

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549**

**FORM S-3  
REGISTRATION STATEMENT  
UNDER  
THE SECURITIES ACT OF 1933**

**FEDERAL REALTY INVESTMENT TRUST**

(Exact name of Registrant as Specified in Its Charter)

**Maryland**  
(State or Other Jurisdiction of  
Incorporation or Organization)

**52-0782497**  
(I.R.S. Employer  
Identification Number)

**1626 East Jefferson Street  
Rockville, Maryland 20852  
(301) 998-8100**  
(Address, Including Zip Code, and Telephone Number,  
Including Area Code, of Registrant's Principal Executive Offices)

**Dawn M. Becker**  
**Senior Vice President, General Counsel,  
Secretary**  
**Federal Realty Investment Trust**  
**1626 East Jefferson Street**  
**Rockville, Maryland 20852**  
**(301) 998-8100**  
(Name, Address, Including Zip Code, and Telephone  
Number, Including Area Code, of Agent for Service)

*With a copy to:*  
**Sylvia M. Mahaffey, Esq.**  
**Shaw Pittman LLP**  
**2300 N Street, N.W.**  
**Washington, D.C. 20037**  
**(202) 663-8000**

Approximate date the registrant proposes to begin selling securities to the public: From time to time after the effective date of this registration statement.

If the only securities being registered on this form are being offered pursuant to dividend or interest reinvestment plans, please check the following box.

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 of 1933, other than securities offered in connection with dividend or interest reinvestment plans, 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, please 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(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 delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box.

**CALCULATION OF REGISTRATION FEE**

<b>Title of Each Class of Securities To Be Registered</b>	<b>Amount To Be Registered</b>	<b>Proposed Maximum Offering Price Per Unit (1)</b>	<b>Proposed Maximum Aggregate Offering Price</b>	<b>Amount of Registration Fee</b>
Common Shares of Beneficial Interest, par value \$.01 per share	80,000	\$ 47.88(1)	\$ 3,830,400(1)	\$ 490.00

(1) Estimated solely for the purposes of calculating the registration fee pursuant to Rule 457(c) under the Securities Act of 1933 and based upon prices on the New York Stock Exchange on November 9, 2004.

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 which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the registration statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

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The information in this prospectus is not complete and may be changed. The selling shareholder identified herein may not sell the securities covered by this prospectus until the Securities and Exchange Commission declares the registration statement of which this prospectus is a part effective. This prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any state where such an offer or sale is not permitted.

Subject to Completion, Dated November 15, 2004

PROSPECTUS



**Common Shares of Beneficial Interest**

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The person listed herein, who is a shareholder of Federal Realty Investment Trust, may offer and sell from time to time up to 80,000 common shares of beneficial interest under this prospectus. We refer to such person as the selling shareholder. We are registering the offered shares as required under the terms of a registration rights agreement between the selling shareholder and us. Our registration of the offered shares does not mean that the selling shareholder will offer or sell any of the offered shares. We will receive no proceeds of any sales of the offered shares by the selling shareholder, but we will incur expenses in connection with the offering.

The selling shareholder may sell the offered shares in public or private transactions, on or off the New York Stock Exchange, at prevailing market prices or at privately negotiated prices. The selling shareholder may sell the offered shares directly or through agents or broker-dealers acting as principal or agent, or in a distribution by underwriters.

Our common shares are listed on the New York Stock Exchange under the symbol "FRT."

Investing in our common shares involves risks. See "Risk Factors" beginning on page 4.

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

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The date of this prospectus is \_\_\_\_\_, 2004.

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ABOUT THIS PROSPECTUS

This prospectus is part of a registration statement on Form S-3 that we filed with the Commission under the Securities Act of 1933. This prospectus and any accompanying prospectus supplement do not contain all of the information included in the registration statement. For further information, we refer you to the registration statement, including its exhibits. Statements contained in this prospectus and any accompanying prospectus supplement about the provisions or contents of any agreement or other document are not necessarily complete. If the Commission’s rules and regulations require that such agreement or document be filed as an exhibit to the registration statement, please see that agreement or document for a complete description of these matters. You should not assume that the information in this prospectus or any prospectus supplement is accurate as of any date other than the date on the front of each document.

This prospectus provides you with a general description of the offered shares. Each time the selling shareholder sells any of the offered shares, the selling shareholder will provide you with this prospectus and a prospectus supplement, if applicable, that will contain specific information about the terms of that offering. The prospectus supplement may also add, update or change any information contained in this prospectus. You should read both this prospectus and any prospectus supplement together with additional information described under the heading “Where You Can Find More Information.”

As used in this prospectus, references to “we,” “our,” the “Trust” and “Federal Realty” and similar references are to Federal Realty Investment Trust, a Maryland real estate investment trust and its consolidated subsidiaries. As used in this prospectus, references to the “selling shareholder” and similar references are to the person listed herein, who is a shareholder of Federal Realty Investment Trust and who may offer and sell from time to time up to 80,000 common shares of beneficial interest under this prospectus.

## DISCLOSURE REGARDING FORWARD-LOOKING STATEMENTS

Some statements made in this prospectus and the documents incorporated herein by reference contain forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. Such forward-looking statements involve known and unknown risks, uncertainties and other factors which may cause our actual results, performance or achievements to be materially different from the results of operations or plans expressed or implied by such forward-looking statements. Given these uncertainties, we caution you not to place undue reliance on any forward-looking statements that we make, including those in this prospectus. Such factors include, but are not limited to, the risk factors described below, and include the following:

- risks that our tenants will not pay rent or that we may be unable to renew leases or re-let space at favorable rents as leases expire;
- risks that we may not be able to proceed with or obtain necessary approvals for any redevelopment or renovation project, and that any redevelopment or renovation project that we do pursue may not perform as anticipated;
- risks normally associated with the real estate industry, including risks that occupancy levels at our properties and the amount of rent that we receive from our properties may be lower than expected, that new acquisitions and our development, construction and renovation projects may fail to perform as expected, that competition for acquisitions could result in increased prices for acquisitions, that we may have environmental risks at our properties, and, because real estate is illiquid, that we may not be able to sell properties when appropriate;
- risks that our growth will be limited if we cannot obtain additional capital;
- risks of financing, such as our ability to consummate additional financings or obtain replacement financing on terms which are acceptable to us, our ability to meet existing financial covenants and the limitations imposed on our operations by those covenants, and the possibility of increases in interest rates that would result in increased interest expense; and
- risks related to our status as a real estate investment trust, commonly referred to as a REIT, for federal income tax purposes, such as the existence of complex tax regulations relating to our status as a REIT, the effect of future changes in REIT requirements as a result of new legislation, and the adverse consequences of the failure to qualify as a REIT.

We identify forward-looking statements in this prospectus and other materials filed or to be filed by us with the Securities and Exchange Commission, or the Commission, and

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incorporated by reference into this prospectus by using words or phrases such as “anticipate,” “believe,” “estimate,” “expect,” “intend,” “may be,” “objective,” “plan,” “predict,” “project” and “will be” and similar words or phrases, or the negatives thereof or other similar variations thereof or comparable terminology. Except as required by law, we make no promise to update any of the forward-looking statements as a result of new information, future events, or otherwise.

### **THE TRUST**

We are an equity real estate investment trust specializing in the ownership, management, development and redevelopment of high quality retail and mixed-use properties. As of June 30, 2004, we owned or had an interest in 62 community and neighborhood shopping centers comprising approximately 14.1 million square feet, primarily located in densely populated and affluent communities throughout the Northeast and Mid-Atlantic United States, as well as California. In addition, we owned 49 urban and retail mixed-use properties comprising almost 2.8 million square feet and one apartment complex, primarily located in strategic metropolitan markets in the Northeast and Mid-Atlantic regions and California. In total, our properties were 94.2% leased at June 30, 2004, 93.1% leased at December 31, 2003 and 93.1% leased at June 30, 2003. We have paid quarterly dividends to our shareholders continuously since our founding in 1962, and have increased our dividend rate for 36 consecutive years.

We operate our business on an asset management model, where focused teams are responsible for a portfolio of assets. We have divided our portfolio of properties into three operating regions: the Northeast, Mid-Atlantic and West. Each region is operated under the direction of an asset manager, with dedicated leasing, property management and financial staff who are responsible for day to day operating decisions.

Our principal executive offices are located at 1626 East Jefferson Street, Rockville, Maryland 20852 and our telephone number is (301) 998-8100. Our Web site address is [www.federalrealty.com](http://www.federalrealty.com). The information contained on our Web site is not a part of this prospectus.

### **RISK FACTORS**

#### **Revenue from our properties may be reduced or limited if the retail operations of our tenants are not successful.**

Revenue from our properties depends primarily on the ability of our tenants to pay the full amount of rent and other charges due under their leases on a timely basis. Some of our leases provide for the payment, in addition to base rent, of additional rent above the base amount according to a specified percentage of the gross sales generated by the tenants and for reimbursement of real estate taxes and expenses of operating the property. The amount of rent and expense reimbursements we receive from our tenants generally will depend in part on the success of our tenants' retail operations, making us vulnerable to general economic downturns and other conditions affecting the retail industry. Any reduction in our tenants' ability to pay base rent, percentage rent or other charges, including the filing by any of our tenants for bankruptcy protection, may adversely affect our financial condition and results of operations.

**Our ability to increase our net income depends on the success and continued presence of our shopping center “anchor” tenants.**

Our net income could be adversely affected in the event of a downturn in the business, or the bankruptcy or insolvency, of any anchor store or anchor tenant. The closing of one or more anchor stores prior to the expiration of the lease of that store or the termination of a lease by one or more of a property’s anchor tenants could adversely affect that property and result in lease terminations by, or reductions in rent from, other tenants whose leases may permit termination or rent reduction in those circumstances or whose own operations may suffer as a result. This could reduce our net income.

**We may experience difficulty or delay in renewing leases or re-leasing space.**

We derive most of our revenue directly or indirectly from rent received from our tenants. We are subject to the risks that, upon expiration or termination of leases, whether by their terms, as a result of a tenant bankruptcy or otherwise, leases for space in our properties may not be renewed, the space may not be re-leased, or the terms of renewal or re-lease, including the cost of required renovations or concessions to tenants, may be less favorable than current lease terms. As a result, our results of operations and our net income could be reduced.

**The amount of debt we have and the restrictions imposed by that debt could adversely affect our business and financial condition.**

We have a substantial amount of debt. As of June 30, 2004, we had approximately \$1.3 billion of debt outstanding. Of that outstanding debt, approximately \$253 million was secured by 12 of our properties and approximately \$159 million represented capital lease obligations on 11 of our properties. All of our secured debt and senior notes and virtually all of our capital lease obligations are fixed rate debt. Our organizational documents do not limit the level or amount of debt that we may incur. We do not have a policy limiting the ratio of our debt to total capitalization or assets. The amount of our debt outstanding from time to time could have important consequences to our shareholders. For example, it could:

- require us to dedicate a substantial portion of our cash flow from operations to payments on our debt, thereby reducing funds available for operations, property acquisitions, redevelopments and other appropriate business opportunities that may arise in the future;
- limit our ability to make distributions on our outstanding common shares and preferred shares;
- make it difficult to satisfy our debt service requirements;
- require us to dedicate increased amounts of our cash flow from operations to payments on our variable rate, unhedged debt if interest rates rise;
- limit our flexibility in planning for, or reacting to, changes in our business and the factors that affect the profitability of our business;

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- limit our ability to obtain any additional debt or equity financing we may need in the future for working capital, debt refinancing, capital expenditures, acquisitions, redevelopment or other general corporate purposes or to obtain such financing on favorable terms; and
- limit our flexibility in conducting our business, which may place us at a disadvantage compared to competitors with less debt or debt with less restrictive terms.

Our ability to make scheduled payments of the principal of, to pay interest on, or to refinance, our indebtedness will depend primarily on our future performance, which to a certain extent is subject to economic, financial, competitive and other factors beyond our control. There can be no assurance that our business will continue to generate sufficient cash flow from operations in the future to service our debt or meet our other cash needs. If we are unable to generate this cash flow from our business, we may be required to refinance all or a portion of our existing debt, sell assets or obtain additional financing to meet our debt obligations and other cash needs, including the payment of dividends required to maintain our status as a real estate investment trust. We cannot assure you that any such refinancing, sale of assets or additional financing would be possible on terms that we would find acceptable.

### **We are obligated to comply with financial and other covenants in our debt that could restrict our operating activities, and the failure to comply could result in defaults that accelerate payment under our debt.**

Our credit facility and term loans include financial covenants that may limit our operating activities in the future. These covenants require us, among other things, to:

- limit the amount of debt as a percentage of total asset value to less than .55 to 1 (we maintained a ratio of .47 to 1 as of June 30, 2004);
- limit the amount of secured debt as a percentage of total asset value to less than .30 to 1 (we maintained a ratio of .15 to 1 as of June 30, 2004);
- limit the amount of debt so that our interest and other fixed charge coverage will exceed 1.75 to 1 (we maintained a ratio of 2.22 to 1 as of June 30, 2004);
- limit the amount of unsecured debt so that unencumbered asset value to unsecured debt will equal or exceed 1.75 to 1 (we maintained a ratio of 2.72 to 1 as of June 30, 2004); and
- limit the total cost of development projects under construction to 15% or less of total asset value (the budgeted total cost of our projects under construction at June 30, 2004 represented 3.6% of gross asset value).



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Because these covenants are calculated in accordance with the terms of our credit facility, there is no relevant reconciliation to these ratios under generally accepted accounting principles.

We are also obligated to comply with additional covenants, including, among others, provisions:

- relating to the maintenance of property securing a mortgage;
- restricting our ability to pledge assets or create other liens;
- restricting our ability to incur additional debt;
- restricting our ability to amend or modify existing leases;
- restricting our ability to enter into transactions with affiliates; and
- restricting our ability to consolidate, merge or sell all or substantially all of our assets.

As of June 30, 2004, we were in compliance with all of our financial covenants. If we were to breach any of our debt covenants, including the listed covenants, and did not cure the breach within any applicable cure period, our lenders could require us to repay the debt immediately, and, if the debt is secured, could immediately begin proceedings to take possession of the property securing the loan. Many of our debt arrangements, including our public notes and our credit facility, are cross-defaulted, which means that the lenders under those debt arrangements can put us in default and require immediate repayment of their debt if we breach and fail to cure a covenant under certain of our other debt obligations. As a result, any default under our debt covenants could have an adverse effect on our financial condition, our results of operations, our ability to meet our obligations and the market value of our shares.

### **Our development activities are inherently risky.**

*General.* The ground-up development of improvements on real property, as opposed to the renovation and redevelopment of existing improvements, presents substantial risks. We do not intend to initiate any new large-scale mixed-use, ground-up development projects; however, we do intend to complete the development of remaining phases of projects we have already started, such as Bethesda Row in Bethesda, Maryland and Santana Row in San Jose, California. If the additional phases of these projects are not successful, it may adversely affect our financial condition and results of operations.

In addition to the risks associated with real estate investment in general as described elsewhere, the risks associated with our remaining development activities include:

- significant time lag between commencement and completion subjects us to greater risks due to fluctuation in the general economy;

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- failure or inability to obtain construction or permanent financing on favorable terms;
- expenditure of money and time on projects that may never be completed;
- inability to achieve projected rental rates or anticipated pace of lease-up;
- higher-than-estimated construction costs, including labor and material costs; and
- possible delay in completion of the project because of a number of factors, including weather, labor disruptions, construction delays or delays in receipt of zoning or other regulatory approvals, or acts of God (such as fires, earthquakes or floods).

*Santana Row.* Santana Row is the largest project we have undertaken, and if it is not successful it could have a material adverse effect on our financial condition and results of operations. We have made a full and final settlement with the insurance company relating to the August 19, 2002 fire at the property. All proceeds from that insurance settlement have been reflected in our 2003 financial statements with the exception of approximately \$3 million which will be included as income in our 2004 financial statements. We are currently in the process of constructing Phases III and IV of the project. Phase III consists of the addition of a new art screen cinema and a small amount of additional retail space. The movie theater has been pre-leased and the tenant is responsible for constructing the new improvements. Our cost of completing Phase III is estimated to be approximately \$3.8 million. Phase IV of the project consists of rebuilding on Building 7 256 residential units that were destroyed by the August 2002 fire. We have estimated the incremental cost of completing Phase IV to be approximately \$58 million.

The success of Santana Row will depend on many factors which cannot be assured and are not entirely within our control. These factors include, among others, the demand for retail and residential space, the cost of operations, including utilities and insurance, the availability and cost of capital, and the general economy, particularly in and around the Silicon Valley. In addition, our financial condition and results of operations may be adversely affected by delays or cost overruns in completing Phase III, Phase IV or future phases of Santana Row, by an inability to achieve the market rents that were projected when the project was commenced, or by slower than projected lease-up of the project.

### **Redevelopments and acquisitions may fail to perform as expected.**

Our investment strategy is focused on the redevelopment and acquisition of community and neighborhood shopping centers that are anchored by grocery stores, drugstores or high volume, value-oriented retailers that provide consumer necessities. The redevelopment and acquisition of properties entails risks that include the following, any of which could adversely affect our results of operations and our ability to meet our obligations:

- our estimate of the costs to improve, reposition or redevelop a property may prove to be too low, or the time we estimate to complete the improvement, repositioning or redevelopment may be too short, and in either case, the property may fail to achieve the returns we have projected, either temporarily or for a longer time;

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- we may not be able to identify suitable properties to acquire or may be unable to complete the acquisition of the properties we identify;
- we may not be able to integrate any acquisitions into our existing operations successfully;
- properties we redevelop or acquire may fail to achieve within the time frames we project the occupancy or rental rates we project at the time we make the decision to invest, which may result in the properties' failure to achieve the returns we projected;
- our pre-acquisition evaluation of the physical condition of each new investment may not detect certain defects or identify necessary repairs until after the property is acquired, which could significantly increase our total acquisition costs; and
- our investigation of a property or building prior to our acquisition, and any representations we may receive from the seller, may fail to reveal various liabilities, which could reduce the cash flow from the property or increase our acquisition cost.

In addition, to complete our redevelopments, it is often necessary for us to take space out of service for a period of time which, on at least a temporary basis, increases vacancy and decreases revenue at the property.

### **Our ability to grow will be limited if we cannot obtain additional capital.**

Our growth strategy is focused on the redevelopment of properties we already own and the acquisition of additional properties. We believe that it will be difficult to fund our expected growth with cash from operating activities because, in addition to other requirements, we are required to distribute to our shareholders at least 90% of our REIT taxable income each year to continue to qualify as a real estate investment trust, or REIT, for federal income tax purposes. As a result, we must rely primarily upon the availability of debt or equity capital, which may or may not be available on favorable terms or at all. The debt could include mortgage loans from third parties or the sale of debt securities. Equity capital could include our common shares or preferred shares. We cannot guarantee that additional financing, refinancing or other capital will be available in the amounts we desire or on favorable terms. Our access to debt or equity capital depends on a number of factors, including the market's perception of our growth potential, our ability to pay dividends, and our current and potential future earnings. Depending on the outcome of these factors, we could experience delay or difficulty in implementing our growth strategy on satisfactory terms, or be unable to implement this strategy.

**Rising interest rates could adversely affect our cash flow and the market price of our outstanding debt and preferred shares.**

Of our approximately \$1.3 billion of debt outstanding as of December 31, 2003, approximately \$186 million bears interest at variable rates and was unhedged. We also may borrow additional funds at variable interest rates in the future. Increases in interest rates would increase our interest expense on our variable rate debt and reduce our cash flow, which could adversely affect our ability to service our debt and meet our other obligations and also could reduce the amount we are able to distribute to our shareholders. Although we have in the past and may in the future enter into hedging arrangements or other transactions as to a portion of our variable rate debt to limit our exposure to rising interest rates, the amounts we are required to pay under the variable rate debt to which the hedging or similar arrangements relate may increase in the event of non-performance by the counterparties to any of our hedging arrangements. In addition, an increase in market interest rates may lead purchasers of our securities, both debt and preferred, to demand a higher annual yield, which could adversely affect the market price of our outstanding debt securities and preferred shares and the cost of issuing additional debt securities or preferred shares.

**Our performance and value are subject to general risks associated with the real estate industry.**

Our economic performance and the value of our real estate assets, and, consequently, the value of our investments, are subject to the risk that if our properties do not generate revenues sufficient to meet our operating expenses, including debt service and capital expenditures, our cash flow and ability to pay distributions to our shareholders will be adversely affected. As a real estate company, we are susceptible to the following real estate industry risks:

- economic downturns in the areas where our properties are located;
- adverse changes in local real estate market conditions, such as oversupply or reduction in demand;
- changes in tenant preferences that reduce the attractiveness of our properties to tenants;
- zoning or regulatory restrictions;
- decreases in market rental rates;
- weather conditions that may increase or decrease energy costs and other weather-related expenses;
- costs associated with the need to periodically repair, renovate and re-lease space; and
- increases in the cost of adequate maintenance, insurance and other operating costs, including real estate taxes, associated with one or more properties, which may occur even when circumstances such as market factors and competition cause a reduction in revenues from one or more properties, although real estate taxes typically do not increase upon a reduction in such revenues.

**Many real estate costs are fixed, even if income from our properties decreases.**

Our financial results depend primarily on leasing space in our properties to tenants on terms favorable to us. Costs associated with real estate investment, such as real estate taxes, insurance and maintenance costs, generally are not reduced even when a property is not fully occupied, rental rates decrease, or other circumstances cause a reduction in income from the investment. As a result, cash flow from the operations of our properties may be reduced if a tenant does not pay its rent or we are unable to rent our properties on favorable terms. Under those circumstances, we might not be able to enforce our rights as landlord without delays, and may incur substantial legal costs. Additionally, new properties that we may acquire or develop may not produce any significant revenue immediately, and properties that we redevelop, renovate or reposition may produce reduced rents during the redevelopment, renovation or repositioning. In those events, the cash flow from existing operations may be insufficient to pay the operating expenses and debt service associated with those properties until the properties are fully leased.

**Competition may limit our ability to purchase new properties and generate sufficient income from tenants.**

Numerous commercial developers and real estate companies compete with us in seeking tenants for our existing properties and properties for acquisition. This competition may:

- reduce properties available for acquisition;
- increase the cost of properties available for acquisition;
- reduce rents payable to us;
- interfere with our ability to attract and retain tenants;
- lead to increased vacancy rates at our properties; and
- adversely affect our ability to minimize expenses of operation.

Retailers at our properties also face increasing competition from outlet stores, discount shopping clubs, and other forms of marketing of goods, such as direct mail, internet marketing and telemarketing. This competition could contribute to lease defaults and insolvency of tenants. If we are unable to continue to attract appropriate retail tenants to our properties, or to purchase new properties in our geographic markets, it could materially affect our ability to generate net income, service our debt and make distributions to our shareholders.

**We may be unable to sell properties when appropriate because real estate investments are illiquid.**

Real estate investments generally cannot be sold quickly. In addition, there are some limitations under federal income tax laws applicable to real estate and to REITs in particular that may limit our ability to sell our assets. We may not be able to alter our portfolio promptly in response to changes in economic or other conditions. Our inability to respond quickly to adverse changes in the performance of our investments could have an adverse effect on our ability to meet our obligations and make distributions to our shareholders.

**Our insurance coverage on our properties may be inadequate or may become inadequate.**

As of June 30, 2004, we carry comprehensive insurance on all of our properties, including insurance for liability, fire, flood, and rental loss. We also carry earthquake insurance on all of our properties in California and environmental insurance on most of our properties. These earthquake and environmental policies contain coverage limitations. We believe this coverage is of the type and amount customarily obtained for or by an owner of real property assets. We intend to obtain similar insurance coverage on subsequently acquired properties.

As a consequence of the September 11, 2001 terrorist attacks and other significant losses incurred by the insurance industry, the availability of insurance coverage has decreased and the prices for insurance have increased. As a result, we may be unable to renew or duplicate our current insurance coverage in adequate amounts or at reasonable prices when the policies expire. In addition, insurance companies may no longer offer coverage against certain types of losses, such as losses due to terrorist acts and toxic mold, or, if offered, the expense of obtaining these types of insurance may not be justified. We therefore may cease to have insurance coverage against certain types of losses and/or there may be decreases in the limits of insurance available. If an uninsured loss or a loss in excess of our insured limits occurs, we could lose all or a portion of the capital we have invested in a property, as well as the anticipated future revenue from the property, but still remain obligated for any mortgage debt or other financial obligations related to the property. We cannot guarantee that material losses in excess of insurance proceeds will not occur in the future. If any of our properties were to experience a catastrophic loss, it could seriously disrupt our operations, delay revenue and result in large expenses to repair or rebuild the property. Also, due to inflation, changes in codes and ordinances, environmental considerations and other factors, it may not be feasible to use insurance proceeds to replace a building after it has been damaged or destroyed. Events such as these could adversely affect our results of operations and our ability to meet our obligations, including distributions to our shareholders.

**We may have limited flexibility in dealing with our jointly owned investments.**

Our organizational documents do not limit the amount of funds that we may invest in properties and assets jointly with other persons or entities and as of October 1, 2004, we hold eleven shopping centers and six urban retail and mixed-use properties jointly with other persons. We may make additional joint investments in the future. Our existing and future joint investments may subject us to special risks, including the possibility that our partners or co-investors might become bankrupt, that those partners or co-investors might have economic or other business interests or goals which are unlike or incompatible with our business interests or goals, and that those partners or co-investors might be in a position to take action contrary to our

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suggestions or instructions, or in opposition to our policies or objectives. Although we hold the managing general partnership or membership interest in all 17 of our existing co-investments as of October 1, 2004, we must obtain the consent of the co-investor or meet defined criteria to sell or to finance 10 of these properties. Joint ownership gives a third party the opportunity to influence the return we can achieve on some of our investments and may adversely affect our ability to make distributions to our shareholders. We may also be liable for the actions of our co-investors.

In addition, we have created a new joint venture for purposes of acquiring properties. We own three shopping centers through this joint venture. Although we are the manager of that entity, we are the minority equity owner. Under the joint venture arrangement, our partner's consent is required to take certain actions with respect to the properties acquired by the venture, and as a result, we may not be able to take actions that we believe are necessary or desirable to protect or increase the value of the property or the property's income, or to act quickly if circumstances change or we believe an action is required. In particular, our partner's consent is required to do the following:

- enter into or modify leases with, or enforce remedies against, anchor tenants;
- make certain repairs, renovations or other changes or improvements to properties, the cost of which exceeds approved budgets; and
- sell the property or finance or refinance the property with secured debt.

Under the terms of our partnership, certain acquisition opportunities that become available to us are required to be offered first to the joint venture. This requirement will result in conflicts of interest and could limit our ability to acquire properties for our own account which could, in turn, limit our ability to grow. Our investment in this joint venture is also subject to the risks described above for jointly owned investments.

In addition, because we act as property manager and leasing agent for the joint venture, there may be potential conflicts of interest within management in allocating time and resources between us and the joint venture.

### **Environmental laws and regulations could reduce the value or profitability of our properties.**

All real property and the operations conducted on real property are subject to federal, state and local laws, ordinances and regulations relating to hazardous materials, environmental protection and human health and safety. Under various federal, state and local laws, ordinances and regulations, we and our tenants may be required to investigate and clean up certain hazardous or toxic substances released on or in properties we own or operate, and also may be required to pay other costs relating to hazardous or toxic substances. This liability may be imposed without regard to whether we or our tenants knew about the release of these types of substances or were responsible for their release. The presence of contamination or the failure properly to remediate contamination at any of our properties may adversely affect our ability to

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sell or lease those properties or to borrow using those properties as collateral. The costs or liabilities could exceed the value of the affected real estate. We are not aware of any environmental condition with respect to any of our properties that management believes would have a material adverse effect on our business, assets or results of operations taken as a whole. The uses of any of our properties prior to our acquisition of the property and the building materials used at the property are among the property-specific factors that will affect how the environmental laws are applied to our properties. If we are subject to any material environmental liabilities, the liabilities could adversely affect our results of operations and our ability to meet our obligations.

We cannot predict what other environmental legislation or regulations will be enacted in the future, how existing or future laws or regulations will be administered or interpreted or what environmental conditions may be found to exist on the properties in the future. Compliance with existing and new laws and regulations may require us or our tenants to spend funds to remedy environmental problems. Our tenants, like many of their competitors, have incurred, and will continue to incur, capital and operating expenditures and other costs associated with complying with these laws and regulations, which will adversely affect their potential profitability.

Generally, our tenants must comply with environmental laws and meet remediation requirements. Our leases typically impose obligations on our tenants to indemnify us from any compliance costs we may incur as a result of the environmental conditions on the property caused by the tenant. If a lease does not require compliance or if a tenant fails to or cannot comply, we could be forced to pay these costs. If not addressed, environmental conditions could impair our ability to sell or re-lease the affected properties in the future or result in lower sales prices or rent payments.

### **The Americans with Disabilities Act of 1990 could require us to take remedial steps with respect to existing or newly acquired properties.**

Our existing properties, as well as properties we may acquire, as commercial facilities, are required to comply with Title III of the Americans with Disabilities Act of 1990. Investigation of a property may reveal non-compliance with this Act. The requirements of the Act, or of other federal, state or local laws, also may change in the future and restrict further renovations of our properties with respect to access for disabled persons. Future compliance with the Act may require expensive changes to the properties.

### **The revenues generated by our tenants could be negatively affected by various federal, state and local laws to which they are subject.**

We and our tenants are subject to a wide range of federal, state and local laws and regulations, such as local licensing requirements, consumer protection laws and state and local fire, life-safety and similar requirements that affect the use of the properties. The leases typically require that each tenant comply with all regulations. Failure to comply could result in fines by governmental authorities, awards of damages to private litigants, or restrictions on the ability to conduct business on such properties. Non-compliance of this sort could reduce our revenues from a tenant, could require us to pay penalties or fines relating to any non-compliance, and could adversely affect our ability to sell or lease a property.



**Failure to qualify as a REIT for federal income tax purposes would cause us to be taxed as a corporation, which would substantially reduce funds available for payment of distributions.**

We believe that we are organized and qualified as a REIT for federal income tax purposes and currently intend to operate in a manner that will allow us to continue to qualify as a REIT under the Internal Revenue Code of 1986, as amended (“Code”). However, the IRS may determine that we are not qualified as such. In addition, we may not remain qualified as a REIT in the future.

Qualification as a REIT involves the application of highly technical and complex Code provisions and applicable income tax regulations that have been issued under the Code. Certain facts and circumstances not entirely within our control may affect our ability to qualify as a REIT. For example, in order to qualify as a REIT, at least 95% of our gross income in any year must be derived from qualifying rents and other income. Satisfying this requirement could be difficult, for example, if defaults by tenants were to reduce the amount of income from qualifying rents. Also, we must make annual distributions to shareholders of at least 90% of our REIT taxable income (excluding capital gains). In addition, new legislation, new regulations, new administrative interpretations or new court decisions may significantly change the tax laws with respect to qualification as a REIT or the federal income tax consequences of such qualification.

If we fail to qualify as a REIT:

- we would not be allowed a deduction for distributions to shareholders in computing taxable income;
- we would be subject to federal income tax at regular corporate rates;
- we could be subject to the federal alternative minimum tax;
- unless we are entitled to relief under specific statutory provisions, we could not elect to be taxed as a REIT for four taxable years following the year during which we were disqualified;
- we could be required to pay significant income taxes, which would substantially reduce the funds available for investment or for distribution to our shareholders for each year in which we failed or were not permitted to qualify, and
- we would no longer be required by law to make any distributions to our shareholders.

**We may be required to incur additional debt to qualify as a REIT.**

As a REIT, we must make annual distributions to shareholders of at least 90% of our REIT taxable income. We are subject to income tax on amounts of undistributed REIT taxable income and net capital gain. In addition, we would be subject to a 4% excise tax if we fail to distribute sufficient income to meet a minimum distribution test based on our ordinary income, capital gain and aggregate undistributed income from prior years.

We intend to make distributions to shareholders to comply with the Code's distribution provisions and to avoid federal income and excise tax. We may need to borrow funds to meet our distribution requirements because:

- our income may not be matched by our related expenses at the time the income is considered received for purposes of determining taxable income; and
- non-deductible capital expenditures, creation of reserves, or debt service requirements may reduce available cash but not taxable income.

In these circumstances, we might have to borrow funds on unfavorable terms and we may have to borrow funds even if our management believes the market conditions make borrowing financially unattractive.

**To maintain our status as a REIT, we limit the amount of shares any one shareholder can own.**

The Code imposes certain limitations on the ownership of the stock of a REIT. For example, not more than 50% in value of our outstanding shares of capital stock may be owned, actually or constructively, by five or fewer individuals (as defined in the Code). To protect our REIT status, our declaration of trust prohibits any one shareholder from owning (actually or constructively) more than 9.8% in value of the outstanding common shares or of any class or series of outstanding preferred shares. The constructive ownership rules are complex. Shares of our capital stock owned, actually or constructively, by a group of related individuals and/or entities may be treated as constructively owned by one of those individuals or entities. As a result, the acquisition of less than 9.8% in value of the outstanding common shares and/or a class of series of preferred shares (or the acquisition of an interest in an entity that owns common shares or preferred shares), by an individual or entity could cause that individual or entity (or another) to own constructively more than 9.8% in value of the outstanding stock. If that happened, either the transfer or ownership would be void or the shares would be transferred to a charitable trust and then sold to someone who can own those shares without violating the 9.8% ownership limit.

The Board of Trustees may waive these restrictions on a case-by-case basis. In addition, the Board of Trustees and two-thirds of our shareholders eligible to vote at a shareholder meeting may remove these restrictions if they determine it is no longer in our best interests to attempt to qualify, or to continue to qualify, as a REIT. The 9.8% ownership restrictions may delay, defer or prevent a transaction or a change of our control that might involve a premium price for the common shares or otherwise be in the shareholders' best interest.

**We cannot assure you we will continue to pay dividends at historical rates.**

Our ability to continue to pay dividends on our common shares at historical rates or to increase our common share dividend rate, and our ability to pay preferred share dividends and service our debt securities, will depend on a number of factors, including, among others, the following:

- our financial condition and results of future operations;
- the performance of lease terms by tenants;
- the terms of our loan covenants; and
- our ability to acquire, finance, develop or redevelop and lease additional properties at attractive rates.

If we do not maintain or increase the dividend rate on our common shares, it could have an adverse effect on the market price of our common shares and other securities. Any preferred shares we may offer in the future may have a fixed dividend rate that would not increase with any increases in the dividend rate of our common shares. Conversely, payment of dividends on our common shares may be subject to payment in full of the dividends on any preferred shares and payment of interest on any debt securities we may offer.

**Certain tax and anti-takeover provisions of our declaration of trust and bylaws may inhibit a change of our control.**

Certain provisions contained in our declaration of trust and bylaws and the Maryland General Corporation Law, as applicable to Maryland REITs, may discourage a third party from making a tender offer or acquisition proposal to us. If this were to happen, it could delay, deter or prevent a change in control or the removal of existing management. These provisions also may delay or prevent the shareholders from receiving a premium for their common shares over then-prevailing market prices. These provisions include:

- the REIT ownership limit described above;
- authorization of the issuance of our preferred shares with powers, preferences or rights to be determined by the Board of Trustees;
- a staggered, fixed-size Board of Trustees consisting of three classes of trustees;
- special meetings of our shareholders may be called by the chairman of the Board, by the chief executive officer, by the president, by one-third of the trustees or by shareholders possessing no less than 25% of all the votes entitled to be cast at the meeting;

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- the Board of Trustees, without a shareholder vote, can classify or reclassify unissued shares of beneficial interest, including the reclassification of common shares into preferred shares and vice-versa;
- a two-thirds shareholder vote is required to approve some amendments to the declaration of trust;
- advance-notice requirements for proposals to be presented at shareholder meetings; and
- a shareholder rights plan that provides, among other things, that when specified events occur, our shareholders will be entitled to purchase from us a number of common shares equal in value to two times the purchase price, which initially will be equal to \$65 per share, subject to certain adjustments.

In addition, if we elect to be governed by it in the future, the Maryland control share acquisition law could delay or prevent a change in control. Under Maryland law, unless a REIT elects not to be subject to this law, “control shares” acquired in a “control share acquisition” have no voting rights except to the extent approved by shareholders by a vote of two-thirds of the votes entitled to be cast on the matter, excluding shares owned by the acquirer and by officers or trustees who are employees of the REIT. “Control shares” are voting shares that would entitle the acquirer to exercise voting power in electing trustees within specified ranges of voting power. A “control share acquisition” means the acquisition of control shares, with some exceptions.

Our bylaws state that the Maryland control share acquisition law will not apply to any acquisition by any person of our common shares. This bylaw provision may be repealed, in whole or in part, at any time, whether before or after an acquisition of control shares, by a vote of fifty percent of the shareholders entitled to vote, and, upon such repeal, may, to the extent provided by any successor bylaw, apply to any prior or subsequent control share acquisition.

### **We may amend or revise our business policies without your approval, and we have adopted a business plan that involves changes in our operational policies.**

Our Board of Trustees may amend or revise our operating policies without shareholder approval. Our investment, financing and borrowing policies and policies with respect to all other activities, such as growth, debt, capitalization and operations, are determined by the Board of Trustees. The Board of Trustees may amend or revise these policies at any time and from time to time at its discretion. A change in these policies could adversely affect our financial condition and results of operations, and the market price of our securities.

In addition, in February of 2002, our Board of Trustees adopted a business plan that focuses on our investment in neighborhood and community shopping centers, principally through redevelopments and acquisitions. If our new business plan is not successful, it could have a material adverse effect on our financial condition and results of operations.

## USE OF PROCEEDS

We will not receive any of the proceeds from sales of the common shares covered by this prospectus by the selling shareholder. We will pay all costs and expenses incurred in connection with the offering of the offered shares, other than any brokerage fees and commissions, fees and disbursements of legal counsel for the selling shareholder and share transfer and other taxes attributable to the sale of the common shares, which will be paid by the selling shareholder.

## SELLING SHAREHOLDER

The selling shareholder received the common shares in exchange for its limited partnership interests in one of our partnerships, pursuant to the terms of the partnership agreement of that partnership. The following table provides the name of the selling shareholder and the number of common shares that may be offered by the selling shareholder. The address for the selling shareholder is The Wallace Family L.P., 538 Gentlewood Square, Purcellville, VA 20132. Since the selling shareholder may sell all, some or none of the offered shares, no estimate can be made of the number of offered shares that will be sold by the selling shareholder or that will be owned by the selling shareholder upon completion of the offering. The offered shares represent approximately 0.15% of our total common shares outstanding as of October 28, 2004.

Name of Selling Stockholder	Shares Beneficially Owned Prior to the Offering		Number of Shares Being Offered	Shares Beneficially Owned After the Offering(1)	
	Number of Shares Beneficially Owned	Percent(2)		Number of Shares Beneficially Owned	Percent(2)
The Wallace Family L.P.	80,000	.15%	80,000	0	0%

(1) Assuming the sale of all of the shares being offered under this registration statement.

(2) Based upon 52,112,089 common shares outstanding as of October 28, 2004.

## FEDERAL INCOME TAX CONSIDERATIONS

The following sections summarize the material federal income tax issues that you may consider relevant. Because this section is a summary, it does not address all of the tax issues that may be important to you. In addition, this section does not address the tax issues that may be important to certain types of shareholders that are subject to special treatment under the federal income tax laws, such as insurance companies, tax-exempt organizations (except to the extent discussed in “— Taxation of Tax-Exempt U.S. Shareholders” below), financial institutions and broker-dealers, and non-U.S. individuals and foreign corporations (except to the extent discussed in “— Taxation of Non-U.S. Shareholders” below).

The statements in this section are based on the current federal income tax laws governing our qualification as a REIT. We cannot assure you that new laws, interpretations of laws or court decisions, any of which may take effect retroactively, will not cause any statement in this section to be inaccurate.

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

### **Taxation of the Company**

We elected to be taxed as a REIT under the federal income tax laws when we filed our 1962 tax return. We have operated in a manner intended to qualify as a REIT and we intend to continue to operate in that manner. This section discusses the laws governing the federal income tax treatment of a REIT and its shareholders. These laws are highly technical and complex.

In the opinion of our tax counsel, Shaw Pittman LLP, (i) we qualified as a REIT under Sections 856 through 859 of the Code with respect to our taxable years ended through December 31, 2003; and (ii) we are organized in conformity with the requirements for qualification as a REIT under the Code and our current method of operation and ownership will enable us to meet the requirements for qualification and taxation as a REIT for the current taxable year and for future taxable years, provided that we have operated and continue to operate in accordance with various assumptions and factual representations made by us concerning our business, properties and operations. We may not, however, have met or continue to meet such requirements. You should be aware that opinions of counsel are not binding on the IRS or any court. Our qualification as a REIT depends on our ability to meet, on a continuing basis, certain qualification tests set forth in the federal tax laws. Those qualification tests involve the percentage of income that we earn from specified sources, the percentage of our assets that fall within certain categories, the diversity of the ownership of our shares, and the percentage of our earnings that we distribute. We describe the REIT qualification tests in more detail below. Shaw Pittman LLP will not monitor our compliance with the requirements for REIT qualification on an ongoing basis. Accordingly, our actual operating results may not satisfy the qualification tests. For a discussion of the tax treatment of us and our shareholders if we fail to qualify as a REIT, see “— Requirements for REIT Qualification — Failure to Qualify.”

As a REIT, we generally will not be subject to federal income tax on the taxable income that we distribute to our shareholders. The benefit of that tax treatment is that it avoids the “double taxation” (i.e., at both the corporate and stockholder levels) that generally results from owning stock in a corporation. However, we will be subject to federal tax in the following circumstances:

- we will pay federal income tax on taxable income (including net capital gain) that we do not distribute to our shareholders during, or within a specified time period after, the calendar year in which the income is earned;
- we may be subject to the “alternative minimum tax” on any items of tax preference that we do not distribute or allocate to our shareholders;

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- we will pay income tax at the highest corporate rate on (i) net income from the sale or other disposition of property acquired through foreclosure that we hold primarily for sale to customers in the ordinary course of business and (ii) other non-qualifying income from foreclosure property;
- we will pay a 100% tax on net income from certain sales or other dispositions of property (other than foreclosure property) that we hold primarily for sale to customers in the ordinary course of business (“prohibited transactions”);
- if we fail to satisfy the 75% gross income test or the 95% gross income test (as described below under “— Requirements for REIT Qualification — Income Tests”), but nonetheless continue to qualify as a REIT because we meet certain other requirements, we will pay a 100% tax on (i) the gross income attributable to the greater of the amount by we fail, respectively, the 75% or 95% gross income test, multiplied, in either case, by (ii) a fraction intended to reflect our profitability;
- beginning in our 2005 taxable year, if we fail, in more than a de minimis fashion, to satisfy one or more of the asset tests for any quarter of a taxable year, but nonetheless continue to qualify as a REIT because we qualify under certain relief provisions, we may be required to pay a tax of the greater of \$50,000 or a tax computed at the highest corporate rate on the amount of net income generated by the assets causing the failure from the date of failure until the assets are disposed of or we otherwise return to compliance with the asset test;
- beginning in our 2005 taxable year, if we fail to satisfy one or more of the requirements for REIT qualification (other than the income tests or the asset tests), we nevertheless may avoid termination of our REIT election in such year if the failure is due to reasonable cause and not due to willful neglect and we pay a penalty of \$50,000 for each failure to satisfy the REIT qualification requirements;
- if we fail to distribute during a calendar year at least the sum of (i) 85% of our REIT ordinary income for such year, (ii) 95% of our REIT capital gain net income for such year, and (iii) any undistributed taxable income from prior periods, we will pay a 4% excise tax on the excess of such required distribution over the amount we actually distributed;
- we may elect to retain and pay income tax on our net long-term capital gain; or
- if we acquire any asset from a C corporation (i.e., a corporation generally subject to full corporate-level tax) in a merger or other transaction in which we acquire a “carryover” basis in the asset (i.e., basis determined by reference to the C corporation’s basis in the asset (or another asset)), and we recognize gain on the sale or disposition of such asset during the 10-year period after we acquire such asset, we will pay tax at the highest regular corporate rate applicable on the lesser of (i) the amount of gain that we recognize at the time of the sale or disposition and (ii) the amount of gain that we would have recognized if we had sold the asset at the time we acquired the asset.

### **Requirements for REIT Qualification**

To qualify as a REIT, we must meet the following requirements:

1. we are managed by one or more trustees or directors;

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2. our beneficial ownership is evidenced by transferable shares, or by transferable certificates of beneficial interest;
3. we would be taxable as a domestic corporation, but for Sections 856 through 860 of the Code;
4. we are neither a financial institution nor an insurance company subject to certain provisions of the Code;
5. at least 100 persons are beneficial owners of our shares or ownership certificates;
6. not more than 50% in value of our outstanding shares or ownership certificates is owned, directly or indirectly, by five or fewer individuals (as defined in the Code to include certain entities) during the last half of any taxable year (the “5/50 Rule”);
7. we elect to be a REIT (or have made such election for a previous taxable year) and satisfy all relevant filing and other administrative requirements established by the Internal Revenue Service that must be met to elect and maintain REIT status;
8. we use a calendar year for federal income tax purposes and comply with the record keeping requirements of the Code and the related regulations of the U.S. Department of Treasury (“Treasury”); and
9. we meet certain other qualification tests, described below, regarding the nature of our income and assets.

We must meet requirements 1 through 4 during our entire taxable year and must meet requirement 5 during at least 335 days of a taxable year of 12 months, or during a proportionate part of a taxable year of less than 12 months. If we comply with all the requirements for ascertaining the ownership of our outstanding shares in a taxable year and have no reason to know that we violated the 5/50 Rule, we will be deemed to have satisfied the 5/50 Rule for such taxable year. For purposes of determining share ownership under the 5/50 Rule, an “individual” generally includes a supplemental unemployment compensation benefits plan, a private foundation, or a portion of a trust permanently set aside or used exclusively for charitable purposes. An “individual,” however, generally does not include a trust that is a qualified employee pension or profit sharing trust under Code Section 401(a), and beneficiaries of such a trust will be treated as holding our shares in proportion to their actuarial interests in the trust for purposes of the 5/50 Rule.

We believe we have issued sufficient common shares with sufficient diversity of ownership to satisfy requirements 5 and 6 set forth above. In addition, our declaration of trust restricts the ownership and transfer of the common shares so that we should continue to satisfy requirements 5 and 6. The provisions of our declaration of trust restricting the ownership and transfer of the common shares are described in “Risk Factors – To maintain our status as a REIT, we limit the amount of shares any one shareholder can own.”



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We currently have several direct corporate subsidiaries and may have additional corporate subsidiaries in the future. A corporation that is a “qualified REIT subsidiary” is not treated as a corporation separate from its parent REIT. All assets, liabilities, and items of income, deduction, and credit of a qualified REIT subsidiary are treated as assets, liabilities, and items of income, deduction, and credit of the REIT. A qualified REIT subsidiary is a corporation, all of the capital stock of which is owned by the parent REIT, unless we and the subsidiary have jointly elected to have it treated as a “taxable REIT subsidiary,” in which case it is treated separately from us and will be subject to federal corporate income taxation. Thus, in applying the requirements described herein, any qualified REIT subsidiary of ours will be ignored, and all assets, liabilities, and items of income, deduction, and credit of such subsidiary will be treated as our assets, liabilities, and items of income, deduction, and credit. We believe our direct corporate subsidiaries are qualified REIT subsidiaries, except for those which are taxable REIT subsidiaries. Accordingly, they are not subject to federal corporate income taxation, though they may be subject to state and local taxation.

A REIT is treated as owning its proportionate share of the assets of any partnership in which it is a partner and as earning its allocable share of the gross income of the partnership for purposes of the applicable REIT qualification tests. Thus, our proportionate share of the assets, liabilities and items of income of any partnership (or limited liability company treated as a partnership) in which we have acquired or will acquire an interest, directly or indirectly, are treated as our assets and gross income for purposes of applying the various REIT qualification requirements.

*Income Tests.* We must satisfy two gross income tests annually to maintain our qualification as a REIT:

- At least 75% of our gross income (excluding gross income from prohibited transactions) for each taxable year must consist of defined types of income that we derive, directly or indirectly, from investments relating to real property or mortgages on real property or temporary investment income (the “75% gross income test”). Qualifying income for purposes of the 75% gross income test includes “rents from real property,” interest on debt secured by mortgages on real property or on interests in real property, and dividends or other distributions on and gain from the sale of shares in other REITs; and
- At least 95% of our gross income (excluding gross income from prohibited transactions) for each taxable year must consist of income that is qualifying income for purposes of the 75% gross income test, dividends, other types of interest, gain from the sale or disposition of stock or securities, or any combination of the foregoing (the “95% gross income test”).

The following paragraphs discuss the specific application of these tests to us.

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*Rental Income.* Our primary source of income derives from leasing properties. Rent that we receive from real property that we own and lease to tenants will qualify as “rents from real property” (which is qualifying income for purposes of the 75% and 95% gross income tests) only if several conditions are met under the REIT tax rules:

- The rent must not be based, in whole or in part, on the income or profits of any person although, generally, rent may be based on a fixed percentage or percentages of receipts or sales. We have not entered into any lease based in whole or part on the net income of any person and do not anticipate entering into such arrangements.
- Except in certain limited circumstances involving taxable REIT subsidiaries, neither we nor someone who owns 10% or more of our shares may own 10% or more of a tenant from whom we receive rent. Our ownership and the ownership of a tenant is determined based on direct, indirect and constructive ownership. The constructive ownership rules generally provide that if 10% or more in value of our shares are owned, directly or indirectly, by or for any person, we are considered as owning the shares owned, directly or indirectly, by or for such person. The applicable attribution rules, however, are highly complex and difficult to apply, and we may inadvertently enter into leases with tenants who, through application of such rules, will constitute “related party tenants.” In such event, rent paid by the related party tenant will not qualify as “rents from real property,” which may jeopardize our status as a REIT. We will use our best efforts not to rent any property to a related party tenant (taking into account the applicable constructive ownership rules), unless we determine in our discretion that the rent received from such related party tenant is not material and will not jeopardize our status as a REIT. We believe that we have not leased property to any related party tenant, except where we have determined that the rent received from such related party tenant is not material and will not jeopardize our status as a REIT.
- In the case of certain rent from a taxable REIT subsidiary which would, but for this exception, be considered rent from a related party tenant, the space leased to the taxable REIT subsidiary must be part of a property at least 90 percent of which is rented to persons other than taxable REIT subsidiaries and related party tenants, and the amounts of rent paid to us by the taxable REIT subsidiary must be substantially comparable to the rents paid by such other persons for comparable space. All space currently leased to taxable REIT subsidiaries meets these conditions, and we intend to meet them in the future, unless we determine in our discretion that the rent received from a taxable REIT subsidiary is not material and will not jeopardize our status as a REIT.
- The rent attributable to any personal property leased in connection with a lease of property is no more than 15% of the total rent received under the lease. In general, we have not leased a significant amount of personal property under our current leases. If any incidental personal property has been leased, we believe that rent under each lease from the personal property would be less than 15% of total rent from that lease. If we lease personal property in connection with a future lease, we intend to satisfy the 15% test described above.
- We generally must not operate or manage our property or furnish or render services to our tenants, other than through an “independent contractor” who is adequately

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compensated and from whom we do not derive revenue, or through a taxable REIT subsidiary. We may provide services directly, if the services are “usually or customarily rendered” in connection with the rental of space for occupancy only and are not otherwise considered “rendered to the occupant.” In addition, we may render directly a de minimis amount of “non-customary” services to the tenants of a property without disqualifying the income as “rents from real property,” as long as our income from the services does not exceed 1% of our income from the related property. We have not provided services to leased properties that have caused rents to be disqualified as rents from real property, and in the future, we intend that any services provided will not cause rents to be disqualified as rents from real property.

Based on the foregoing, we believe that rent from leases should qualify as “rents from real property” for purposes of the 75% and 95% gross income tests. As described above, however, the IRS may assert successfully a contrary position and, therefore, prevent us from qualifying as a REIT.

On an ongoing basis, we will use our best efforts not to:

- charge rent for any property that is based in whole or in part on the income or profits of any person (except by reason of being based on a percentage of receipts or sales, as described above);
- rent any property to a related party tenant (taking into account the applicable constructive ownership rules and the exception for taxable REIT subsidiaries), unless we determine in our discretion that the rent received from such related party tenant is not material and will not jeopardize our status as a REIT;
- derive rental income attributable to personal property (other than personal property leased in connection with the lease of real property, the amount of which is less than 15% of the total rent received under the lease); and
- perform services considered to be rendered to the occupant of the property that generate rents exceeding 1% of all amounts received or accrued during the taxable year with respect to such property, other than through an independent contractor from whom we derive no revenue, through a taxable REIT subsidiary, or if the provision of such services will not jeopardize our status as a REIT.

Because the Code provisions applicable to REITs are complex, however, we may fail to meet one or more of the foregoing.

*Tax on Income From Property Acquired in Foreclosure.* We will be subject to tax at the maximum corporate rate on any income from foreclosure property (other than income that would be qualifying income for purposes of the 75% gross income test), less expenses directly connected to the production of such income. “Foreclosure property” is any real property including interests in real property) and any personal property incident to such real property:

- that is acquired by a REIT at a foreclosure sale, or having otherwise become the owner or in possession of the property by agreement or process of law, after a default (or imminent default) on a lease of such property or on an debt owed to the REIT secured by the property;

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- for which the related loan was acquired by the REIT at a time when default was not imminent or anticipated; and
- for which the REIT makes a proper election to treat the property as foreclosure property.

A REIT will not be considered to have foreclosed on a property where it takes control of the property as a mortgagee-in-possession and cannot receive any profit or sustain any loss except as a creditor of the mortgagor. Generally, property acquired as described above ceases to be foreclosure property on the earlier of:

- the last day of the third taxable year following the taxable year in which the REIT acquired the property (or longer if an extension is granted by the Secretary of the Treasury);
- the first day on which a lease is entered into with respect to such property that, by its terms, will give rise to income that does not qualify under the 75% gross income test or any amount is received or accrued, directly or indirectly, pursuant to a lease entered into on or after such day that will give rise to income that does not qualify under the 75% gross income test;
- the first day on which any construction takes place on such property (other than completion of a building, or any other improvement, where more than 10% of the construction of such building or other improvement was completed before default became imminent); or
- the first day that is more than 90 days after the day on which such property was acquired by the REIT and the property is used in a trade or business that is conducted by the REIT (other than through an independent contractor from whom the REIT itself does not derive or receive any income).

*Tax on Prohibited Transactions.* A REIT will incur a 100% tax on net income derived from any “prohibited transaction.” A “prohibited transaction” generally is a sale or other disposition of property (other than foreclosure property) that the REIT holds primarily for sale to customers in the ordinary course of a trade or business. We believe that none of our assets are held for sale to customers and that a sale of any such asset would not be in the ordinary course of its business. Whether a REIT holds an asset “primarily for sale to customers in the ordinary course of a trade or business” depends, however, on the facts and circumstances in effect from time to time, including those related to a particular asset. Nevertheless, we will attempt to comply with the terms of safe-harbor provisions in the Code prescribing when an asset sale will not be characterized as a prohibited transaction. We may fail to comply with such safe-harbor provisions or may own property that could be characterized as property held “primarily for sale to customers in the ordinary course of a trade or business.”

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*Tax and Deduction Limits on Certain Transactions with Taxable REIT Subsidiaries.* A REIT will incur a 100% tax on certain transactions between a REIT and a taxable REIT subsidiary to the extent the transactions are not on an arms-length basis. In addition, under certain circumstances the interest paid by a taxable REIT subsidiary to the REIT may not be deductible by the taxable REIT subsidiary. We believe that none of the transactions we have had with our taxable REIT subsidiaries will give rise to the 100% tax and that none of our taxable REIT subsidiaries will be subject to the interest deduction limits.

*Relief from Consequences of Failing to Meet Income Tests.* If we fail to satisfy one or both of the 75% and 95% gross income tests for any taxable year, we nevertheless may qualify as a REIT for such year if we qualify for relief under certain provisions of the Code. Those relief provisions generally will be available if our failure to meet such tests is due to reasonable cause and not due to willful neglect, and we attach a schedule of the sources of our income to our tax return. We may not qualify for the relief provisions in all circumstances. In addition, as discussed above in “— Taxation of the Company,” even if the relief provisions apply, we would incur a 100% tax on gross income to the extent we fail the 75% or 95% gross income test (whichever amount is greater), multiplied by a fraction intended to reflect our profitability.

*Asset Tests.* To maintain our qualification as a REIT, we also must satisfy two asset tests at the close of each quarter of each taxable year:

- At least 75% of the value of our total assets must consist of cash or cash items (including certain receivables), government securities, “real estate assets,” or qualifying temporary investments (the “75% asset test”).
- “Real estate assets” include interests in real property, interests in mortgages on real property and stock in other REITs. We believe that the properties qualify as real estate assets.
- “Interests in real property” include an interest in mortgage loans or land and improvements thereon, such as buildings or other inherently permanent structures (including items that are structural components of such buildings or structures), a leasehold of real property, and an option to acquire real property (or a leasehold of real property).
- Qualifying temporary investments are investments in stock or debt instruments during the one-year period following our receipt of new capital that we raise through equity or long-term (at least five-year) debt offerings.
- For investments not included in the 75% asset test, (A) the value of our interest in any one issuer’s securities (which does not include our equity ownership of other REITs, any qualified REIT subsidiary, or any taxable REIT subsidiary) may not exceed 5% of the value of our total assets (the “5% asset test”), (B) we may not own more than 10% of the

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voting power or value of any one issuer's outstanding securities, which does not include our equity ownership in other REITs, any qualified REIT subsidiary, or any taxable REIT subsidiary (the "10% asset test"), and (C) the value of our securities in one or more taxable REIT subsidiaries may not exceed 20% of the value of our total assets.

We intend to select future investments so as to comply with the asset tests.

If we failed to satisfy the asset tests at the end of a calendar quarter, we would not lose our REIT status if (i) we satisfied the asset tests at the close of the preceding calendar quarter and (ii) the discrepancy between the value of our assets and the asset test requirements arose from changes in the market values of our assets and was not wholly or partly caused by the acquisition of one or more non-qualifying assets. If we did not satisfy the condition described in clause (ii) of the preceding sentence, we still could avoid disqualification as a REIT by eliminating any discrepancy within 30 days after the close of the calendar quarter in which the discrepancy arose.

*Relief from Consequences of Failing to Meet Asset Tests.* Beginning in our 2005 taxable year, if we fail to satisfy one or more of the asset tests for any quarter of a taxable year, we nevertheless may qualify as a REIT for such year if we qualify for relief under certain provisions of the Code. Those relief provisions generally will be available for failures of the 5% asset test and the 10% asset test if (i) the failure is due to the ownership of assets that do not exceed the lesser of 1% of our total assets or \$10 million, and the failure is corrected within 6 months following the quarter in which it was discovered, or (ii) the failure is due to ownership of assets that exceed the amount in (i) above, the failure is due to reasonable cause and not due to willful neglect, we file a schedule with a description of each asset causing the failure in accordance with regulations prescribed by the Treasury, the failure is corrected within 6 months following the quarter in which it was discovered, and we pay a tax consisting of the greater of \$50,000 or a tax computed at the highest corporate rate on the amount of net income generated by the assets causing the failure from the date of failure until the assets are disposed of or we otherwise return to compliance with the asset test. We may not qualify for the relief provisions in all circumstances.

*Distribution Requirements.* Each taxable year, we must distribute dividends (other than capital gain dividends and deemed distributions of retained capital gain) to our shareholders in an aggregate amount at least equal to (1) the sum of 90% of (A) our "REIT taxable income" (computed without regard to the dividends paid deduction and our net capital gain) and (B) our net income (after tax), if any, from foreclosure property, minus (2) certain items of non-cash income.

We must pay such distributions in the taxable year to which they relate, or in the following taxable year if we declare the distribution before we timely file our federal income tax return for such year and pay the distribution on or before the first regular dividend payment date after such declaration.

We will pay federal income tax at regular corporate rates on taxable income (including net capital gain) that we do not distribute to shareholders. Furthermore, we will incur a 4% nondeductible excise tax if we fail to distribute during a calendar year (or, in the case of distributions with declaration and record dates falling in the last three months of the calendar

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year, by the end of January following such calendar year) at least the sum of (1) 85% of our REIT ordinary income for such year, (2) 95% of our REIT capital gain income for such year, and (3) any undistributed taxable income from prior periods. The excise tax is on the excess of such required distribution over the amounts we actually distributed. We may elect to retain and pay income tax on the net long-term capital gain we receive in a taxable year. See “— Taxation of Taxable U.S. Shareholders.” For purposes of the 4% excise tax, we will be treated as having distributed any such retained amount. We have made, and we intend to continue to make, timely distributions sufficient to satisfy the annual distribution requirements.

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

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

*Record Keeping Requirements.* We must maintain certain records to qualify as a REIT. In addition, to avoid a monetary penalty, we must request on an annual basis certain information from our shareholders designed to disclose the actual ownership of our outstanding stock. We have complied, and we intend to continue to comply, with such requirements.

*Relief from Other Failures of the REIT Qualification Provisions.* Beginning in our 2005 taxable year, if we fail to satisfy one or more of the requirements for REIT qualification (other than the income tests or the asset tests), we nevertheless may avoid termination of our REIT election in such year if the failure is due to reasonable cause and not due to willful neglect and we pay a penalty of \$50,000 for each failure to satisfy the REIT qualification requirements. We may not qualify for this relief provision in all circumstances.

*Failure to Qualify.* If we failed to qualify as a REIT in any taxable year, and no relief provision applied, we would be subject to federal income tax (including any applicable alternative minimum tax) on our taxable income at regular corporate rates. In calculating our taxable income in a year in which we failed to qualify as a REIT, we would not be able to deduct amounts paid out to shareholders. In fact, we would not be required to distribute any amounts to shareholders in such year. In such event, to the extent of our current and accumulated earnings and profits, all distributions to shareholders would be taxable as ordinary income. Such

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distributions would, however, be “qualified dividend income,” which is taxable at long-term capital gain rates for individual stockholders. Furthermore, subject to certain limitations of the Code, corporate shareholders might be eligible for the dividends received deduction. Unless we qualified for relief under specific statutory provisions, we also would be disqualified from taxation as a REIT for the four taxable years following the year during which we ceased to qualify as a REIT. We cannot predict whether in all circumstances we would qualify for such statutory relief.

### **Taxation of Taxable U.S. Shareholders**

As used herein, the term “U.S. shareholder” means a holder of common shares that for U.S. federal income tax purposes is

- a citizen or resident of the United States;
- a corporation, partnership, or other entity created or organized in or under the laws of the United States, any of its states or the District of Columbia;
- an estate whose income is subject to U.S. federal income taxation regardless of its source; or
- any trust with respect to which (A) a U.S. court is able to exercise primary supervision over the administration of such trust and (B) one or more U.S. persons have the authority to control all substantial decisions of the trust. Notwithstanding the preceding sentence, to the extent provided in the Treasury regulations, some trusts in existence on August 20, 1996, and treated as United States persons prior to this date that elect to continue to be treated as United States persons, shall be considered United States shareholders.

If a partnership, including an entity that is treated as a partnership for U.S. federal income tax purposes, is a beneficial owner of our common stock, the treatment of a partner in the partnership will generally depend on the status of the partner and the activities of the partnership.

*Dividends and Other U.S. Shareholder Distributions.* As long as we qualify as a REIT, a taxable U.S. shareholder must take into account distributions on our common shares out of our current or accumulated earnings and profits (and that we do not designate as capital gain dividends or retained long-term capital gain) as ordinary income. Such distributions will not qualify for the dividends received deduction generally available to corporations.

In determining the extent to which a distribution constitutes a dividend for federal income tax purposes, our earnings and profits will be allocated first to distributions with respect to our preferred shares and then to distributions with respect to our common shares. If, for any taxable year, we elect to designate as capital gain dividends any portion of the distributions paid for the year to our shareholders, the portion of the amount so designated (not in excess of our net capital gain for the year) that will be allocable to the holders of each class or series of preferred shares will be the amount so designated, multiplied by a fraction, the numerator of which will be



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the total dividends (within the meaning of the Code) paid to the holders of such class or series of preferred shares for the year and the denominator of which will be the total dividends paid to the holders of all classes of our shares for the year. The remainder of the designated capital gain dividends will be allocable to holders of our common shares.

A U.S. shareholder will recognize distributions that we designate as capital gain dividends as long-term capital gain (to the extent they do not exceed our actual net capital gain for the taxable year) without regard to the period for which the U.S. shareholder has held its common shares. Subject to certain limitations, we will designate our capital gain dividends as either 20% or 25% rate distributions. A corporate U.S. shareholder, however, may be required to treat up to 20% of certain capital gain dividends as ordinary income.

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

A U.S. shareholder will not incur tax on a distribution to the extent it exceeds our current and accumulated earnings and profits if such distribution does not exceed the adjusted basis of the U.S. shareholder's common shares. Instead, such distribution in excess of earnings and profits will reduce the adjusted basis of such common shares. To the extent a distribution exceeds both our current and accumulated earnings and profits and the U.S. shareholder's adjusted basis in its common shares, the U.S. shareholder will recognize long-term capital gain (or short-term capital gain if the common shares have been held for one year or less), assuming the common shares are a capital asset in the hands of the U.S. shareholder. In addition, if we declare a distribution in October, November, or December of any year that is payable to a U.S. shareholder of record on a specified date in any such month, such distribution shall be treated as both paid by us and received by the U.S. shareholder on December 31 of such year, provided that we actually pay the distribution during January of the following calendar year. We will notify U.S. shareholders after the close of our taxable year as to the portions of the distributions attributable to that year that constitute ordinary income or capital gain dividends.

*Taxation of U.S. Shareholders on the Disposition of the Common Shares.* In general, a U.S. shareholder who is not a dealer in securities must treat any gain or loss realized upon a taxable disposition of the common shares as long-term capital gain or loss if the U.S. shareholder has held the common stock for more than one year and otherwise as short-term capital gain or loss. However, a U.S. shareholder must treat any loss upon a sale or exchange of common shares held by such shareholder for six months or less (after applying certain holding period rules) as a long-term capital loss to the extent of capital gain dividends and other distributions from us that such U.S. shareholder treats as long-term capital gain. All or a portion of any loss a U.S. shareholder realizes upon a taxable disposition of the common shares may be disallowed if the U.S. shareholder purchases additional common shares within the 61-day period beginning 30 days before and ending 30 days after the disposition.

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*Capital Gains and Losses.* A taxpayer generally must hold a capital asset for more than one year for gain or loss derived from its sale or exchange to be treated as long-term capital gain or loss. The highest marginal individual income tax rate on ordinary income exceeds the maximum tax rate on long-term capital gain applicable to non-corporate taxpayers. The maximum tax rate on long-term capital gain from the sale or exchange of “Section 1250 property” (i.e., depreciable real property) is, to the extent that such gain would have been treated as ordinary income if the property were “Section 1245 property,” higher than the maximum long-term capital gain rate otherwise applicable. With respect to distributions that we designate as capital gain dividends and any retained capital gain that is deemed to be distributed, we may designate (subject to certain limits) whether such a distribution is taxable to our non-corporate shareholders at the lower or higher rate. The tax rate differential between capital gain and ordinary income for non-corporate taxpayers is significant. A U.S. shareholder required to include retained long-term capital gains in income will be deemed to have paid, in the taxable year of the inclusion, its proportionate share of the tax paid by us in respect of such undistributed net capital gains. U.S. shareholders subject to these rules will be allowed a credit or a refund, as the case may be, for the tax deemed to have been paid by such shareholders. U.S. shareholders will increase their basis in their common shares by the difference between the amount of such includible gains and the tax deemed paid by the U.S. shareholder in respect of such gains. In addition, the characterization of income as capital gain or ordinary income may affect the deductibility of capital losses. A non-corporate taxpayer generally may deduct capital losses not offset by capital gains against its ordinary income only up to a maximum annual amount of \$3,000. A non-corporate taxpayer may carry forward unused capital losses indefinitely. A corporate taxpayer must pay tax on its net capital gain at ordinary corporate rates. A corporate taxpayer can deduct capital losses only to the extent of capital gains, with unused losses being carried back three years and forward five years.

*The Jobs and Growth Tax Relief Reconciliation Act of 2003.* Under the Act, which was signed into law on May 28, 2003, the maximum tax rate on the long-term capital gains of domestic non-corporate taxpayers is reduced to 15% for taxable years beginning on or before December 31, 2008. The Act also reduced the tax rate on “qualified dividend income” to the maximum capital gains rate. Because, as a REIT, we are not generally subject to tax on the portion of our REIT taxable income or capital gains distributed to our shareholders, our distributions are not generally eligible for this new tax rate on dividends. As a result, our ordinary REIT distributions continue to be taxed at the higher tax rates applicable to ordinary income. However, the new 15% rate does generally apply to:

- a shareholder’s long-term capital gain, if any, recognized on the disposition of our shares;
- distributions we designate as long-term capital gain dividends (except to the extent attributable to real estate depreciation, in which case the 25% tax rate applies);
- distributions attributable to dividends we receive from non-REIT corporations; and
- distributions to the extent attributable to income upon which we have paid corporate tax (for example, the tax we would pay if we distributed less than all of our taxable REIT income).

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Without further legislation, the maximum tax rate on long-term capital gains will revert to 20% in 2009.

*Information Reporting Requirements and Back-up Withholding.* We will report to our shareholders and to the IRS the amount of distributions we pay during each calendar year, and the amount of tax we withhold, if any. Under the backup withholding rules, a shareholder may be subject to backup withholding (at the rate of 28% through December 31, 2010 and thereafter at a rate of 31%) with respect to distributions unless such holder (1) is a corporation or comes within certain other exempt categories and, when required, demonstrates this fact or (2) provides a taxpayer identification number, certifies as to no loss of exemption from back-up withholding, and otherwise complies with the applicable requirements of the back-up withholding rules. A shareholder who does not provide us with its correct taxpayer identification number also may be subject to penalties imposed by the IRS. Any amount paid as back-up withholding will be creditable against the shareholder's income tax liability. In addition, we may be required to withhold a portion of capital gain distributions to any shareholders who fail to certify their non-foreign status to us.

### **Taxation of Tax-Exempt U.S. Shareholders**

Tax-exempt entities, including qualified employee pension and profit sharing trusts and individual retirement accounts and annuities ("exempt organizations"), generally are exempt from federal income taxation. However, they are subject to taxation on their unrelated business taxable income ("UBTI"). While many investments in real estate generate UBTI, the IRS has issued a published ruling that dividend distributions from a REIT to an exempt employee pension trust do not constitute UBTI, provided that the exempt employee pension trust does not otherwise use the shares of the REIT in an unrelated trade or business of the pension trust. Based on that ruling, amounts that we distribute to exempt organizations generally should not constitute UBTI. However, if an exempt organization were to finance its acquisition of common shares with debt, a portion of the income that they receive from us would constitute UBTI pursuant to the "debt-financed property" rules. Furthermore, social clubs, voluntary employee benefit associations, supplemental unemployment benefit trusts and qualified group legal services plans that are exempt from taxation under paragraphs (7), (9), (17), and (20), respectively, of Code Section 501(c) are subject to different UBTI rules, which generally will require them to characterize distributions that they receive from us as UBTI unless the organization is able to properly claim a deduction for amounts set aside or placed in reserve for specific purposes so as to offset the income generated by its investment in our common stock. Finally, in certain circumstances, a qualified employee pension or profit sharing trust that owns more than 10% of our shares is required to treat a percentage of the dividends that it receives from us as UBTI (the "UBTI Percentage"). The UBTI Percentage is equal to the gross income we derive from an unrelated trade or business (determined as if it were a pension trust) divided by our total gross income for the year in which we pay the dividends. The UBTI rule applies to a pension trust holding more than 10% of our shares only if:

- the UBTI Percentage is at least 5%;

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- we qualify as a REIT by reason of the modification of the 5/50 Rule that allows the beneficiaries of the pension trust to be treated as holding our shares in proportion to their actuarial interests in the pension trust; and
- we are a “pension-held REIT” (i.e., either (1) one pension trust owns more than 25% of the value of our shares or (2) a group of pension trusts individually holding more than 10% of the value of our shares collectively owns more than 50% of the value of our shares).

Tax-exempt entities will be subject to the rules described above, under the heading “— Taxation of Taxable U.S. Shareholders” concerning the inclusion of our designated undistributed net capital gains in the income of our shareholders. Thus, such entities will, after satisfying filing requirements, be allowed a credit or refund of the tax deemed paid by such entities in respect of such includible gains.

### **Taxation of Non-U.S. Shareholders**

The rules governing U.S. federal income taxation of non-U.S. shareholders are complex. This section is only a summary of such rules. We urge non-U.S. shareholders to consult their own tax advisors to determine the impact of federal, state, and local income tax laws on ownership of common shares, including any reporting requirements. As used herein, the term “non-U.S. shareholder” means any beneficial owner of our shares that is not a U.S. shareholder.

*Ordinary Dividends.* A non-U.S. shareholder that receives a distribution that is not attributable to gain from our sale or exchange of U.S. real property interests (as defined below) and that we do not designate as a capital gain dividend or retained capital gain will recognize ordinary income to the extent that we pay such distribution out of our current or accumulated earnings and profits. A withholding tax equal to 30% of the gross amount of the distribution ordinarily will apply to such distribution unless an applicable tax treaty reduces or eliminates the tax. However, if a distribution is treated as effectively connected with the non-U.S. shareholder’s conduct of a U.S. trade or business, the non-U.S. shareholder generally will be subject to federal income tax on the distribution at graduated rates, in the same manner as U.S. shareholders are taxed with respect to such distributions (and also may be subject to the 30% branch profits tax in the case of a non-U.S. shareholder that is a non-U.S. corporation). We plan to withhold U.S. income tax at the rate of 30% on the gross amount of any such distribution paid to a non-U.S. shareholder unless (i) a lower treaty rate applies and the non-U.S. shareholder (or beneficial owner in the case of shares owned through a pass-through entity that is not acting as a withholding foreign partnership or trust) provides IRS Form W-8BEN to us evidencing eligibility for that reduced rate, (ii) the non-U.S. shareholder files an IRS Form W-8ECI with us claiming that the distribution is effectively connected income, or (iii) the non-U.S. shareholder holds shares through a “qualified intermediary” that has elected to perform any necessary withholding itself.

*Return of Capital.* A non-U.S. shareholder will not incur tax on a distribution to the extent it exceeds our current and accumulated earnings and profits if such distribution does not

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exceed the adjusted basis of its common shares. Instead, such distribution in excess of earnings and profits will reduce the adjusted basis of such common shares. A non-U.S. shareholder will be subject to tax to the extent a distribution exceeds both our current and accumulated earnings and profits and the adjusted basis of its common shares, if the non-U.S. shareholder otherwise would be subject to tax on gain from the sale or disposition of its common shares, as described below. Because we generally cannot determine at the time we make a distribution whether or not the distribution will exceed our current and accumulated earnings and profits, we normally will withhold tax on the entire amount of any distribution just as we would withhold on a dividend. However, a non-U.S. shareholder may obtain a refund of amounts that we withhold if we later determine that a distribution in fact exceeded our current and accumulated earnings and profits.

*Capital Gain Dividends.* For any year through our 2004 taxable year in which we qualify as a REIT, a non-U.S. shareholder will incur tax on distributions that are attributable to gain from our sale or exchange of “U.S. real property interests” under the provisions of the Foreign Investment in Real Property Tax Act of 1980 (“FIRPTA”). The term “U.S. real property interests” includes certain interests in real property and stock in corporations at least 50% of whose assets consists of interests in real property, but excludes mortgage loans and mortgage-backed securities. Under FIRPTA, a non-U.S. shareholder is taxed on distributions attributable to gain from sales of U.S. real property interests as if such gain were effectively connected with a U.S. business of the non-U.S. shareholder. A non-U.S. shareholder thus would be taxed on such a distribution at the normal capital gain rates applicable to U.S. shareholders (subject to applicable alternative minimum tax and a special alternative minimum tax in the case of a nonresident alien individual). A corporate non-U.S. shareholder not entitled to treaty relief or exemption also may be subject to the 30% branch profits tax on distributions subject to FIRPTA. We must withhold 35% of any distribution that we could designate as a capital gain dividend. However, if we make a distribution and later designate it as a capital gain dividend, then (although such distribution may be taxable to a non-U.S. shareholder) it is not subject to withholding under FIRPTA. Instead, we must make-up the 35% FIRPTA withholding from distributions made after the designation, until the amount of distributions withheld at 35% equals the amount of the distribution designated as a capital gain dividend. A non-U.S. shareholder may receive a credit against its FIRPTA tax liability for the amount we withhold.

Beginning with our 2005 taxable year, the above taxation under FIRPTA of capital gain dividends (or retained capital gain that is deemed to be distributed) will not apply, provided our common shares are “regularly traded” on an established securities market in the United States, and the non-U.S. shareholder does not own more than 5% of the common stock at any time during the taxable year. Instead, such amounts will be treated as an ordinary dividend not effectively connected to a U.S. trade or business, taxable as described above under “Taxation of Non-U.S. Shareholders – Ordinary Dividends.”

Distributions to a non-U.S. shareholder that we designate at the time of distribution as capital gain dividends which are not attributable to or treated as attributable to our disposition of a U.S. real property interest generally will not be subject to U.S. federal income taxation, except as described below under “— Sale of Shares.”

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*Sale of Shares.* A non-U.S. shareholder generally will not incur tax under FIRPTA on gain from the sale of its common shares as long as we are a “domestically controlled REIT.” A “domestically controlled REIT” is a REIT in which at all times during a specified testing period non-U.S. persons held, directly or indirectly, less than 50% in value of the stock. We anticipate that we will continue to be a “domestically controlled REIT.” In addition, a non-U.S. shareholder that owns, actually or constructively, 5% or less of outstanding common shares at all times during a specified testing period will not incur tax under FIRPTA if the common shares are “regularly traded” on an established securities market. If neither of these exceptions were to apply, the gain on the sale of the common shares would be taxed under FIRPTA, in which case a non-U.S. shareholder would be taxed in the same manner as U.S. shareholders with respect to such gain (subject to applicable alternative minimum tax and a special alternative minimum tax in the case of nonresident alien individuals).

A non-U.S. shareholder will incur tax on gain not subject to FIRPTA if (1) the gain is effectively connected with the non-U.S. shareholder’s U.S. trade or business, in which case the non-U.S. shareholder will be subject to the same treatment as U.S. shareholders with respect to such gain, or (2) the non-U.S. shareholder is a nonresident alien individual who was present in the U.S. for 183 days or more during the taxable year, in which case the non-U.S. shareholder will incur a 30% tax on his capital gains. Capital gains dividends not subject to FIRPTA will be subject to similar rules.

*Back-up Withholding.* Back-up withholding tax (which generally is withholding at the rate of 28% through December 31, 2010 and thereafter at a rate of 31%), on certain payments to persons that fail to furnish certain information under the United States information reporting requirements) and information reporting will generally not apply to distributions to a non-U.S. shareholder provided that the non-U.S. shareholder certifies under penalty of perjury that the shareholder is a non-U.S. shareholder, or otherwise establishes an exemption. As a general matter, back-up withholding and information reporting will not apply to a payment of the proceeds of a sale of common shares effected at a foreign office of a foreign broker. Information reporting (but not back-up withholding) will apply, however, to a payment of the proceeds of a sale of common shares by a foreign office of a broker that:

- is a U.S. person;
- derives 50% or more of its gross income for a specified three-year period from the conduct of a trade or business in the U.S.;
- is a “controlled foreign corporation” (generally, a foreign corporation controlled by U.S. shareholders) for U.S. tax purposes; or
- that is a foreign partnership, if at any time during its tax year 50% or more of its income or capital interest are held by U.S. persons or if it is engaged in the conduct of a trade or business in the U.S.,

unless the broker has documentary evidence in its records that the holder or beneficial owner is a non-U.S. shareholder and certain other conditions are met, or the shareholder otherwise

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establishes an exemption. Payment of the proceeds of a sale of common shares effected at a U.S. office of a broker is subject to both back-up withholding and information reporting unless the shareholder certifies under penalty of perjury that the shareholder is a non-U.S. shareholder, or otherwise establishes an exemption. Back-up withholding is not an additional tax. A non-U.S. shareholder may obtain a refund of excess amounts withheld under the back-up withholding rules by filing the appropriate claim for refund with the IRS.

### **Other Tax Consequences**

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

### **PLAN OF DISTRIBUTION**

We will not receive any of the proceeds from the sale of the common shares covered by this prospectus.

The sale or distribution of all or any portion of the common shares covered by this prospectus may be effected from time to time by the selling shareholder, or any of its pledgees, donees, transferees or other successors in interest to the selling shareholder. The sales may be made directly, indirectly through brokers or dealers or in a distribution by one or more underwriters on a firm commitment or best efforts basis, in the over-the-counter market, on any national securities exchange or automated quotation system on which the common shares covered by this prospectus may be listed or traded, in privately negotiated transactions, to or through a market maker, or through any other legally available means. In addition, the sales will be made at market prices prevailing at the time of sale, at prices related to such prevailing market prices or at negotiated prices.

The methods by which the common shares covered by this prospectus may be sold or distributed include:

- a block trade (which may involve crosses) in which the broker or dealer so engaged will attempt to sell the common shares covered by this prospectus as agent but may position and resell a portion of the block as principal to facilitate the transaction;
- purchases by a broker or dealer as principal and resale by such broker or dealer for its account pursuant to this prospectus;
- ordinary brokerage transactions and transactions in which the broker solicits purchasers;
- pro rata distributions as part of the liquidation and winding up of the affairs of the selling shareholder or successor in interest that is an entity;

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- pledges to a lender as collateral to secure loans, credit or other financing arrangements and any subsequent foreclosure, if any, thereunder; or
- any other legally available means.

In effecting sales, brokers or dealers engaged by the selling shareholder may arrange for other brokers or dealers to participate. Any public offering price and any discount, concession or commission allowed or reallocated or paid to dealers may be changed from time to time and, as to any particular underwriter, broker, dealer or agent, may be in excess of those customary in the types of transactions involved.

The selling shareholder may from time to time sell all or a portion of the common shares covered by this prospectus short and deliver those securities to cover the short sale or sales, or may deliver the common shares covered by this prospectus upon the exercise, settlement or closing of a call equivalent position or a put equivalent position. The selling shareholder also may enter into hedging transactions with brokers, dealers or other financial institutions, which may in turn engage in short sales of the common shares covered by this prospectus in the course of hedging the positions they assume.

The selling shareholder and the brokers or dealers participating in the distribution of the common shares covered by this prospectus may be deemed “underwriters” within the meaning of the Securities Act. Any profit on the sale of the common shares covered by this prospectus by the selling shareholder and any discounts, concessions or commissions received by any such brokers or dealers may be regarded as underwriting commissions under the Securities Act.

In connection with the sale or distribution of the common shares covered by this prospectus, the rules of the Commission permit any underwriter to engage in certain transactions that stabilize the price of the common shares covered by this prospectus. These transactions may consist of bids or purchases for the purpose of pegging, fixing or maintaining the price of the common shares covered by this prospectus.

Underwriters, brokers, dealers or agents may be entitled, under agreements with us, to indemnification against the contribution toward certain civil liabilities, including liabilities under the Securities Act.

We will pay all expenses in connection with the registration of the common shares covered by this prospectus. The selling shareholder will pay for any brokerage or underwriting commissions and taxes of any kind (including, without limitation, transfer taxes) with respect to any disposition, sale or transfer of the common shares covered by this prospectus.

The common shares covered by this prospectus not sold pursuant to the registration statement on Form S-3 of which this prospectus is a part may be subject to certain restrictions under the Securities Act and could be sold, if at all, only pursuant to Rule 144 or another exemption from the registration requirements of the Securities Act. In general, under Rule 144, a



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person (or persons whose offered shares are aggregated) who has satisfied a one-year holding period may, under certain circumstances, sell within any three-month period a number of the common shares covered by this prospectus which does not exceed the greater of one percent of the our outstanding common shares or the average weekly reported trading volume of the common shares covered by this prospectus during the four calendar weeks prior to such sale. Rule 144 also permits, under certain circumstances, the sale of the common shares covered by this prospectus by a person who is not an affiliate of ours and who has satisfied a two-year holding period without any volume limitation. Therefore, both during and after the effectiveness of the registration statement, the selling shareholder may sell the common shares covered by this prospectus pursuant to Rule 144.

### **EXPERTS**

The consolidated balance sheets as of December 31, 2003 and December 31, 2002, and the consolidated statements of operations, common shareholders' equity and cash flows for the years ended December 31, 2003 and December 31, 2002 appearing in our Annual Report on Form 10-K, as amended, for the fiscal years ended December 31, 2003, and incorporated by reference into this prospectus, have been audited by Grant Thornton LLP, independent registered public accounting firm, as indicated in their report with respect thereto, and have been incorporated by reference herein in reliance upon the authority of said firm as experts in giving said report.

The consolidated balance sheet as of December 31, 2001 and the consolidated statements of operations, common shareholders' equity and cash flows for the year ended December 31, 2001 appearing in our Annual Report on Form 10-K for the year ended December 31, 2001 and incorporated by reference into this prospectus and elsewhere in the registration statement, have been audited by Arthur Andersen LLP.

### **NOTICE REGARDING ARTHUR ANDERSEN LLP**

On June 4, 2002, we announced that we had appointed Grant Thornton LLP as our independent auditor for fiscal year 2002, replacing Arthur Andersen LLP.

Section 11(a) of the Securities Act provides that if any part of a registration statement at the time it becomes effective contains an untrue statement of a material fact or an omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, any person acquiring a security pursuant to the registration statement (unless it is provided that at the time of the acquisition the person knew of the untruth or omission) may sue, among others, every accountant who has consented to be named as having prepared or certified any part of the registration statement or as having prepared or certified any report or valuation which is used in connection with the registration statement with respect to the statement in the registration statement, report or valuation which purports to have been prepared or certified by the accountant.

Prior to the date of this prospectus, the Arthur Andersen partners who reviewed our audited financial statements, as of December 31, 2001, resigned from Arthur Andersen. As a

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result, after reasonable efforts, we have been unable to obtain Arthur Andersen's written consent to the incorporation by reference into this registration statement of its audit reports with respect to those financial statements.

Under these circumstances, Rule 437a under the Securities Act permits us to file this registration statement without a written consent from Arthur Andersen. Accordingly, Arthur Andersen will not be liable to you under Section 11(a) of the Securities Act because it has not consented to being named as an expert in the registration statement.

### **LEGAL MATTERS**

The validity of the offered shares and the accuracy of the discussion under "Federal Income Tax Considerations" will be passed upon for us by Shaw Pittman LLP, Washington, D.C. If any portion of the offered shares is distributed in an underwritten offering or through agents, certain legal matters may be passed upon for any agents or underwriters by counsel for such agents or underwriters identified in the applicable prospectus supplement.

### **WHERE YOU CAN FIND MORE INFORMATION**

We file annual, quarterly and special reports, proxy statements and other information with the Commission. Our Commission filings are available to the public over the Commission's website at <http://www.sec.gov>. You may also read and copy any document we file at the Commission's Public Reference Room at:

Public Reference Section  
Securities and Exchange Commission  
Room 1200  
450 Fifth Street, N.W.  
Washington, D.C. 20549

Please call the Commission at (800) SEC-0330 for further information on the operating rules and procedures for the public reference room.

The Commission allows us to "incorporate by reference" the information we file with them, which means we can disclose important information to you by referring you to those documents. The information we incorporate by reference is an important part of our prospectus, and all information that we will later file with the Commission will automatically update and supersede this information. We incorporate by reference the documents listed below as well as any future filings made with the Commission under Sections 13(a), 13(c), 14, or 15(d) of the Securities Exchange Act from the date of the initial registration statement and prior to the effectiveness of this registration statement, and any filings made from the date of this prospectus until we sell all of the securities under this prospectus as supplemented.

- Our Annual Report on Form 10-K for the fiscal year ended December 31, 2003 filed March 15, 2004, as amended by the Form 10-K/A filed March 26, 2004 and the Form 10-K/A filed March 31, 2004.
- Our Quarterly Report on Form 10-Q for the fiscal quarter ended March 31, 2004.

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- Our Quarterly Report on Form 10-Q for the fiscal quarter ended June 30, 2004.
- Our Quarterly Report on Form 10-Q for the fiscal quarter ended September 30, 2004.
- Our Current Report on Form 8-K, filed January 26, 2004.
- Our Current Report on Form 8-K, filed March 11, 2004.
- Our Current Report on Form 8-K, filed April 5, 2004.
- Our Current Report on Form 8-K, filed July 13, 2004.
- Description of our common shares contained in the Registration Statement on Form 8-A/A, filed June 6, 2002.
- Description of our Common Share Purchase Rights included in the Registration Statement on Form 8-A/A, filed March 11, 1999 and in the First Amendment to Amended and Restated Rights Agreement, dated as of November 2003, between us and American Stock Transfer & Trust Company.

In addition, you may request a copy of these filings and any amendments thereto, at no cost, by writing or telephoning us. Those copies will not include exhibits to those documents unless the exhibits are specifically incorporated by reference in the documents or unless you specifically request them. You may also request copies of any exhibits to the registration statement. Please direct your request to:

Dawn M. Becker  
Senior Vice President, General Counsel and Secretary  
Federal Realty Investment Trust  
1626 East Jefferson Street  
Rockville, Maryland 20852  
(301) 998-8100

Our prospectus does not contain all of the information included in the registration statement. We have omitted certain parts of the registration statement in accordance with the rules and regulations of the Commission. For further information, we refer you to the registration statement, including its exhibits and schedules. Statements contained in our prospectus and any accompanying prospectus supplement about the provisions or contents of any contract, agreement or any other document referred to are not necessarily complete. Please refer to the actual exhibit for a more complete description of the matters involved. You may get copies of the exhibits by contacting the person named above.

You should rely only on the information in our prospectus, any prospectus supplement and the documents that are incorporated by reference. We have not authorized anyone else to provide you with different information. We are not offering these securities in any state where the offer is prohibited by law. You should not assume that the information in this prospectus, any prospectus supplement or any incorporated document is accurate as of any date other than the date of the document.

**PART II****INFORMATION NOT REQUIRED IN PROSPECTUS**

## Item 14. Other Expenses of Issuance and Distribution

The following table sets forth the estimated fees and expenses, other than underwriting discounts and commissions, payable by us in connection with the issuance and distribution of the securities being registered:

Registration Fee	\$ 490.00
Printing and Duplicating Expenses	3,000.00*
Legal Fees and Expenses	15,000.00*
Accounting Fees and Expenses	5,000.00*
Miscellaneous	1,000.00*
	<hr/>
Total	\$24,490.00*

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\* Estimated

## Item 15. Indemnification of Trustees and Officers

The Registrant's Declaration of Trust authorizes the Registrant, to the maximum extent permitted by Maryland law, to obligate itself to indemnify and to pay or reimburse reasonable expenses in advance of final disposition of a proceeding to (i) any individual who is a present or former shareholder, Trustee or officer of the Registrant or (ii) any individual who, while a Trustee of the Registrant and at the request of the Registrant, serves or has served as a director, officer, partner, trustee, employee or agent of another corporation, real estate investment trust, partnership, joint venture, trust, employee benefit plan or any other enterprise from and against any claim or liability to which such person may become subject or which such person may incur by reason of his or her status. The Registrant's Declaration of Trust also permits the Registrant to indemnify and advance expenses to any person who served a predecessor of the Registrant in any of the capacities described above and to any employee or agent of the Registrant or a predecessor of the Registrant.

The Registrant's Bylaws obligate it, to the maximum extent permitted by Maryland law, to indemnify (a) any Trustee, officer or shareholder or any former Trustee, officer or shareholder, including any individual who, while a Trustee, officer or shareholder and at the express request of the Registrant, serves or has served another real estate investment trust, corporation, partnership, joint venture, trust, employee benefit plan or any other enterprise as a director, officer, shareholder, partner or trustee of such real estate investment trust, corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, who has been successful, on the merits or otherwise, in the defense of a proceeding to which he was made a party by reason of service in such capacity, against reasonable expenses incurred by him in connection with the proceeding, (b) any Trustee or officer or any former Trustee or officer against any claim or liability to which he may become subject by reason of such status unless it

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is established that (i) his act or omission was material to the matter giving rise to the proceeding and was committed in bad faith or was the result of active and deliberate dishonesty, (ii) he actually received an improper personal benefit in money, property or services or (iii) in the case of a criminal proceeding, he had reasonable cause to believe that his act or omission was unlawful and (c) each shareholder or former shareholder against any claim or liability to which he may become subject by reason of such status. In addition, the Registrant will, without requiring a preliminary determination of the ultimate entitlement to indemnification, pay or reimburse, in advance of final disposition of a proceeding, reasonable expenses incurred by a Trustee, officer or shareholder or former Trustee, officer or shareholder made a party to a proceeding by reason of such status, provided that, in the case of a Trustee or officer, the Registrant must have received (i) a written affirmation by the Trustee or officer of his good faith belief that he has met the applicable standard of conduct necessary for indemnification by the Registrant and (ii) a written undertaking by or on his behalf to repay the amount paid or reimbursed by the Registrant if it shall ultimately be determined that the applicable standard of conduct was not met. The Registrant may, with the approval of its Trustees, provide such indemnification or payment or reimbursement of expenses to any Trustee, officer or shareholder or any former Trustee, officer or shareholder who served a predecessor of the Trust and to any employee or agent of the Registrant or a predecessor of the Registrant. Any indemnification or payment or reimbursement of the expenses permitted by the Registrant's Bylaws will be furnished in accordance with the procedures provided for indemnification or payment or reimbursement of expenses, as the case may be, under Section 2-418 of the MGCL for directors of Maryland corporations. The Registrant may provide to Trustees, officers and shareholders such other and further indemnification or payment or reimbursement of expenses, as the case may be, to the fullest extent permitted by the MGCL, as in effect from time to time, for directors of Maryland corporations.

Title 8 of the Corporations and Associations Code of the State of Maryland, as amended, a shareholder or Trustee of a Maryland real estate investment trust is not personally liable for the obligations of the real estate investment trust, except in any case in which a Trustee otherwise would be liable and such liability to the real estate investment trust or its shareholders constitutes bad faith, willful misfeasance, gross negligence or reckless disregard of the Trustee's duties. Title 1 of the Corporations and Associations Code of the State of Maryland, as amended, permits a corporation to indemnify its present and former Trustees and officers, among others, against judgments, penalties, fines, settlements and reasonable expenses actually incurred by them in connection with any proceeding to which they may be made a party by reason of their service in those or other capacities unless it is established that (a) the act or omission of the Trustee or officer was material to the matter giving rise to the proceeding and (i) was committed in bad faith or (ii) was the result of active and deliberate dishonesty, (b) the Trustee or officer actually received an improper personal benefit in money, property or services or (c) in the case of any criminal proceeding, the Trustee or officer had reasonable cause to believe that the act or omission was unlawful. However, a Maryland corporation may not indemnify a Trustee or officer in a suit by or in the right of the trust if such Trustee or officer has been adjudged to be liable to the corporation.

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to Trustees, officers or persons controlling the registrant pursuant to the foregoing

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provisions, the registrant has been informed that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

### Item 16. Exhibits

<u>Number</u>	<u>Description</u>
4.1	Specimen Common Share certificate (filed as Exhibit 4(i) to the Trust's Annual Report on Form 10-K for the year ended December 31, 1999, and incorporated herein by reference)
4.2	Amended and Restated Rights Agreement, dated March 11, 1999, between the Trust and American Stock Transfer & Trust Company (filed as Exhibit 1 to the Trust's Registration Statement No. 1-07533 on Form 8-A/A filed on March 11, 1999, and incorporated herein by reference)
4.3	First Amendment to Amended and Restated Rights Agreement, dated as of November 2003, between the Trust and American Stock Transfer & Trust Company (filed as Exhibit 4.5 to the Trust's Annual Report on Form 10-K for the year ended December 31, 2003 filed on March 15, 2004, and incorporated herein by reference)
5.1	Opinion of Shaw Pittman LLP regarding the validity of the shares (filed herewith)
8.1	Opinion of Shaw Pittman LLP regarding certain tax matters (filed herewith)
23.1	Consent of Grant Thornton LLP, independent registered public accounting firm (filed herewith)
23.2	Consent of Shaw Pittman LLP (included in Exhibit 5.1)
23.3	Consent of Shaw Pittman LLP (included in Exhibit 8.1)
24.1	Power of Attorney (included on signature page)

### Item 17. Undertakings

(a) The undersigned Registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in this registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume

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and price represent no more than a 20 percent change in the maximum aggregate offering price set forth in the “Calculation of Registration Fee” table in the effective registration statement;

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in this registration statement;

provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in the periodic reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in this registration statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered herein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The undersigned registrant hereby undertakes that, for the purposes of determining any liability under the Securities Act of 1933, each filing of the registrant’s annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 that is incorporated by reference in this registration statement shall be deemed to be a new registration statement relating to the securities offered herein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to Trustees, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act of 1933 and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a Trustee, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such Trustee, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act of 1933 and will be governed by the final adjudication of such issue.

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in Rockville, Maryland, on this 10<sup>th</sup> day of November, 2004.

**FEDERAL REALTY INVESTMENT TRUST**

By:     /s/ Donald C. Wood    

Name: Donald C. Wood

Title: President, Chief Executive Officer and Trustee  
(Principal Executive Officer)

**POWER OF ATTORNEY**

We, the undersigned trustees and officers of Federal Realty Investment Trust, a Maryland real estate investment trust, do hereby constitute and appoint Dawn M. Becker and Larry E. Finger, and each and either of them, our true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, to do any and all acts and things in our names and on our behalf in our capacities as trustees and officers and to execute any and all instruments for us and in our name in the capacities indicated below, which said attorneys and agents may deem necessary or advisable to enable said trust to comply with the Securities Act of 1933 and any rules, regulations and requirements of the Securities and Exchange Commission, in connection with this registration statement, or any registration statement for this offering that is to be effective upon filing pursuant to Rule 462(b) under the Securities Act of 1933, including specifically, but without limitation, any and all amendments (including post-effective amendments) hereto; and we hereby ratify and confirm all that said attorneys and agents, or either of them, shall do or cause to be done by virtue thereof.

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

<u>SIGNATURE</u>	<u>TITLE</u>	<u>DATE</u>
<u>/s/ Donald C. Wood</u> Donald C. Wood	President, Chief Executive Officer and Trustee (principal executive officer)	November 10, 2004
<u>/s/ Larry E. Finger</u> Larry E. Finger	Senior Vice President and Chief Financial Officer and Treasurer (principal accounting officer)	November 10, 2004
<u>/s/ David W. Faeder</u> David W. Faeder	Trustee	November 10, 2004
<u>/s/ Kristin Gamble</u> Kristin Gamble	Trustee	November 10, 2004
<u>/s/ Joseph S. Vassalluzzo</u> Joseph S. Vassalluzzo	Trustee	November 10, 2004
<u>/s/ Mark S. Ordan</u> Mark S. Ordan	Trustee	November 10, 2004
<u>/s/ Amy B. Lane</u> Amy B. Lane	Trustee	November 10, 2004
<u>/s/ Walter F. Loeb</u> Walter F. Loeb	Trustee	November 10, 2004



**INDEX TO EXHIBITS**

<u>Number</u>	<u>Description</u>
4.1	Specimen Common Share certificate (filed as Exhibit 4(i) to the Trust's Annual Report on Form 10-K for the year ended December 31, 1999 and incorporated herein by reference)
4.2	Amended and Restated Rights Agreement, dated March 11, 1999, between the Trust and American Stock Transfer & Trust Company (filed as Exhibit 1 to the Trust's Registration Statement No. 1-07533 on Form 8-A/A filed on March 11, 1999 and incorporated herein by reference)
4.3	First Amendment to Amended and Restated Rights Agreement, dated as of November 2, 2003, between the Trust and American Stock Transfer & Trust Company (filed as Exhibit 4.5 to the Trust's Annual Report on Form 10-K for the year ended December 31, 2003 filed on March 15, 2004 and incorporated herein by reference)
5.1	Opinion of Shaw Pittman LLP regarding the validity of the shares (filed herewith)
8.1	Opinion of Shaw Pittman LLP regarding certain tax matters (filed herewith)
23.1	Consent of Grant Thornton LLP, independent registered public accounting firm (filed herewith)
23.2	Consent of Shaw Pittman LLP (included in Exhibit 5.1)
23.3	Consent of Shaw Pittman LLP (included in Exhibit 8.1)
24.1	Power of Attorney (included on signature page)

SHAW PITTMAN LLP  
2300 N STREET, NW  
WASHINGTON, DC 20037

November 15, 2004

Federal Realty Investment Trust  
1626 East Jefferson Street  
Rockville, Maryland 20852

Re: **Registration Statement on Form S-3**

Ladies and Gentlemen:

We have acted as counsel to Federal Realty Investment Trust, a Maryland real estate investment trust (the "Company"), in connection with the Company's filing with the Securities and Exchange Commission under the Securities Act of 1933, as amended (the "Act"), of a registration statement on Form S-3 (the "Registration Statement") and the prospectus included therein (the "Prospectus") relating to the resale of 80,000 of the Company's common shares of beneficial interest, par value \$.01 per share (the "Shares"), as provided in the Registration Statement, by the selling shareholders identified in the Registration Statement.

For the purposes of this opinion, we have examined copies of the following documents:

1. the Prospectus;
2. the Registration Statement;
3. a copy of the Declaration of Trust of the Company (the "Articles"), as amended, restated or supplemented, if applicable, as certified by the Maryland State Department of Assessments and Taxation on November 9, 2004, and certified to us by the Senior Vice President, General Counsel and Secretary of the Company as being complete, accurate and in effect as of the date hereof;

4. the Amended and Restated Bylaws of the Company, as amended, restated or supplemented, if applicable (the "Bylaws"), in the form certified to us by the Senior Vice President, General Counsel and Secretary of the Company as being complete, accurate and in effect as of the date hereof;
5. the Agreement of Limited Partnership of FR Leesburg Plaza, LP, a Delaware limited partnership, dated as of September 15, 1998, entered into by FR Leesburg Plaza, LLC, a Delaware limited liability company and wholly owned subsidiary of the Company, and the persons set forth on Exhibit A thereto;
6. the Registration Rights Agreement, dated as of September 15, 1998, by the Company and The Wallace Family L.P.;
7. resolutions of the Board of Trustees of the Company (the "Resolutions");
8. a certificate of the Secretary of the Company dated as of the date hereof; and
9. such other documents, corporate records, certificates of public officials and other instruments as we have deemed necessary for the purposes of rendering this opinion.

In our examination of the aforesaid documents, we have assumed the legal capacity of all natural persons, the authority of all entities other than the Company, the genuineness of all signatures, the completeness and authenticity of all documents submitted to us as originals, and the conformity to original documents of all documents submitted to us as certified, telecopied, photostatic or reproduced copies.

In connection with the opinion expressed below, we have assumed that, at and prior to the time of the issuance and delivery of the Shares, (i) the Resolutions shall not have been amended, modified or rescinded and (ii) no change in law materially adversely affecting the power of the Company to issue and deliver the Shares or the validity of the Shares shall have occurred. We also have assumed that the sale, issuance and delivery of the Shares will not at the time of such sale, issuance and delivery violate or conflict with (1) the Articles, as then amended, restated and supplemented, and the Bylaws, as then amended, restated and supplemented, (2) any provision of any license, indenture, instrument, mortgage, contract, document or agreement to which the Company is then a party or by which the Company is then bound, or (3) any law or regulation or any decree, judgment or order then applicable to the Company. We further have assumed that the number of Shares to be issued and delivered will not at the time of such issuance and delivery exceed the amount of such class of capital stock authorized in the Articles, as then amended, restated or supplemented, and

remaining unissued (and not otherwise reserved for issuance) at such time, and that prior to the time of the issuance and delivery of the Shares the Registration Statement shall have been declared effective and no stop order suspending the effectiveness of the Registration Statement shall have been issued, nor any proceedings with respect thereto commenced or threatened.

Based upon, subject to and limited by the foregoing, we are of the opinion that, when issued and delivered in the manner contemplated by, and in accordance with, the Resolutions, the Shares will be validly issued by the Company, fully paid and nonassessable.

This opinion is limited to the laws of the United States and, except as provided below, the laws of the State of Maryland. Our opinion is rendered only with respect to the laws and the rules, regulations and orders thereunder that are currently in effect. We assume no obligation to advise you of any changes in the foregoing subsequent to the delivery of this opinion. We express no opinion as to compliance with any state securities laws, including the securities laws of the State of Maryland. This opinion has been prepared for your use in connection with the filing of the Registration Statement.

We hereby consent to the filing of this opinion as an exhibit to the Registration Statement and to the use of our name in the Prospectus under the caption "Legal Matters." The giving of this consent, however, does not constitute an admission that we are "experts" within the meaning of Section 11 of the Act or within the category of persons whose consent is required by Section 7 of the Act.

Very truly yours,

/s/ Shaw Pittman LLP

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SHAW PITTMAN LLP

SHAW PITTMAN LLP  
2300 N STREET, NW  
WASHINGTON, DC 20037

November 15, 2004

Federal Realty Investment Trust  
1626 East Jefferson Street  
Rockville, Maryland 20852

Ladies and Gentlemen:

You have requested certain opinions regarding the application of U.S. federal income tax laws to Federal Realty Investment Trust, a Maryland real estate investment trust (the "Company"), in connection with the filing of a registration statement on Form S-3 (the "Registration Statement," which term includes the prospectus and all documents incorporated and deemed to be incorporated by reference therein) with the Securities and Exchange Commission (the "Commission").

In rendering the following opinions, we have examined such statutes, regulations, records, certificates and other documents as we have considered necessary or appropriate as a basis for such opinions, including the following: (1) the Registration Statement, (2) the Declaration of Trust of the Company, as amended, restated or supplemented, if applicable (the "Declaration of Trust") and the Amended and Restated Bylaws of the Company, (3) certain written representations of the Company contained in a letter to us dated as of the date hereof, a copy of which is attached as Schedule 1 hereto, (4) copies of the representative leases entered into by the Company as of the date hereof, and (5) such other documents or information as we have deemed necessary to render the opinions set forth in this letter. In our review, we have assumed, with your consent, that all of the representations and statements set forth in such documents as to factual matters (but not legal conclusions) are true and correct, and all of the obligations imposed by any such documents on the parties thereto, including obligations imposed under the Declaration of Trust, have been or will be performed or satisfied in accordance with their terms. We also have assumed the genuineness of all signatures, the proper execution of all documents, the authenticity of all documents submitted to us as originals, the conformity to originals of documents submitted to us as copies, and the authenticity of the originals from which any copies were made.

Unless facts material to the opinions expressed herein are specifically stated to have been independently established or verified by us, we have relied as to such facts solely upon the representations made by the Company. To the extent that the representations of the Company are with respect to matters set forth in the Internal Revenue Code of 1986, as amended (the "Code") or the regulations promulgated thereunder (the "Treasury Regulations"), we have reviewed with the individuals making such representations the relevant provisions of the Code, the applicable Treasury Regulations and published administrative interpretations thereof. We assume that each representation made by the Company is and will be true, correct and complete, and that all representations that speak in the future, or to the intention, or to the best of belief and knowledge of any person(s) or party(ies) are and will be true, correct and complete as if made without such qualification. Nothing has come to our attention which would cause us to believe that any of such representations are untrue, incorrect or incomplete.

Based upon and subject to the foregoing and to the qualifications below, we are of the opinion that (i) the Company qualified as a real estate investment trust, or REIT, under the Code for each of its taxable years ending after December 31, 1986 and before January 1, 2004; and the Company qualified as a REIT under the Internal Revenue Code of 1954 for each of its taxable years ending before January 1, 1987, (ii) the Company is organized in conformity with the requirements for qualification as a REIT under the Code, and its current method of operation and ownership will enable it to meet the requirements for qualification as a REIT for the current (2004) taxable year and for future taxable years, and (iii) the discussions in (y) the Registration Statement under the caption "Risk Factors," specifically the discussion of the Company's status as a REIT, and (z) the Registration Statement under the caption "Federal Income Tax Considerations," which discussions are part of, or incorporated by reference into, the Registration Statement, to the extent that they discuss matters of law or legal conclusions or purport to describe certain provisions of the federal tax laws, are correct summaries of the matters discussed therein, and the opinions of such counsel appearing in the Registration Statement under the caption "Federal Income Tax Considerations" are hereby confirmed.

The opinions set forth in this letter are based on existing law as contained in the Code, Treasury Regulations (including any Temporary and Proposed Regulations), and interpretations of the foregoing by the Internal Revenue Service ("IRS") and by the courts in effect (or, in case of certain Proposed Regulations, proposed) as of the date hereof, all of which are subject to change, both retroactively or prospectively, and to possibly different interpretations. Moreover, the Company's ability to achieve and maintain qualification as a REIT depends upon its ability to achieve and maintain certain diversity of stock ownership requirements and, through actual annual operating results, certain requirements under the Code regarding its income, assets and distribution levels.

No assurance can be given as to whether, for any given taxable year, the actual ownership of the Company's stock and its actual operating results and distributions satisfy the tests necessary to achieve and maintain its status as a REIT.

The foregoing opinions are limited to the specific matters covered thereby and should not be interpreted to imply the undersigned has offered its opinion on any other matter. We assume no obligation to update the opinions set forth in this letter after the date hereof.

We hereby consent to the filing of this opinion as an exhibit to the Registration Statement. The giving of this consent, however, does not constitute an admission that we are "experts" within the meaning of Section 11 of the Securities Act of 1933, as amended (the "Act"), or within the category of persons whose consent is required by Section 7 of the Act.

Very truly yours,

SHAW PITTMAN LLP

By: /s/ Charles B. Temkin, P.C

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Charles B. Temkin, P.C.

**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We have issued our report dated February 5, 2004 accompanying the consolidated financial statements and schedules included in the Annual Report of Federal Realty Investment Trust on Form 10-K, as amended, for the year ended December 31, 2003. We hereby consent to the incorporation by reference of said report in the Registration Statement of Federal Realty Investment Trust on Form S-3.

/s/ Grant Thornton LLP

Vienna, Virginia  
November 15, 2004