such Holders, either waive such compliance in such instance or generally waive compliance with such covenant or condition. Except to the extent so expressly waived, and until such waiver shall become effective, our obligations and the duties of the Trustee in respect of any such term, provision or condition shall remain in full force and effect.

As used herein, and in the Indenture:

Acquired Indebtedness means Indebtedness of a Person (i) existing at the time such Person becomes a Subsidiary or (ii) assumed in connection with the acquisition of assets from such Person, in each case, other than Indebtedness incurred in connection with, or in contemplation of, such Person becoming a Subsidiary or such acquisition. Acquired Indebtedness shall be deemed to be incurred on the date of the related acquisition of assets from any Person or the date the acquired Person becomes a Subsidiary.

Annual Debt Service Charge for any period means the aggregate interest expense for such period in respect of, and the amortization during such period of any original issue discount of, Indebtedness of us and our Subsidiaries and the amount of dividends which are payable during such period in respect of any Disqualified Stock.

Capital Stock means, with respect to any Person, any capital stock (including preferred stock), shares, interests, participations or other ownership interests (however designated) of such Person and any rights (other than debt securities convertible into or exchangeable for corporate stock), warrants or options to purchase any thereof.

Table of Contents

Consolidated Income Available for Debt Service for any period means Earnings from Operations (as defined below) of ours and our Subsidiaries plus amounts which have been deducted, and minus amounts which have been added, for the following (without duplication): (i) interest on Indebtedness of us and our Subsidiaries, (ii) provision for taxes of us and our Subsidiaries based on income, (iii) amortization of debt discount, (iv) provisions for gains and losses on properties and property depreciation and amortization, (v) the effect of any noncash charge resulting from a change in accounting principles in determining Earnings from Operations for such period and (vi) amortization of deferred charges.

Disqualified Stock means, with respect to any Person, any Capital Stock of such Person which by the terms of such Capital Stock (or by the terms of any security into which it is convertible or for which it is exchangeable or exercisable), upon the happening of any event or otherwise (i) matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise (other than Capital Stock which is redeemable solely in exchange for common stock), (ii) is convertible into or exchangeable or exercisable for Indebtedness or Disqualified Stock or (iii) is redeemable at the option of the holder thereof, in whole or in part (other than Capital Stock which is redeemable solely in exchange for Capital Stock which is not Disqualified Stock or the redemption price of which may, at the option of such Person, be paid in Capital Stock which is not Disqualified Stock), in each case on or prior to the Stated Maturity of the notes.

Earnings from Operations for any period means net earnings excluding gains and losses on sales of investments, extraordinary items and property valuation losses, net as reflected in the financial statements of us and our Subsidiaries for such period determined on a consolidated basis in accordance with GAAP.

Encumbrance means any mortgage, lien, charge, pledge or security interest of any kind.

GAAP means generally accepted accounting principles as used in the United States applied on a consistent basis as in effect from time to time; provided that solely for purposes of any calculation required by the financial covenants contained in the Indenture, *GAAP* shall mean generally accepted accounting principles as used in the United States on the date of the Indenture, applied on a consistent basis.

Indebtedness of us or our Subsidiaries means any indebtedness of us or our Subsidiaries, whether or not contingent, in respect of (i) borrowed money or evidenced by bonds, notes, debentures or similar instruments whether or not such indebtedness is secured by any Encumbrance existing on property owned by us or any Subsidiary of ours, (ii) indebtedness for borrowed money of a Person other than us or our Subsidiaries which is secured by any Encumbrance existing on property owned by us or our Subsidiaries, to the extent of the lesser of (x) the amount of indebtedness so secured and (y) the fair market value (as determined in good faith by our Board of Directors) of the property subject to such Encumbrance, (iii) the reimbursement obligations, contingent or otherwise, in connection with any letters of credit actually issued or amounts representing the balance deferred and unpaid of the purchase price of any property or services, except any such balance that constitutes an accrued expense or trade payable, or all conditional sale obligations or obligations under any title retention agreement, (iv) the principal amount of all obligations of us or our Subsidiaries with respect to redemption, repayment or other repurchase of any Disqualified Stock or (v) any lease of property by us or any Subsidiary as lessee which is reflected on our consolidated balance sheet as a capitalized lease in accordance with GAAP, and also includes, to the extent not otherwise included, any obligation by us or our Subsidiaries to be liable for, or to pay, as obligor, guarantor or otherwise (other than for purposes of collection in the ordinary course of business), Indebtedness of another Person (other than us or our Subsidiaries) (it being understood that Indebtedness shall be deemed to be incurred by us or our Subsidiaries whenever we or such Subsidiary shall create, assume, guarantee or otherwise become liable in respect thereof).

Subsidiary means, with respect to any Person, any corporation or other entity of which a majority of (i) the voting power of the voting equity securities or (ii) the outstanding equity interests of which are owned, directly or indirectly, by such Person. For the purposes of this definition, *voting equity securities* means equity securities having voting power for the election of directors, whether at all times or only so long as no senior class of security has such voting power by reason of any contingency.

Table of Contents

Total Assets as of any date means the sum of (i) the Undepreciated Real Estate Assets and (ii) all other assets of us and our Subsidiaries determined on a consolidated basis in accordance with GAAP (but excluding accounts receivable and intangibles).

Total Unencumbered Assets means the sum of (i) those Undepreciated Real Estate Assets not subject to an Encumbrance for borrowed money and (ii) all other assets of us and our Subsidiaries not subject to an Encumbrance for borrowed money determined on a consolidated basis in accordance with GAAP (but excluding accounts receivable and intangibles); *provided, however*, that, in determining Total Unencumbered Assets as a percentage of outstanding Unsecured Indebtedness for purposes of the covenant requiring us and our subsidiaries to maintain Total Unencumbered Assets equal to at least 150% of the aggregate outstanding principal amount of Unsecured Indebtedness on a consolidated basis, all investments in unconsolidated joint ventures, unconsolidated limited partnerships, unconsolidated limited liability companies and other Persons that are not consolidated for financial reporting purposes in accordance with GAAP shall be excluded from Total Unencumbered Assets.

Undepreciated Real Estate Assets as of any date means the cost (original cost plus capital improvements) of real estate assets of us and our Subsidiaries on such date, before depreciation and amortization, determined on a consolidated basis in accordance with GAAP.

Unsecured Indebtedness means Indebtedness which is not secured by any Encumbrance upon any of our properties or those of any Subsidiary.

See Description of Debt Securities Certain Covenants in the accompanying prospectus for a description of additional covenants applicable to us.

Events of Default

The Indenture provides that the following events are Events of Default with respect to the notes:

default in the payment of any interest on any notes when such interest becomes due and payable that continues for a period of 30 days;

default in the payment of the principal of (or Make-Whole Amount, if any, on) any notes when due and payable;

our default in the performance, or breach, of any other covenant or warranty in the Indenture with respect to the notes and continuance of such default or breach for a period of 60 days after written notice as provided in the Indenture;

default under any bond, debenture, note, mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidenced any indebtedness for money borrowed by us (or by any Subsidiary, the repayment of which we have guaranteed or for which we are directly responsible or liable as obligor or guarantor), having an aggregate principal amount outstanding of at least \$10,000,000, whether such indebtedness now exists or shall hereafter be created, which default shall have resulted in such indebtedness becoming or being declared due and payable prior to the date on which it would otherwise have become due and payable, without such indebtedness having been discharged, or such acceleration having been rescinded or annulled, within a period of 10 days after written notice to us as provided in the Indenture;

the entry by a court of competent jurisdiction of one or more judgments, orders or decrees against us or any Subsidiary in an aggregate amount (excluding amounts covered by insurance) in excess of \$10,000,000 and such judgments, orders or decrees remain undischarged, unstayed and unsatisfied in an aggregate amount (excluding amounts covered by insurance) in excess of \$10,000,000 for a period of 30 consecutive days; and

Table of Contents

certain events of bankruptcy, insolvency or reorganization, or court appointment of a receiver, liquidator or trustee of us or any Significant Subsidiary. The Term Significant Subsidiary has the meaning ascribed to such term in Regulation S-X promulgated under the Securities Act.

If an Event of Default specified in the last bullet point above, relating to us or any Significant Subsidiary occurs, the principal amount of and the Make-Whole Amount on all outstanding notes shall become due and payable without any declaration or other act on the part of the Trustee or of the Holders.

Discharge, Defeasance and Covenant Defeasance

The provisions of Article XIV of the Indenture relating to defeasance and covenant defeasance, which are described under Description of Debt Securities Discharge, Defeasance and Covenant Defeasance in the accompanying prospectus, will apply to the notes. Each of the covenants described under Certain Covenants in this prospectus supplement and Description of Debt Securities Certain Covenants in the accompanying prospectus will be subject to covenant defeasance.

The Trustee

U.S. Bank National Association is the trustee under the Indenture and is a lender under our credit facility. Certain of its affiliates have engaged and in the future may engage in joint investments, investment banking transactions and in general financing and commercial banking transactions with, and the provision of services to, us and our affiliates in the ordinary course of business.

Book-Entry System

The notes will be issued in the form of one or more fully registered global notes (Global Securities) which will be deposited with, or on behalf of, The Depository Trust Company (DTC), and registered in the name of DTC's nominee, Cede & Co. Except under the circumstances described below, the notes will not be issuable in definitive form. Unless and until it is exchanged in whole or in part for the individual notes represented thereby, a Global Security may not be transferred except as a whole by DTC to a nominee of DTC or by a nominee of DTC to DTC or another nominee of DTC or by DTC or any nominee of DTC to a successor depository or any nominee of such successor.

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

Purchases of Global Securities under the DTC system must be made by or through Direct Participants, which will receive a credit for the securities on DTC's records. The ownership interest of each actual purchaser of each Global Security (Beneficial Owner) is in turn to be recorded on the Direct and Indirect Participants' records. Beneficial Owners will not receive written confirmation from DTC of their purchase, but Beneficial Owners are expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered

Table of Contents

into the transaction. Transfers of ownership interests in the Global Securities are to be accomplished by entries made on the books of Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in Global Securities, except in the event that use of the book-entry system for the Global Securities is discontinued.

To facilitate subsequent transfers, all Global Securities deposited by Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co. The deposit of Global Securities with DTC and their registration in the name of Cede & Co. effect no change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Global Securities; DTC's records reflect only the identity of the Direct Participants to whose accounts such Global Securities are credited, which may or may not be the Beneficial Owners. The Participants will remain responsible for keeping account of their holdings on behalf of their customers.

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

Neither DTC nor Cede & Co. will consent or vote with respect to the Global Securities. Under its usual procedures, DTC mails an Omnibus Proxy to us as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts the Global Securities are credited on the record date (identified in a listing attached to the Omnibus Proxy). Principal and interest payments on the Global Securities will be made to Cede & Co., as nominee of DTC. DTC's practice is to credit Direct Participants' accounts, upon DTC's receipt of funds and corresponding detail information from us or the Trustee, on payable date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in street name, and will be the responsibility of such Participant and not of DTC, the Trustee or us, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of principal and interest to Cede & Co. is our responsibility or the responsibility of the Trustee, disbursement of such payments to Direct Participants shall be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners shall be the responsibility of Direct and Indirect Participants.

DTC may discontinue providing its services as securities depository with respect to the Global Securities at any time by giving reasonable notice to us or the Trustee. Under such circumstances, in the event that a successor securities depository is not obtained, definitive certificates are required to be printed and delivered.