

MID AMERICA APARTMENT COMMUNITIES INC  
 Form 424B5  
 May 29, 2009  
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Filed Pursuant to Rule 424(b)(5)  
 Registration No. 333-159595

**CALCULATION OF REGISTRATION FEE**

<b>Title of Each Class of Securities Registered</b>	<b>Amount to be Registered</b>	<b>Proposed Maximum Offering Price per Share</b>	<b>Proposed Maximum Aggregate Offering Price</b>	<b>Amount of Registration Fee</b>
Common Stock, \$.01 par value per share	877,000(1)	\$ 35.03(1)	\$ 30,721,310.00(1)	\$ 1,714.25(1)

(1) In accordance with Rules 456(b) and 457(r), the Registrant initially deferred payment of the registration fee for Registration Statement No. 333-159595 filed by the Registrant on May 29, 2009. Previously, Registrant had paid a registration fee of \$10,748.12 with respect to up to \$213,251,881 of securities of the Registrant pursuant to Registration Statement No. 333-112469, which was initially filed by the Registrant with the Securities and Exchange Commission on February 4, 2004 (the Prior Registration Statement), and were not sold thereunder. An additional \$267.50 also remains unused from the Prospectus Supplement which was initially filed by the Registrant with the Securities and Exchange Commission on May 5, 2006 (the Prior Prospectus). In accordance with Rule 457(p) under the Securities Act of 1933, \$1,714.25 of the \$11,015.62 unused amount of the registration fee paid with respect to Prior Registration Statement and the Prior Prospectus is applied to pay the registration fee payable under this preliminary prospectus supplement, calculated in accordance with Rule 457(r).

**PROSPECTUS SUPPLEMENT**

(To prospectus dated May 29, 2009)

**Up to 877,000 Shares of Common Stock**

We have entered into a sales agreement with Cantor Fitzgerald & Co. relating to shares of common stock offered by this prospectus supplement and the accompanying prospectus. In accordance with the terms of the sales agreement, we may offer and sell up to 877,000 shares of our common stock from time to time through Cantor Fitzgerald & Co., as our agent for the offer and sale of the shares of common stock.

Our common stock is listed on the New York Stock Exchange under the symbol MAA. The last reported sale price of our common stock on the New York Stock Exchange on May 28, 2009 was \$35.03 per share.

Sales of shares of common stock, if any, under this prospectus supplement and the accompanying prospectus may be made in negotiated transactions or transactions that are deemed to be at the market offerings as defined in Rule 415 under the Securities Act of 1933, including sales made directly on the New York Stock Exchange or sales made to or through a market maker other than on an exchange.

Cantor Fitzgerald & Co. will be entitled to compensation up to 2% of the gross sales price per share for the shares of common stock sold under the sales agreement. In connection with the sale of the shares of common stock on our behalf, Cantor Fitzgerald & Co. may be deemed to be an underwriter within the meaning of the Securities Act of 1933, and the compensation of Cantor Fitzgerald & Co. may be deemed to be underwriting commissions or discounts.

Investing in our common stock involves risks. Before investing in our common stock, you should carefully read the discussion of material risks of investing in our shares under the heading **Risk Factors** beginning on page 1 of the accompanying prospectus, on page 11 of our Annual Report on Form 10-K for the year ended December 31, 2008 and page 25 of our Quarterly Report on Form 10-Q for the quarter ended March 31, 2009, which are both incorporated herein by reference, and in our periodic reports and other information that we file from time to time with the Securities and Exchange Commission.

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

**Cantor Fitzgerald & Co.**

**The date of this prospectus supplement is May 29, 2009.**

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**Prospectus**

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**ABOUT THIS PROSPECTUS SUPPLEMENT**

This prospectus supplement is part of a registration statement that Mid-America Apartment Communities, Inc., (referred to as Mid-America, we, us, our, or the Company ) has filed with the Securities and Exchange Commission, or SEC, utilizing a shelf registration process. This document consists of two parts. The first part is this prospectus supplement, which adds or updates information contained in the accompanying prospectus and the documents incorporated by reference into the accompanying prospectus. The second part is the accompanying prospectus, which gives more general information about us and the common stock offered hereby. To the extent the information contained in this prospectus supplement differs or varies from the information contained in the accompanying prospectus or documents incorporated by reference, the information in this prospectus supplement shall control. You should read both this prospectus supplement and the accompanying prospectus together with additional information described under the heading **Where You Can Find More Information** and incorporated by reference in this prospectus supplement and the accompanying prospectus.

You should rely only on the information contained in or incorporated by reference into this prospectus supplement and the accompanying prospectus. We have not authorized anyone to provide you with different or additional information. We are not making an offer to sell these securities in any jurisdiction where the offer or sale is not permitted. You should not assume that the information appearing in this prospectus supplement, the accompanying prospectus or the documents incorporated by reference into this prospectus supplement and the accompanying prospectus are accurate as of any date other than their respective dates. Our business, financial condition, results of operations and prospects may have changed since those dates.

**FORWARD-LOOKING STATEMENTS**

We consider portions of this prospectus supplement to be forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934, with respect to our expectations for future periods. Forward looking statements do not discuss historical fact, but instead include statements related to expectations, projections, intentions or other items related to the future. Such forward-looking statements include, without limitation, statements concerning property acquisitions and dispositions, development activity and capital expenditures, capital raising activities, rent growth, occupancy, and rental expense growth. Words such as *expects*, *anticipates*, *intends*, *plans*, *believes*, *seeks*, *estimates*, and variations of such words and similar expressions are intended to identify such forward-looking statements. Such statements involve known and unknown risks, uncertainties and other factors which may cause the actual results, performance or achievements to be materially different from the results of operations or plans expressed or implied by such forward-looking statements. Such factors include, among other things, unanticipated adverse business developments affecting us, or our properties, adverse changes in the real estate markets and general and local economies and business conditions. Although we believe that the assumptions underlying the forward-looking statements are reasonable, any of the assumptions could be inaccurate, and therefore such forward-looking statements included in this prospectus supplement may not prove to be accurate. In light of the significant uncertainties inherent in the forward-looking statements included herein, the inclusion of such information should not be regarded as a representation by us or any other person that the results or conditions described in such statements or our objectives and plans will be achieved.

The following factors, among others, could cause our future results to differ materially from those expressed in the forward-looking statements:

- unfavorable changes in apartment market and economic conditions that could adversely affect occupancy levels and rental rates,
- the failure of acquisitions to achieve anticipated results,
- possible difficulty in selling apartment communities,
- the timing and closing of planned acquisitions or dispositions,
- competitive factors that may limit our ability to lease apartment homes or increase or maintain rents,
- insufficient cash flow that could affect our debt financing and create refinancing risk,
- failure to generate sufficient revenue, which could impair our debt service payments and distributions to stockholders,
- development and construction risks that may impact our profitability,
- potential damage from natural disasters, including hurricanes and other weather-related events, which could result in substantial costs to us,

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risks from extraordinary losses for which we may not have insurance or adequate reserves, uninsured losses due to insurance deductibles, self-insurance retention, uninsured claims or casualties, or losses in excess of applicable coverage, delays in completing developments and lease-ups on schedule, investments through joint ventures involve risks not present in investments in which we are the sole investor, our failure to succeed in new markets, changing interest rates, which could increase interest costs and affect the market price of our securities, potential liability for environmental contamination, which could result in substantial costs to us, the imposition of federal taxes if we fail to qualify as a REIT under the Internal Revenue Code in any taxable year, our internal control over financial reporting may not be considered effective which could result in a loss of investor confidence in our financial reports, and in turn have an adverse effect on our stock price, and changes in real estate tax laws, tax laws and other laws affecting our business.

You are advised to carefully read the section of the accompanying prospectus entitled "Risk Factors" and the information under the captions "Item 1A. Risk Factors" and "Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations" (or similar captions) in our most recent annual report filed on Form 10-K and under the captions "Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations" and in Part II under "Item 1A. Risk Factors" (or similar captions) in our quarterly reports on Form 10-Q, and as described in our other filings with the SEC for a more in depth discussion of the material risks to our business.

## **USE OF PROCEEDS**

We expect to use the net proceeds from any sales of shares of common stock resulting from this prospectus supplement for general corporate purposes, which may from time to time include funding or partially funding acquisitions or the repayment of indebtedness such as under our Federal National Mortgage Association ( "FNMA" ) and/or our Federal Home Loan Mortgage Corporation ( "Freddie MAC" ) Facilities.

The FNMA Facilities have a combined line limit of \$1.04 billion, all of which was available to borrow at March 31, 2009. The Company had total borrowings outstanding under the FNMA Facilities of approximately \$917 million at March 31, 2009. Various tranches of the facilities mature from 2011 through 2018. The FNMA Facilities provide for tax free, variable rate and fixed rate borrowings. The average interest rate on the FNMA Facilities was 1.6% as of March 31, 2009. The Freddie MAC Facilities have a combined line limit of \$300 million, approximately \$296 million of which was available to borrow at March 31, 2009. The Company had total borrowings outstanding under the Freddie MAC Facilities of approximately \$296 million at March 31, 2009. Various tranches of the facilities mature from 2011 through 2014. The average interest rate on the Freddie MAC Facilities was 0.9% as of March 31, 2009.

## **PLAN OF DISTRIBUTION**

Upon written instructions from us, Cantor Fitzgerald & Co. will use its commercially reasonable efforts consistent with its sales and trading practices, to solicit offers to purchase shares of our common stock under the terms and subject to the conditions set forth in the sales agreement. Cantor Fitzgerald & Co.'s solicitation will continue until we instruct Cantor Fitzgerald & Co. to suspend the solicitations and offers. We will instruct Cantor Fitzgerald & Co. as to the amount of common stock to be sold by Cantor Fitzgerald & Co. We may instruct Cantor Fitzgerald & Co. not to sell common stock if the sales cannot be effected at or above the price designated by us in any instruction. We or Cantor Fitzgerald & Co. may suspend the offering of common stock upon proper notice and subject to other conditions.

Cantor Fitzgerald & Co. will provide written confirmation to us no later than the opening of the trading day on the New York Stock Exchange following the trading day in which shares of our common stock are sold under the sales agreement. Each confirmation will include the number of shares sold on the preceding day, the net proceeds to us and the compensation payable by us to Cantor Fitzgerald & Co. in connection with the sales.

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We will pay Cantor Fitzgerald & Co. commissions for its services in acting as agent in the sale of common stock. Cantor Fitzgerald & Co. will be entitled to compensation up to 2% of the gross sales price per share of common stock sold under the sales agreement. We estimate that the total expenses for the offering, excluding compensation payable to Cantor Fitzgerald & Co. under the terms of the sales agreement, will be approximately \$20,000.00.

Settlement for sales of common stock will occur on the third business day following the date on which any sales are made, or on some other date that is agreed upon by us and Cantor Fitzgerald & Co. in connection with a particular transaction, in return for payment of the net proceeds to us. There is no arrangement for funds to be received in an escrow, trust or similar arrangement.

In connection with the sale of the common stock on our behalf, Cantor Fitzgerald & Co. may, and will with respect to sales effected in an at the market offering, be deemed to be an underwriter within the meaning of the Securities Act of 1933, and the compensation of Cantor Fitzgerald & Co. may be deemed to be underwriting commissions or discounts. We have agreed to provide indemnification and contribution to Cantor Fitzgerald & Co. against certain civil liabilities, including liabilities under the Securities Act. We have also agreed to reimburse Cantor Fitzgerald & Co. for other specified expenses.

The offering of shares of our common stock pursuant to the sales agreement will terminate upon the earlier of (1) the sale of all common stock subject to the agreement, whether by Cantor Fitzgerald & Co. or any other agent pursuant to an at the market offering or (2) termination of the sales agreement. The sales agreement may be terminated by us in our sole discretion at any time by giving notice to Cantor Fitzgerald & Co. Cantor Fitzgerald & Co. may terminate the sales agreement under the circumstances specified in the sales agreement and in its sole discretion at any time following a period of twelve months from the date of the sales agreement by giving notice to us.

## **LEGAL MATTERS**

Certain legal matters in connection with this offering will be passed upon for us by Baker, Donelson, Bearman, Caldwell & Berkowitz PC. Certain legal matters in connection with this offering will be passed upon for Cantor Fitzgerald & Co. by DLA Piper US LLP.

## **EXPERTS**

The consolidated financial statements of Mid-America Apartment Communities, Inc. appearing in Mid-America Apartment Communities, Inc. s Current Report on Form 8-K dated May 29, 2009 (including the schedule appearing therein), and the effectiveness of Mid-America Apartment Communities, Inc. s internal control over financial reporting as of December 31, 2008, have been audited by Ernst & Young LLP, independent registered public accounting firm, as set forth in their reports thereon included therein, and incorporated herein by reference. Such financial statements are, and audited financial statements to be included in subsequently filed documents will be, incorporated herein in reliance upon the reports of Ernst & Young LLP pertaining to such financial statements and the effectiveness of our internal control over financial reporting as of the respective dates (to the extent covered by consents filed with the Securities and Exchange Commission) given on the authority of such firm as experts in accounting and auditing.

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**PROSPECTUS**

**Debt Securities**

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**Depository Shares**

From time to time, we may offer to sell common stock, preferred stock, debt securities or depository shares under this prospectus. This prospectus describes some of the general terms that may apply to these securities. The specific terms of any securities to be offered will be described in a supplement to this prospectus that contains specific information about the offering and the terms of the securities. This prospectus may not be used to consummate sales of these securities unless accompanied by a prospectus supplement.

We may offer and sell these securities to or through one or more underwriters, dealers and agents, or directly to purchasers, on a continuous or delayed basis.

The New York Stock Exchange Lists our:

Common Stock (symbol: MAA);

8.30% Series H Cumulative Preferred Stock (symbol: MAA PrH).

To assist us in maintaining our qualification as a REIT, no person may own more than 9.9% of the total value of our outstanding capital stock, unless our Board of Directors waives this limitation.

**INVESTING IN OUR SECURITIES INVOLVES RISKS. BEFORE BUYING OUR SECURITIES, YOU SHOULD REFER TO THE RISK FACTORS INCLUDED IN OUR PERIODIC REPORTS, IN PROSPECTUS SUPPLEMENTS RELATING TO SPECIFIC OFFERINGS AND IN OTHER INFORMATION FILED WITH THE SECURITIES AND EXCHANGE COMMISSION. YOU SHOULD ALSO REFER TO RISK FACTORS BEGINNING ON PAGE ONE OF THIS PROSPECTUS.**

**NEITHER THE SECURITIES AND EXCHANGE COMMISSION NOR ANY STATE SECURITIES COMMISSION HAS APPROVED OR DISAPPROVED OF THESE SECURITIES OR DETERMINED IF THIS PROSPECTUS IS TRUTHFUL OR COMPLETE. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.**

**The date of this prospectus is May 29, 2009**

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You should only rely on the information contained or incorporated by reference in this prospectus and in a prospectus supplement. We have not authorized anyone to provide you with different information. If anyone provides you with different or inconsistent information, you should not rely on it. We will not make an offer to sell these securities in any jurisdiction where the offer and sale is not permitted. You should assume that the information appearing in this prospectus, as well as information we previously filed with the Securities and Exchange Commission and incorporated by reference, is accurate only as of its date. Our business, financial condition, results of operations and prospects may have changed since those dates.

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**ABOUT THIS PROSPECTUS**

This prospectus is part of a registration statement that Mid-America Apartment Communities, Inc., (referred to as we, us, our, or the Company) has filed with the Securities and Exchange Commission utilizing a shelf registration process. Under this shelf process, we may sell any combination of the securities described in this prospectus in one or more offerings from time to time. This prospectus provides you with a general description of the securities we may offer. Each time we sell securities, we will provide a prospectus supplement that will contain specific information about the terms of that offering. The prospectus supplement may also add, update or change information contained or incorporated by reference in this prospectus. You should read both this prospectus and any applicable supplement together with additional information described under the heading **Where You Can Find More Information** and incorporated by reference either in this prospectus or any prospectus supplement.

**OUR COMPANY**

Mid-America Apartment Communities, Inc. is a Memphis, Tennessee-based self-administered and self-managed umbrella partnership real estate investment trust, or REIT, that focuses on acquiring, owning and operating apartment communities. We, together with our subsidiaries, report as a single business segment. As of March 31, 2009, we owned interests in 144 multifamily apartment communities comprising 42,252 apartments located in 13 states, including two communities comprising 626 apartments owned through our joint venture, Mid-America Multifamily Fund I, LLC, and two development communities in varying stages of lease-up. Two of these communities, consisting of 536 apartments, were classified as held for sale as of March 31, 2009. We employed 1,178 full time and 76 part time employees at March 31, 2009.

Our principal executive offices are located at 6584 Poplar Avenue, Memphis, Tennessee 38138 and our telephone number is (901) 682-6600.

**RISK FACTORS**

Investment in the offered securities involves risk. Before acquiring any securities offered pursuant to this prospectus, you should carefully consider the risks factors described in our periodic reports filed with the Securities and Exchange Commission, or SEC, which are incorporated by reference in this prospectus, including the risks factors described under the captions **Item 1A. Risk Factors** and **Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations** in our most recent annual report on Form 10-K and under the captions **Item 1A. Risk Factors** and **Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations** in our quarterly reports on Form 10-Q, and as described in our other filings with the SEC. The occurrence of any of these risks might cause you to lose all or a part of your investment in the offered securities. Please also refer to the section below entitled **Forward-Looking Statements** for additional risks and uncertainties. Additional risks and uncertainties not presently known to us or that we currently deem immaterial may also impair our business operations. If any of the risks or uncertainties described in our periodic reports filed with the SEC or any such additional risks and uncertainties actually occur, our business, results of operations and financial condition could be materially and adversely affected. In that case, the trading price of the securities being offered by this prospectus and any applicable prospectus supplement could decline, and you might lose all or part of your investment. You should consider these risk factors when you read forward-looking statements contained elsewhere or incorporated by reference in this prospectus.

**FORWARD-LOOKING STATEMENTS**

We consider portions of this prospectus, including the documents incorporated by reference into this prospectus, to contain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. Forward looking statements do not discuss historical fact, but instead include statements related to expectations, projections, intentions or other items related to the future. Such forward-looking statements include, without limitation, statements concerning property acquisitions and dispositions, development activity and capital expenditures, capital raising activities, rent growth, occupancy, and rental expense growth. Words such as **expects, anticipates, intends, plans, believes, seeks, estimates,** and variations of such words and similar expressions are intended to identify forward-looking statements. Such

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statements involve known and unknown risks, uncertainties and other factors which may cause the actual results, performance or achievements to be materially different from the results of operations or plans expressed or implied by such forward-looking statements. Such factors include, among other things, unanticipated adverse business developments affecting us, or our properties, adverse changes in the real estate markets and general and local economies and business conditions. Although we believe that the assumptions underlying the forward-looking statements contained herein are reasonable, any of the assumptions could be inaccurate, and therefore such forward-looking statements included in this report may not prove to be accurate. In light of the significant uncertainties inherent in the forward-looking statements included herein, the inclusion of such information should not be regarded as a representation by us or any other person that the results or conditions described in such statements or our objectives and plans will be achieved.

The following factors, among others, could cause our future results to differ materially from those expressed in the forward-looking statements:

economic downturn and recession, resulting in reduced demand for apartments;

competition from other apartment communities and other rental properties, including unsold single family houses and condominiums;

overbuilding of new apartment units in our markets;

inability to rent apartment units on favorable economic terms;

inability to generate sufficient cash flows due to market conditions, changes in supply and/or demand, competition, uninsured losses, changes in tax and housing laws, or other factors;

increased operating costs;

inability to acquire funding through the capital markets;

inability to pay required distributions to maintain REIT status due to required debt payments;

loss of hedge accounting treatment for interest rate swaps due to volatility in the financial markets;

unexpected capital needs;

the availability of credit, including mortgage financing, and the liquidity of the debt markets, including that provided to us by Fannie Mae and Freddie Mac, at present operating under the conservatorship of the United States Government;

changes in interest rate levels, including that of variable rate debt such as is extensively used by us;

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the continuation of the good credit of swap and cap providers, including Deutsche Bank, Royal Bank of Canada, and J. P. Morgan;

increasing real estate taxes and insurance costs;

losses from catastrophes in excess of our insurance coverage;

inability to meet loan covenants;

inability to attract and retain qualified personnel;

failure of new acquisitions to achieve anticipated results or be efficiently integrated;

inability to acquire additional or dispose of existing apartment units on favorable economic terms;

potential liability for environmental contamination;

litigation and compliance costs associated with laws requiring access for disabled persons;

adverse legislative or regulatory tax changes;

inability of a joint venture to perform as expected; and

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the imposition of federal taxes if we fail to qualify as a REIT under the Internal Revenue Code in any taxable year or foregone opportunities to ensure REIT status.

All of the foregoing factors are difficult to predict, contain uncertainties that may materially affect actual results, and may be beyond our control. New factors emerge from time to time that could adversely affect our business. It is not possible for us to predict all of the factors that may from time to time affect our business or to assess the potential impact of each such factor.

**CONSOLIDATED RATIO OF EARNINGS TO COMBINED**

**FIXED CHARGES AND PREFERRED STOCK DISTRIBUTIONS AND**

**CONSOLIDATED RATIO OF EARNINGS TO FIXED CHARGES**

The consolidated ratio of earnings to combined fixed charges and preferred stock distributions and the consolidated ratio of earnings to fixed charges for each of the periods indicated is as follows:

	Twelve Months Ended December 31,					Three Months Ended
	2004	2005	2006	2007	2008	March 31, 2009
Ratio of earnings to combined fixed charges and preferred stock distributions	1.2x	1.3x	1.1x	1.4x	1.2x	1.4x
Ratio of earnings to fixed charges	1.5x	1.6x	1.3x	1.6x	1.5x	1.7x

For the purpose of calculating the consolidated ratio of earnings to combined fixed charges and preferred stock dividends, earnings consist of income from continuing operations before loss from investments in unconsolidated entities, plus fixed charges less capitalized interest. Fixed charges consist of interest expense, capitalized interest, amortized premiums, discounts and capitalized expenses relating to debt and an estimate of the interest component of rent expense.

**USE OF PROCEEDS**

Unless otherwise described in a prospectus supplement, we will contribute the net proceeds of any sale of the offered securities to our Operating Partnership in exchange for units of limited partnership interests having characteristics similar to those of the offered securities and our Operating Partnership will use the net proceeds for general corporate purposes, which may include the acquisition or development of apartment communities, the improvement of apartment communities, the repayment of debt or the redemption of preferred stock.

**DESCRIPTION OF CAPITAL STOCK**

The following is a summary of the terms of the shares of our capital stock and is subject to and qualified in its entirety by reference to our amended and restated charter as further amended, and our bylaws, as amended, both of which we may amend at a later time and both of which are incorporated by reference into this prospectus. References to the TBCA are to the Tennessee Business Corporation Act, as amended.

*Overview*

Our authorized capital stock consists of 50,000,000 shares of common stock and 20,000,000 shares of preferred stock. Each outstanding share of common stock entitles the holder to one vote on all matters presented to shareholders for a vote.

*Common Stock*

Subject to such preferential rights granted by the Board of Directors in connection with the issuance of shares of our preferred stock, holders of shares of common stock are entitled to one vote per share on all matters to be voted on by shareholders and are entitled to receive ratably such dividends as may be declared in respect of the common stock by the Board of Directors in its

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discretion from funds legally available therefore. In the event of our liquidation, dissolution or winding up, holders of common stock are entitled to share ratably in all assets remaining after payment of all debts and other liabilities and any liquidation preference of the holders of our then-outstanding preferred stock. Holders of common stock have no subscription, redemption, conversion or preemptive rights. Matters submitted for shareholder approval generally require a majority vote of the shares present and voting thereon. The outstanding shares of common stock are fully paid and nonassessable.

*Preferred Stock*

The following description of the terms of our preferred stock sets forth general terms and provisions of our preferred stock to which a prospectus supplement may relate. Specific terms of any series of preferred stock offered by a prospectus supplement will be described in that prospectus supplement. The description set forth below is subject to and qualified in its entirety by reference to the articles of amendment to our charter fixing the preferences, limitations and relative rights of a particular series of preferred stock.

Under our charter, our Board of Directors is authorized, without further shareholder action, to provide for the issuance of up to 20,000,000 shares of preferred stock, in such series, with such preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends, qualifications or other provisions, as may be fixed by the Board of Directors. As a result, the Board of Directors may afford the holders of any series or class of preferred stock preferences, powers, and rights, voting or otherwise, senior to the rights of holders of common stock. As of the date of this prospectus, our Board of Directors has designated:

2,000,000 shares of 9.5% Series A Cumulative Preferred Stock, of which no shares are outstanding;

1,938,830 shares of 8.875% Series B Cumulative Preferred Stock, of which no shares are outstanding;

2,000,000 shares of 9.385% Series C Cumulative Preferred Stock, of which no shares are outstanding;

1,000,000 shares of 9.5% Series E Cumulative Preferred Stock, of which no shares are outstanding;

3,000,000 shares of 9.25% Series F Cumulative Redeemable Preferred Stock, of which no shares are outstanding;

400,000 shares of 8.625% Series G Cumulative Redeemable Preferred Stock, of which no shares are outstanding; and

6,200,000 shares of 8.30% Series H Cumulative Redeemable Preferred Stock, of which 6,200,000 shares are outstanding.

The description of our Series H preferred stock is contained in documents filed with the SEC.

Our preferred stock will have the dividend, liquidation, redemption, conversion and voting rights set forth below unless otherwise provided in the prospectus supplement relating to a particular series of preferred stock. Reference is made to the prospectus supplement relating to the particular series of preferred stock offered thereby for specific terms, including: (i) the title and liquidation preference per share of such preferred stock and the number of shares offered; (ii) the price at which such series will be issued; (iii) the dividend rate (or method of calculation), the dates on which dividends shall be payable and the dates from which dividends shall commence to accumulate; (iv) any redemption or sinking fund provisions of such series; (v) any conversion provisions of such series; and (vi) any additional dividend, liquidation, redemption, sinking fund and other rights, preferences, privileges, limitations and restrictions of such series.

Our preferred stock will, when issued, be fully paid and nonassessable. Unless otherwise specified in the prospectus supplement relating to a particular series of preferred stock, each series will rank on a parity as to dividends and distributions in the event of a liquidation with each other series of preferred stock and, in all cases, will be senior to our common stock.



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Holders of preferred stock of each series will be entitled to receive, when, as and if declared by the Board of Directors, out of our assets legally available for distribution, cash dividends at such rates and on such dates as are set forth in the prospectus supplement relating to such series of preferred stock. Such rate may be fixed or variable or both and may be cumulative, noncumulative or partially cumulative.

If the applicable prospectus supplement so provides, as long as any shares of preferred stock are outstanding, no dividends will be declared or paid or any distributions be made on our common stock, other than a dividend payable in common stock, unless the accrued dividends on each series of preferred stock have been fully paid or declared and set apart for payment and we will have set apart all amounts, if any, required to be set apart for all sinking funds, if any, for each series of preferred stock.

If the applicable prospectus supplement so provides, when dividends are not paid in full upon any series of preferred stock and any other series of preferred stock ranking on a parity as to dividends with such series of preferred stock, all dividends declared upon such series of preferred stock and any other series of preferred stock ranking on a parity as to dividends will be declared pro rata so that the amount of dividends declared per share on such series of preferred stock and such other series will in all cases bear to each other the same ratio that accrued dividends per share on such series of preferred stock and such other series bear to each other.

Each series of preferred stock will be entitled to dividends as described in the prospectus supplement relating to such series, which may be based upon one or more methods of determination. Different series of preferred stock may be entitled to dividends at different dividend rates or based upon different methods of determination. Except as provided in the applicable prospectus supplement, no series of preferred stock will be entitled to participate in our earnings or assets.

In the event of our voluntary or involuntary liquidation, dissolution or winding up, the holders of each series of our preferred stock will be entitled to receive out of our assets available for distribution to shareholders the amount stated or determined on the basis set forth in the prospectus supplement relating to such series, which may include accrued dividends, if such liquidation, dissolution or winding up is involuntary or may equal the current redemption price per share (otherwise than for the sinking fund, if any provided for such series) provided for such series set forth in such prospectus supplement, if such liquidation, dissolution or winding up is voluntary, and on such preferential basis as is set forth in such prospectus supplement. If, upon our voluntary or involuntary liquidation, dissolution or winding up the amounts payable with respect to preferred stock of any series and any other of our shares of stock ranking as to any such distribution on a parity with such series of preferred stock are not paid in full, the holders of preferred stock of such series and of such other shares will share ratably in any such distribution of our assets in proportion to the full respective preferential amounts to which they are entitled or on such other basis as is set forth in the applicable prospectus supplement. The rights, if any, of the holders of any series of preferred stock to participate in our assets remaining after the holders of other series of preferred stock have been paid their respective specified liquidation preferences upon our liquidation, dissolution or winding up will be described in the prospectus supplement relating to such series.

A series of preferred stock may be redeemable, in whole or in part, at our option, and may be subject to mandatory redemption pursuant to a sinking fund, in each case upon terms, at the times, the redemption prices and for the types of consideration set forth in the prospectus supplement relating to such series. The prospectus supplement relating to a series of preferred stock which is subject to mandatory redemption shall specify the number of shares of such series that shall be redeemed by us in each year commencing after a date to be specified, at a redemption price per share to be specified, together with an amount equal to any accrued and unpaid dividends thereon to the date of redemption.

If, after giving notice of redemption to the holders of a series of preferred stock, we deposit with a designated bank funds sufficient to redeem such preferred stock, then from and after such deposit, all shares called for redemption will no longer be outstanding for any purpose, other than the right to receive the redemption price and the right to convert such shares into other classes of our stock. The redemption price will be stated in the prospectus supplement relating to a particular series of preferred stock.

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Except as indicated in the applicable prospectus supplement, our preferred stock is not subject to any mandatory redemption at the option of the holder.

The prospectus supplement for any series of preferred stock will state the terms, if any, of a sinking fund for the purchase or redemption of that series.

The prospectus supplement for any series of preferred stock will state the terms, if any, on which shares of that series are convertible into or redeemable for shares of common stock or another series of preferred stock. Our preferred stock will have no preemptive rights.

Except as indicated in the prospectus supplement relating to a particular series of preferred stock, or except as expressly required by Tennessee law, a holder of preferred stock will not be entitled to vote. Except as indicated in the prospectus supplement relating to a particular series of preferred stock, in the event we issue full shares of any series of preferred stock, each such share will be entitled to one vote on matters on which holders of such series of preferred stock are entitled to vote.

Under Tennessee law, the affirmative vote of the holders of a majority of the outstanding shares of all series of preferred stock entitled to vote, voting as a separate voting group, or of all outstanding votes of all series of preferred stock equally affected, as a voting group, will be required for (i) the authorization of any class of stock ranking senior to or on a parity with Preferred Stock or the increase in the number of authorized shares of any such stock, (ii) any increase in the number of authorized shares of preferred stock and (iii) certain amendments to the charter that may be adverse to the rights of preferred stock outstanding.

### *Certain Matters of Corporate Governance*

*Charter and Bylaw Provisions.* The TBCA and our charter and our bylaws govern shareholders' rights and related matters. Certain provisions of our charter and bylaws, which are summarized below, may make it more difficult to change the composition of the Board of Directors and may discourage or make more difficult any attempt by a person or group to obtain control of us.

*Voting Requirement.* Our charter may not be amended without the affirmative vote of at least a majority of the shares entitled to vote generally in the election of directors, voting as a single voting group. Our bylaws may be amended by either the affirmative vote of a majority of all shares outstanding and entitled to vote generally in the election of directors, voting as a single group, or by an affirmative vote of a majority of the Board of Directors then holding office, unless the shareholders prescribe that any such bylaw may not be amended or repealed by the Board of Directors. Notwithstanding the foregoing, we cannot take any action intended to terminate our qualification as a REIT without the affirmative vote of at least two-thirds of the outstanding shares of common stock.

*Special Meetings.* Under our bylaws, shareholders may call special meetings of the shareholders only if such shareholders hold outstanding shares representing more than 50% of all votes entitled to be cast on any issue proposed to be considered at any such special meeting.

*Advance Notice of Director Nominations and New Business.* Our bylaws provide that with respect to an annual meeting of shareholders, the proposal of business to be considered by shareholders may be made only (i) by or at the direction of the Board of Directors, or (ii) by a shareholder who has complied with the advance notice procedures set forth in the bylaws. In addition, with respect to any meeting of shareholders, nominations of persons for election to the Board of Directors may be made only (i) by or at the direction of the Board of Directors or (ii) by any shareholder who is entitled to vote at the meeting and has complied with the advance notice provisions set forth in the bylaws.

The advance notice provisions of the bylaws could have the effect of discouraging a takeover or other transaction in which holders of some, or a majority, of the shares of common stock might receive a premium for their shares over the then prevailing market price or which such holders might believe to be otherwise in their best interests.

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*Limitation Of Directors' Liability.* Our charter eliminates, subject to certain exceptions, the personal liability of a director to us or our shareholders for monetary damages for breaches of such director's duty of care or other duties as a director. The charter does not provide for the elimination of or any limitation on the personal liability of a director for:

any breach of a director's duty of loyalty to us;

acts or omissions which involve intentional misconduct or knowing violations of law;

unlawful corporate distributions; or

acts or omissions which involve transactions from which the director derived an improper personal benefit.

The charter further provides that if the TBCA is amended to authorize corporate action further eliminating or limiting the personal liability of a director, such personal liability shall be eliminated or limited to the fullest extent permitted by the TBCA, as amended. These provisions of the charter will limit the remedies available to a shareholder in the event of breaches of any director's duties to such shareholder.

*Tennessee Anti-Takeover Statutes.* In addition to certain of our charter provisions discussed above, Tennessee has adopted a series of statutes which can have an anti-takeover effect and may delay or prevent a tender offer or takeover attempt that a shareholder might consider in its best interest, including those attempts that might result in a premium over the market price for our common stock.

Under the Tennessee Investor Protection Act, unless a company's board of directors has recommended a takeover offer to shareholders, no offeror beneficially owning 5% or more of any class of equity securities of the offeree company, any of which was purchased within one year prior to the proposed takeover offer (unless the offeror, before making such purchase, has made a public announcement of his intention with respect to changing or influencing the management or control of the offeree company, has made a full, fair and effective disclosure of such intention to the person from whom he intends to acquire such securities and has filed with the Tennessee Commissioner of Commerce and Insurance (the "Commissioner") and the offeree company a statement signifying such intentions and containing such additional information as the Commissioner by rule prescribes), may offer to acquire any class of equity security of an offeree company pursuant to a tender offer if after the acquisition thereof the offeror would be directly or indirectly a beneficial owner of more than 10% of any class of outstanding equity securities of the company (a "Takeover Offer"). Such an offeror must provide that any equity securities of an offeree company deposited or tendered pursuant to a Takeover Offer may be withdrawn by an offeree at any time within seven days from the date the offer has become effective following filing with the Commissioner and the offeree company and public announcement of the terms or after 60 days from the date the offer has become effective. If an offeror makes a Takeover Offer for less than all the outstanding equity securities of any class, and if the number of securities tendered is greater than the number the offeror has offered to accept and make for, the securities shall be accepted pro rata. If an offeror varies the terms of a Takeover Offer before its expiration date by increasing the consideration offered to offeree, the offeror shall make the increased consideration for all equity securities accepted, whether accepted before or after the variation in the terms of the offer.

Under the TBCA, subject to certain exceptions, no Tennessee corporation may engage in any "business combination" with an "interested shareholder" for a period of five years following the date that such shareholder became an interested shareholder unless prior to such date the Board of Directors of the corporation approved either the business combination or the transaction which resulted in the shareholder becoming an interested shareholder.

A "business combination" is defined by the TBCA as any:

merger or consolidation;

share exchange;



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sale, lease, exchange, mortgage, pledge or other transfer of assets representing 10% or more of:

the aggregate market value of the corporation's consolidated assets;

the aggregate market value of the corporation's shares; or

the corporation's consolidated net income.

issuance or transfer of shares from the corporation to the interested shareholder;

plan of liquidation of dissolution proposed by the interested shareholder;

transaction or recapitalization which increases the proportionate share of any outstanding voting securities owned or controlled by the interested shareholder; or

financing arrangement whereby any interested shareholder receives, directly or indirectly, a benefit except proportionately as a shareholder.

An interested shareholder is defined as:

any person that is the beneficial owner of 10% or more of the voting power of any class or series of outstanding voting stock of the corporation; or

an affiliate or associate of the corporation who at any time within the five-year period immediately prior to the date in question was the beneficial owner, directly or indirectly, of 10% or more of the voting power of any class or series of the outstanding stock of the corporation.

Consummation of a business combination that is subject to the five-year moratorium is permitted after such period when the transaction (i) complies with all applicable charter and bylaw requirements; (ii) is approved by the holders of two-thirds of the voting stock not beneficially owned by the interested shareholder; and (iii) meets certain fair price criteria.

The Tennessee Greenmail Act prohibits a Tennessee corporation from purchasing, directly or indirectly, any of its shares at a price above the market value of such shares (defined as the average of the highest and lowest closing market price for such shares during the 30 trading days preceding the purchase and sale or preceding the commencement or announcement of a tender offer if the seller of such shares has commenced a tender offer or announced an intention to seek control of the corporation) from any person who holds more than 3% of the class of securities to be purchased if such person has held such shares for less than two years, unless the purchase has been approved by the affirmative vote of a majority of the outstanding shares of each class of voting stock issued by such corporation or the corporation makes an offer, of at least equal value per share, to all holders of shares of such class.

*Ownership Limitations.* For us to qualify as a REIT under the Code, among other things, no more than 50% in value of our outstanding shares of capital stock may be owned, directly or indirectly, by five or fewer shareholders (as defined in the Code to include certain entities) during the last half of a taxable year, and such capital stock must be beneficially owned by 100 or more persons during at least 335 days of a taxable year of 12 months or during a proportionate part of a shorter taxable year. To ensure that we continue to meet the requirements for qualification as a REIT, our charter, subject to certain exceptions, provides that no holder may own, or be deemed to own by virtue of the attribution provisions of the Code, more than 9.9% of the value of all outstanding shares of our capital stock, common and preferred (the *Ownership Limit*). The Board of Directors may waive the Ownership Limit with respect to a shareholder if evidence satisfactory to the Board of Directors and our tax counsel is

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presented that the changes in ownership will not then or in the future jeopardize our status as a REIT. Any transfer of capital stock or any security convertible into capital stock that would result in a direct or indirect ownership of capital stock by a shareholder in excess of the Ownership Limit or that would result in our failure to meet the requirements for qualification as a REIT, including any transfer that results in the capital stock being owned by fewer than 100 persons or results in our being closely held within the meaning of section 856(h) of the Code, shall be null and void, and the intended transferee will acquire no rights to the capital stock. The foregoing restrictions on transferability and ownership will not apply if the Board of Directors determines that it is no longer in our best interests to attempt to qualify, or to continue to qualify, as a REIT.

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Shares of capital stock owned, or deemed to be owned, or transferred to a shareholder in excess of the Ownership Limit shall be deemed Excess Shares held by such holder as agent on behalf of, and in trust for the exclusive benefit of, the transferees (which may include us) to whom such capital stock may be ultimately transferred without violating the Ownership Limit. While the Excess Shares are held in trust, the holder thereof will not be entitled to vote, the Excess Shares will not be considered issued and outstanding for purposes of any shareholder vote or the determination of a quorum for such vote and, except upon liquidation, will not be entitled to participate in dividends or other distributions. Any dividend or distribution paid to a proposed transferee of Excess Shares prior to our discovery that capital stock has been transferred in violation of the Ownership Limit shall be repaid to us upon demand.