

STRATEGIC HOTELS & RESORTS, INC

Form 424B7

February 03, 2015

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Filed Pursuant to Rule 424(b)(7)

File No. 333-179850

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Amount to be registered (2)	Proposed maximum offering price per unit (3)	Proposed maximum aggregate offering price (3)	Amount of registration fee (4)
Common Stock, par value \$0.01 per share (1)	7,347,539	\$13.24	\$97,281,416.36	\$11,304.11

- (1) This registration statement relates to the offer and sale from time to time of up to 7,347,539 shares of our common stock by the selling stockholder named herein.
- (2) Pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the Securities Act), this registration statement shall be deemed to cover any additional number of shares of common stock as may be issued from time to time as a result of stock splits, stock dividends or similar transactions.
- (3) Estimated solely for the purpose of computing the amount of the registration fee pursuant to Rule 457(c) under the Securities Act, based upon the average of the high and low reported sales prices of the common stock on the New York Stock Exchange on February 2, 2015.
- (4) Payment of the registration fee at the time of the filing of the registrant's registration statement on Form S-3, filed with the Securities and Exchange Commission on March 2, 2012 (File No. 333-179850), was deferred pursuant to Rules 456(b) and 457(r) under the Securities Act. This Calculation of Registration Fee table shall be deemed to update the Calculation of Registration Fee table in such registration statement.

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Prospectus Supplement

(To Prospectus dated March 2, 2012)

7,347,539 Shares

STRATEGIC HOTELS & RESORTS, INC.

COMMON STOCK

This prospectus supplement relates to the offer and sale from time to time of up to 7,347,539 shares of common stock, par value \$0.01 per share, of Strategic Hotels & Resorts, Inc. by the selling stockholder named herein. This prospectus supplement amends and supplements, and should be read in conjunction with, the accompanying prospectus dated March 2, 2012. This prospectus supplement is qualified by reference to the accompanying prospectus, except to the extent that the information presented herein supersedes the information contained in the accompanying prospectus. This prospectus supplement is not complete without, and may not be delivered or utilized except in connection with, the accompanying prospectus including any amendments or supplements thereto.

We have registered the offering and resale of the shares to allow the selling stockholder to sell any or all of its shares of common stock identified herein on the New York Stock Exchange, or the NYSE, or in private transactions using any of the methods described in the accompanying prospectus. See **Plan of Distribution** on page 59 of the accompanying prospectus. The registration of the shares does not necessarily mean that any of the shares will be sold by the selling stockholder under this prospectus supplement or otherwise.

We will not receive proceeds from the sale of the shares of common stock by the selling stockholder.

To assist us in complying with certain federal income tax requirements applicable to real estate investment trusts, among other things, our charter contains certain restrictions on the transfer and ownership of our common stock. See **Description of Our Stock - Restrictions on Ownership and Transfer** beginning on page 10 of the accompanying prospectus.

Shares of our common stock are listed on the NYSE under the symbol **BEE**. On February 2, 2015, the last reported sale price of our common stock on the NYSE was \$13.19 per share.

Investing in our common stock involves risks. You should consider the risks set forth under the heading **Item 1A. Risk Factors beginning on page 9 of our Annual Report on Form 10-K for the year ended December 31, 2013, which is incorporated by reference in this prospectus supplement and the accompanying prospectus, as well as the risk factors discussed in the periodic reports and other documents we file from time to time with the Securities and Exchange Commission, or the SEC, and which we incorporate into this prospectus supplement and accompanying prospectus by reference. See also **Risk Factors** on page 4 of the accompanying prospectus dated March 2, 2012.**

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed upon the adequacy or accuracy of this prospectus supplement or the accompanying prospectus. Any representation to the contrary is a criminal offense.

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The date of this prospectus supplement is February 3, 2015.

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SELLING STOCKHOLDER

In connection with our acquisition of the Montage Laguna Beach resort, or the Hotel, we and one of our affiliates entered into a Purchase and Sale Agreement dated January 28, 2015, or the Purchase and Sale Agreement, with the selling stockholder and one of its affiliates, or the Seller, pursuant to which we issued 7,347,539 shares, or the Shares, of our common stock to the selling stockholder on January 29, 2015 as partial consideration for the Hotel. Pursuant to the Purchase and Sale Agreement, we also paid the Seller approximately \$110 million in cash and assumed \$150 million of financing encumbering the Hotel. As contemplated by the Purchase and Sale Agreement, we and the selling stockholder entered into a Registration Rights Agreement, or the RRA, dated January 29, 2015, pursuant to which we agreed to register the resale of the Shares.

Pursuant to the RRA, among other things, we agreed to use commercially reasonable efforts to file a resale shelf registration statement with the SEC to register the resale of the Shares, which has been accomplished by the filing and effectiveness of the registration statement of which this prospectus supplement is a part.

Except as described above and in our Current Report on Form 8-K filed with the SEC on January 29, 2015, or as otherwise set forth in the table below, the selling stockholder does not have, and has not had within the past three years, any position, office or material relationship with us or any of our affiliates.

The following table sets forth, as of the date of this prospectus supplement:

the name of the selling stockholder;

the number of shares of common stock beneficially owned by the selling stockholder before and after the offering to which this prospectus supplement relates;

the percentage of our total outstanding shares of common stock beneficially owned by the selling stockholder before and after the offering to which this prospectus supplement relates; and

the maximum number of shares of common stock which may be offered for the account of the selling stockholder.

The information with respect to ownership after the offering assumes the sale of all of the shares of common stock offered and no purchases of additional shares.

The following table is based on information provided by or on behalf of the selling stockholder. The number of shares of common stock beneficially owned by the selling stockholder and the percentage of shares beneficially owned has been determined in accordance with the rules of the SEC. The number of shares of common stock beneficially owned includes any shares as to which the selling stockholder has sole or shared voting power or investment power. Shares that the selling stockholder has the right to acquire within 60 days of the date of this prospectus supplement, if any, are included in the shares owned by the selling stockholder and are treated as outstanding for purposes of calculating the ownership percentage of the selling stockholder. Information about the selling stockholder may change over time. Any changed information provided to us by the selling stockholder will be set forth in prospectus supplements if and when necessary. We will not receive any proceeds from the sale of the shares of our common stock by the selling

stockholder. The selling stockholder may offer all or part of the shares covered by this prospectus supplement at any time or from time to time.

Name	Total Number of Shares of Common Stock Beneficially Owned Prior to this Offering	Percentage of Outstanding Shares of Common Stock Beneficially Owned Prior to this Offering (2)	Total Number of Shares of Common Stock that may be Offered for the Account of the Selling Stockholder	Total Number of Shares of Common Stock to be Beneficially Owned after this Offering	Percentage of Outstanding Shares of Common Stock to be Beneficially Owned after this Offering
Ohana Holdings, L.L.C. (1)	7,347,539	2.7%	7,347,539	0	0

(1) The Shares are beneficially owned by The Pierre M. Omidyar Living Trust dtd 5/27/1998 (the Trust). Michael G. Mohr and Pierre M. Omidyar are the trustees of the Trust and share voting and dispositive power over the Shares.

(2) Based on a total of 274,783,338 shares of common stock outstanding as of January 30, 2015.

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LEGAL MATTERS

The validity of the Shares offered hereby and certain other matters relating to Maryland law will be passed upon for us by Venable LLP, Baltimore, Maryland.

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PROSPECTUS

STRATEGIC HOTELS & RESORTS, INC.

Common Stock, Preferred Stock, Depositary Shares, Debt Securities, Warrants, Subscription Rights and Units

BEE FINANCING TRUST I

BEE FINANCING TRUST II

BEE FINANCING TRUST III

Preferred Securities

Guaranteed to the extent set forth herein by

Strategic Hotels & Resorts, Inc.

This prospectus contains a general description of the debt and equity securities that we may offer for sale. We may from time to time offer, in one or more series or classes, separately or together, the following:

common stock;

preferred stock;

depositary shares;

debt securities;

warrants;

subscription rights;

preferred securities of certain trusts wholly owned and guaranteed by Strategic Hotels & Resorts, Inc.; and or units.

We or each of BEE Financing Trust I, BEE Financing Trust II and BEE Financing Trust III, which we refer to as the Trusts, will offer our securities in amounts, at prices and on terms to be determined at the time we or they offer those securities. We or each of the Trusts will provide the specific terms of the securities in supplements to this prospectus. We are organized and conduct our operations so as to qualify as a real estate investment trust, or REIT, for federal income tax purposes. The specific terms of the securities may include limitations on actual, beneficial or constructive ownership and restrictions on transfer of the securities that may be appropriate to preserve our status as a REIT.

The securities may be offered on a delayed or continuous basis directly by us, through agents, underwriters or dealers as designated from time to time, through a combination of these methods or any other method as provided in the applicable prospectus supplement. You should read this prospectus and any applicable prospectus supplement carefully before you invest.

In addition, certain selling securityholders to be identified from time to time in a prospectus supplement may sell our securities that they own. We will not receive any of the proceeds from the sale of our securities by selling securityholders.

Our common stock is traded on the New York Stock Exchange under the symbol BEE. On March 1, 2012, the last reported sale price of our common stock on the New York Stock Exchange was \$6.29.

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 that we file with the Securities and Exchange Commission. See Risk Factors on page 4.

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.

March 2, 2012

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ABOUT THIS PROSPECTUS

You should rely only on the information contained or incorporated by reference in this prospectus. We have not authorized anyone to provide you with information different from that contained or incorporated by reference in this prospectus. The information contained or incorporated by reference in this prospectus is accurate only as of the date of this prospectus, regardless of the time of delivery of this prospectus or any sale of securities covered by this prospectus. You should not assume that the information appearing in this prospectus or any applicable prospectus supplement or the documents incorporated by reference herein or therein is accurate as of any date other than their respective dates. Our business, financial condition, results of operation and prospects may have changed since those dates.

As used in this prospectus, references to we, our, us and the Company are to Strategic Hotels & Resorts, Inc. and, except as the context otherwise requires, its consolidated subsidiaries, including Strategic Hotel Funding, L.L.C., our operating partnership, and its consolidated subsidiaries. References to SH Funding are to Strategic Hotel Funding, L.L.C. References to the Trusts or the Subsidiary Trusts are to BEE Financing Trust I, BEE Financing Trust II and BEE Financing Trust III.

This prospectus contains registered trademarks that are the exclusive property of their respective owners, which are companies other than us, including Fairmont[®], Four Seasons[®], Hyatt[®], InterContinental[®], Loews[®], Marriott[®], Ritz-Carlton[®] and Westin[®]. None of the owners of these trademarks, their affiliates or any of their respective officers, directors, agents or employees is an issuer or underwriter of the securities being offered hereby. In addition, none of the owners of these trademarks, their affiliates or any of their respective officers, directors, agents or employees has or will have any liability arising out of or related to the sale or offer of the securities being offered hereby, including any liability or responsibility for any financial statements, projections or other financial information or other information contained in this prospectus or otherwise disseminated in connection with the offer or sale of the securities offered hereby.

This prospectus is part of a shelf registration statement that we filed with the Securities and Exchange Commission, or the SEC. By using a shelf registration statement, we may sell common stock, preferred stock, debt securities, depositary shares, subscription rights and warrants to purchase debt or equity securities described in this prospectus and the Trusts may sell preferred securities that will be guaranteed by us to the extent described in this prospectus, either separately or in units, from time to time in one or more offerings. This prospectus only provides you with a general description of the securities we or the Trusts may offer. Each time we or the Trusts sell securities, we or the Trusts will provide a supplement to this prospectus that will contain specific information about the terms of the securities offered, including the amount, the price and the terms determined at the time of the offering. The prospectus supplement may also add to, update or change information contained in this prospectus. Before purchasing any securities, you should carefully read both this prospectus and any supplement, together with additional information described under the heading Where You Can Find More Information.

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STRATEGIC HOTELS & RESORTS, INC.

Strategic Hotels & Resorts, Inc. was incorporated in Maryland in January 2004 to acquire and asset-manage upper upscale and luxury hotels that are subject to long-term management contracts. The terms upper upscale and luxury are classifications of hotels by brand that are defined by Smith Travel Research, an independent provider of lodging industry statistical data. We completed our initial public offering in June 2004. Our accounting predecessor, Strategic Hotel Capital, L.L.C. was founded in 1997 by Laurence Geller, our president and chief executive officer, Goldman, Sachs & Co.'s Whitehall Fund and others. We own our properties through our investment in SH Funding and its subsidiaries.

We operate as a self-administered and self-managed real estate investment trust, or REIT, managed by our board of directors and executive officers and conduct our operations through our direct and indirect subsidiaries, including SH Funding. We are the managing member of SH Funding and hold approximately 99% of its membership units as of March 1, 2012.

As of March 1, 2012, we:

wholly own or lease 14 hotels, have a 53.5% interest in an affiliate that owns a hotel where we asset manage such hotel, and have 50.0% and 34.3% interests in, and act as asset manager for, two unconsolidated affiliates that each own one hotel;

own land held for development including:

20.5 acres of oceanfront land adjacent to our Four Seasons Punta Mita Resort, Nayarit, Mexico and 60.0 acres of oceanfront land near the Four Seasons Punta Mita Resort;

a 20,000 square-foot parcel of land on the ocean in Santa Monica, California adjacent to our Loews Santa Monica Beach Hotel entitled for development and residential units;

a 50% interest in an unconsolidated affiliate that owns 10.0 acres of land adjacent to the Fairmont Scottsdale Princess hotel; and

a 31% interest in an unconsolidated affiliate with two unaffiliated parties that is developing the fractional ownership program known as the Four Seasons Residence Club Punta Mita.

We do not operate any of our hotels directly; instead we employ internationally known hotel management companies to operate them for us under management contracts or operating leases. Our existing hotels are operating under the widely-recognized upper upscale and luxury brands of Fairmont®, Four Seasons®, Hyatt®, InterContinental®, Loews®, Marriott®, Ritz-Carlton® and Westin®. The Hotel del Coronado is operated by a specialty management company, KSL Resorts.

We seek to maximize asset values and operating results through asset management. Although we have no imperative to grow, we will opportunistically seek to acquire additional properties that meet our disciplined investment criteria.

Our principal executive offices are located at 200 West Madison Street, Suite 1700, Chicago, Illinois 60606-3415 and our telephone number is (312) 658-5000. Our website address is www.strategichotels.com. We are not incorporating the information included, or referred to, on our website into this prospectus, and our website and the information included, or referred to, on our website are not a part of this prospectus.

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THE TRUSTS

Each of BEE Financing Trust I, BEE Financing Trust II and BEE Financing Trust III is a statutory trust formed under Delaware law pursuant to (x) a declaration of trust as may be amended and/or restated from time to time, which we refer to as the Trust Declaration, executed by us, as sponsor, and the Capital Financing Trustees, which we define below, as trustees, and (y) a certificate of trust filed with the Secretary of State of the State of Delaware. Each Trust exists for the exclusive purposes of (i) issuing preferred securities of the Trust, which we refer to as the Preferred Securities, (ii) investing the gross proceeds from the sale of the trust preferred securities and the Common Securities (defined below) in our subordinated debt securities and (iii) engaging in only those other activities necessary or incidental thereto. All of the common securities representing undivided beneficial interests in the assets of a Trust, which we refer to as the Common Securities, will be directly or indirectly owned by us. The Common Securities will rank *pari passu*, and payments will be made *pro rata*, with the Preferred Securities, except that, upon an event of default under the applicable Trust Declaration, the rights of the holders of the Common Securities to payment in respect of distributions and payments upon liquidation, redemption and otherwise will be subordinated to the rights of the holders of the Preferred Securities. We will directly or indirectly acquire Common Securities in an aggregate liquidation amount equal to \$10,000. We will pay all fees and expenses related to the Trusts and the offering of the Trust Securities, the payment of which will be guaranteed by Strategic Hotels & Resorts, Inc. as described under Description of the Trust Preferred Securities Guarantees. The principal place of business of each Trust is c/o Strategic Hotels & Resorts, Inc., 200 West Madison Street, Suite 1700, Chicago, Illinois 60606-3415, Attn: Secretary, (312) 658-5000.

The business and affairs of each Trust will be conducted by the trustees, which we refer to as the Capital Financing Trustees, appointed by us as the direct or indirect holder of all the Common Securities. A majority of the Capital Financing Trustees will be persons who are employees or officers of or who are affiliated with us. One Capital Financing Trustee of each Trust will be a financial institution that is not affiliated with us and has aggregate capital and surplus of at least \$50,000,000, which institution will act as Property Trustee under the applicable Trust Declaration and as an indenture trustee for purposes of the Trust Indenture Act of 1939, or the Trust Indenture Act. In addition, unless the Property Trustee maintains a principal place of business in the State of Delaware and otherwise meets the requirements of applicable law, one Capital Financing Trustee of each Trust, which we refer to as the Delaware Trustee, will have a principal place of business or reside in the State of Delaware. The initial Property Trustee of each Trust is Wilmington Trust Company, a Delaware banking corporation, which maintains a principal place of business in Delaware. Except as provided in the Trust Declaration, the holder of the Common Securities will be entitled to appoint, remove or replace any of, or increase or reduce the number of, the Capital Financing Trustees of each Trust. The duties and obligations of the Capital Financing Trustees for each Trust will be governed by the applicable Trust Declaration.

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RISK FACTORS

Before you invest in any of our securities, in addition to the other information in this prospectus and the applicable prospectus supplement, you should carefully consider the risk factors contained in Part I, Item 1A of our annual report on Form 10-K for the year ended December 31, 2011, filed with the SEC on February 23, 2012, which is incorporated by reference into this prospectus, as the same may be updated from time to time by our future filings under the Securities Exchange Act of 1934, as amended, or the Exchange Act.

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FORWARD-LOOKING STATEMENTS

This prospectus, including information incorporated by reference herein, may contain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, or the Securities Act, and Section 21E of the Exchange Act, which involve certain risks and uncertainties. Forward-looking statements relate to expectations, beliefs, projections, future plans and strategies, anticipated events or trends and similar expressions concerning matters that are not historical facts. These forward-looking statements are identified by their use of such terms and phrases as intends, intend, intended, goal, estimate, estimates, expects, expect, expected, project, projections, plans, seeks, anticipates, anticipated, should, could, may, will, designed to, foresee, believes and scheduled and similar expressions. Our actual results or outcomes may differ materially from those anticipated. Readers are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date the statement was made. Except, as required by law, we undertake no obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events or otherwise.

Our actual results may differ significantly from any results expressed or implied by these forward-looking statements. Some, but not all, of the factors that might cause such a difference include, but are not limited to:

the factors referred to in this prospectus under the section titled Risk Factors ;

the effects of the recent global economic recession upon business and leisure travel and the hotel markets in which we invest;

our liquidity and refinancing demands;

our ability to obtain or refinance maturing debt;

our ability to maintain compliance with covenants contained in our debt facilities;

our ability to meet the requirements of the Maryland General Corporation Law, or MGCL, with respect to the payment of preferred dividends on the June 29, 2012 payment date as further described below;

stagnation or further deterioration in economic and market conditions, particularly impacting business and leisure travel spending in the markets where our hotels operate and in which we invest, including luxury and upper upscale product;

general volatility of the capital markets and the market price of our shares of common stock;

availability of capital;

our ability to dispose of properties in a manner consistent with our investment strategy and liquidity needs;

hostilities and security concerns, including future terrorist attacks, or the apprehension of hostilities, in each case that affect travel within or to the United States, Mexico, Germany, England or other countries where we invest;

difficulties in identifying properties to acquire and completing acquisitions;

our failure to maintain effective internal control over financial reporting and disclosure controls and procedures;

risks related to natural disasters;

increases in interest rates and operating costs, including insurance premiums and real property taxes;

contagious disease outbreaks, such as the H1N1 virus outbreak;

delays and cost-overruns in construction and development;

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marketing challenges associated with entering new lines of business or pursuing new business strategies;

our failure to maintain our status as a REIT;

changes in the competitive environment in our industry and the markets where we invest;

changes in real estate and zoning laws or regulations;

legislative or regulatory changes, including changes to laws governing the taxation of REITs;

changes in generally accepted accounting principles, policies and guidelines; and

litigation, judgments or settlements.

Although we believe that the expectations reflected in the forward-looking statements are reasonable, we cannot guarantee future results, levels of activity, performance or achievements. We caution you not to place undue reliance on these forward-looking statements. All written and oral forward-looking statements attributable to us or persons acting on our behalf are qualified in their entirety by these cautionary statements. Moreover, unless we are required by law to update these statements, we will not necessarily update or revise any forward-looking statements included or incorporated by reference in this prospectus after the date hereof, either to conform them to actual results or to changes in our expectations.

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USE OF PROCEEDS

Unless we state otherwise in the applicable prospectus supplement, we intend to use the net proceeds we receive from the sale of the securities offered by this prospectus and the applicable prospectus supplement to:

repay any outstanding indebtedness at the time it is due;

acquire and develop hotel properties as suitable opportunities arise;

invest in future co-investment ventures;

make improvements to our hotel properties; and

fund general business purposes.

General business purposes may include additions to working capital and capital expenditures. We may also use a portion of the net proceeds to invest in or acquire businesses that we believe are complimentary to our own, although we have no current plans, commitments or agreements with respect to any acquisitions as of the date of this prospectus. Pending application of the net proceeds, we intend to invest the proceeds in interest bearing accounts and short-term, interest bearing securities.

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

	Year Ended December 31,				
	2011	2010	2009	2008	2007
Ratio of Earnings to Fixed Charges					1.13
Ratio of Earnings to Combined Fixed Charges and Preferred Dividends					0.90

In the calculation of the above ratios, our earnings represented (loss) income before income taxes, noncontrolling interests and discontinued operations from our consolidated statements of operations, as adjusted for fixed charges, amortization of capitalized interest, earnings from equity investees, distributed earnings from equity investees and capitalized interest.

Our fixed charges consisted of interest incurred (whether expensed or capitalized), amortization of deferred financing costs and estimated interest component of rental expense. Earnings were inadequate to cover fixed charges by \$94.8 million, \$274.6 million, \$219.9 million and \$289.2 million for the years ended December 31, 2011, 2010, 2009 and 2008, respectively. Earnings were inadequate to cover combined fixed charges and preferred dividends by \$124.0 million, \$305.5 million, \$250.8 million, \$320.1 million and \$14.4 million for the years ended December 31, 2011, 2010, 2009, 2008 and 2007, respectively.

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DESCRIPTION OF OUR STOCK

*Rights of our stockholders are governed by the Maryland General Corporation Law, or MGCL, our charter and our bylaws. The following is a summary of the material provisions of our stock and describes certain provisions of our charter, our bylaws and the MGCL. This summary does not purport to be complete and is subject to, and qualified in its entirety by reference to, our charter (including the terms and provisions of the articles supplementary relating to our preferred stock), and our bylaws, copies of which are filed or incorporated by reference as exhibits to the registration statement of which this prospectus is a part, and the applicable provisions of the MGCL. See *Where You Can Find More Information*.*

General

Our charter provides that we may issue up to 250,000,000 shares of common stock, \$0.01 par value per share, and 150,000,000 shares of preferred stock, \$0.01 par value per share. As of March 1, 2012, we had issued and outstanding:

185,867,664 shares of common stock;

4,148,141 shares of 8.50% Series A Cumulative Redeemable Preferred Stock (the *Series A Preferred Stock*);

3,615,375 shares of 8.25% Series B Cumulative Redeemable Preferred Stock (the *Series B Preferred Stock*);
and

3,827,727 shares of 8.25% Series C Cumulative Redeemable Preferred Stock (the *Series C Preferred Stock* and together with the Series A Preferred Stock and the Series B Preferred Stock, the *Preferred Stock*).

As of March 1, 2012, we also had 250,000 shares of Series D Junior Participating Preferred Stock (the *Series D Preferred Stock*) authorized. Our charter provides that our board of directors, without stockholder approval, may amend our charter to increase or decrease the aggregate number of shares of stock or the number of shares of any class or series of our stock that we are authorized to issue.

Power to Reclassify Stock

Our charter authorizes our board of directors to classify any unissued preferred stock and to reclassify any previously classified but unissued common stock and preferred stock of any series from time to time in one or more classes or series, as authorized by our board of directors. Prior to the issuance of stock of each class or series, our board of directors is required by the MGCL and our charter to set for each such class or series, subject to the provisions of our charter regarding the restrictions on transfer of our stock, the terms, preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications and terms and conditions of redemption for each such class or series. Thus, our board of directors could authorize the issuance of additional preferred stock with priority over our common stock with respect to distributions and rights upon liquidation and with other terms and conditions which could have the effect of delaying, deferring or preventing a transaction or a change in control of us that might involve a premium price for our stockholders or otherwise might be in their best interest.

Power to Issue Additional Common Stock and Preferred Stock

We believe that the power to issue additional common stock or preferred stock and to classify or reclassify unissued common stock or preferred stock and thereafter to issue the classified or reclassified stock provides us with increased flexibility in structuring possible future financings and acquisitions and in meeting other needs which might arise. These actions can be taken without stockholder approval, unless stockholder approval is required by applicable law or the rules of any stock exchange or automated quotation system on which our

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securities may be listed or traded, including the New York Stock Exchange, or the NYSE. Although we have no current intention of doing so, we could issue a class or series of stock that could delay, defer or prevent a transaction or a change in control that might involve a premium price for our stockholders or otherwise be in their best interest. However, please see the discussion of our rights plan below under **Rights Plan**.

Restrictions on Ownership and Transfer

For us to qualify as a REIT under the Internal Revenue Code, or the Code, our stock must be beneficially owned by 100 or more persons during at least 335 days of a taxable year of twelve months or during a proportionate part of a shorter taxable year. Also, not more than 50% of the value of our outstanding stock may be owned, directly or indirectly, by five or fewer individuals (as defined in the Code to include certain entities such as qualified pension plans) during the last half of a taxable year. These requirements of the Code do not apply to the first year for which an election to be a REIT is made.

To assist us in continuing to remain a REIT, our charter contains restrictions on the number of shares of our stock that a person may own. No person may acquire or hold, directly or indirectly, in excess of 9.8% in value of our outstanding shares of stock. In addition, no person may acquire or hold, directly or indirectly, common stock in excess of 9.8% (in value or in number of shares, whichever is more restrictive) of our outstanding shares of common stock.

Our charter further prohibits (i) any person from owning shares of our stock that would result in our being **closely held** under Section 856(h) of the Code or otherwise cause us to fail to qualify as a REIT and (ii) any person from transferring shares of our stock if the transfer would result in our stock being owned by fewer than 100 persons. Any person who acquires or intends to acquire shares of our stock that may violate any of these restrictions, or who is the intended transferee of shares of our stock which are transferred to the Trust, as defined below, is required to give us immediate notice and provide us with such information as we may request in order to determine the effect of the transfer on our status as a REIT. The above restrictions will not apply if our board of directors determines that it is no longer in our best interest to continue to qualify as a REIT.

Our board of directors, in its sole discretion, may, prospectively or retroactively, exempt a person from these limits. However, our board may not exempt any person whose ownership of our outstanding stock would result in our being **closely held** within the meaning of Section 856(h) of the Code or otherwise would result in our failing to qualify as a REIT. In order to be considered by our board for exemption, a person also must not own, directly or indirectly, an interest in any of our tenants (or a tenant of any entity which we own or control) that would cause us to own, directly or indirectly, more than a 9.9% interest in the tenant. The person seeking an exemption must represent to the satisfaction of our board that it will not violate these two restrictions. The person also must agree that any violation or attempted violation of these restrictions will result in the automatic transfer of the shares of stock causing the violation to the Trust. Our board of directors may require a ruling from the Internal Revenue Service, or IRS, or an opinion of counsel in order to determine or ensure our status as a REIT in circumstances where it has received a request for exemption and is unable to satisfy itself that the ownership limitations will not be violated.

Any attempted transfer of our stock which, if effective, would result in our stock being owned by fewer than 100 persons will be null and void. Any attempted transfer of our stock which, if effective, would result in violation of the ownership limits discussed above or in our being **closely held** under Section 856(h) of the Code or otherwise failing to qualify as a REIT will cause the number of shares causing the violation (rounded to the nearest whole share) to be automatically transferred to a trust (the **Trust**) for the exclusive benefit of one or more charitable beneficiaries (**Charitable Beneficiaries**), and the proposed transferee will not acquire any rights in the shares. The automatic transfer will be deemed to be effective as of the close of business on the business day prior to the date of the transfer. Shares of our stock held in the Trust will be issued and outstanding shares. The proposed transferee will not benefit

economically from ownership of any shares of stock held in the Trust, will have no rights to dividends and no rights to vote or other rights attributable to the shares of stock held in the

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Trust. The trustee (the Trustee) of the Trust will have all voting rights and rights to dividends or other distributions with respect to shares held in the Trust. These rights will be exercised for the exclusive benefit of the Charitable Beneficiary. Any dividend or other distribution paid prior to our discovery that shares of stock have been transferred to the Trust must be paid by the recipient to the Trustee upon demand. Any dividend or other distribution authorized but unpaid will be paid when due to the Trustee. Any dividend or distribution paid to the Trustee will be held in trust for the Charitable Beneficiary. Subject to Maryland law, the Trustee will have the authority (i) to rescind as void any vote cast by the proposed transferee prior to our discovery that the shares have been transferred to the Trust and (ii) to recast the vote in accordance with the desires of the Trustee acting for the benefit of the Charitable Beneficiary. However, if we have already taken irreversible corporate action, then the Trustee will not have the authority to rescind and recast the vote.

Within 20 days of receiving notice from us that shares of our stock have been transferred to the Trust, the Trustee will sell the shares to a person designated by the Trustee, whose ownership of the shares will not violate the above ownership limitations. Upon the sale, the interest of the Charitable Beneficiary in the shares sold will terminate and the Trustee will distribute the net proceeds of the sale to the proposed transferee and to the Charitable Beneficiary as follows. The proposed transferee will receive the lesser of (i) the price paid by the proposed transferee for the shares or, if the proposed transferee did not give a value for the shares in connection with the event causing the shares to be held in the Trust (e.g., a gift, devise or other similar transaction), the Market Price (as defined in our charter) of the shares on the day of the event causing the shares to be held in the Trust and (ii) the net proceeds received by the Trustee from the sale or other disposition of the shares. Any net sale proceeds in excess of the amount payable to the proposed transferee will be paid immediately to the Charitable Beneficiary. If, prior to our discovery that shares of our stock have been transferred to the Trust, the shares are sold by the proposed transferee, then (i) the shares shall be deemed to have been sold on behalf of the Trust and (ii) to the extent that the proposed transferee received an amount for the shares that exceeds the amount he was entitled to receive, the excess shall be paid to the Trustee upon demand.

In addition, shares of our stock held in the Trust will be deemed to have been offered for sale to us, or our designee, at a price per share equal to the lesser of (i) the price per share in the transaction that resulted in the transfer to the Trust (or, in the case of a devise or gift, the Market Price at the time of the devise or gift) and (ii) the Market Price on the date we, or our designee, accept the offer. We will have the right to accept the offer until the Trustee has sold the shares.

Upon a sale to us, the interest of the Charitable Beneficiary in the shares sold will terminate and the Trustee will distribute the net proceeds of the sale to the proposed transferee.

All certificates representing shares of our stock will bear a legend referring to the restrictions described above.

Every owner of 5% or more (or such lower percentage as required by the Code or the regulations promulgated thereunder) of our stock, within 30 days after the end of each taxable year, is required to give us written notice, stating his name and address, the number of shares of each class and series of our stock which he beneficially owns and a description of the manner in which the shares are held. Each such owner shall provide us with such additional information as we may request in order to determine the effect, if any, of his beneficial ownership on our status as a REIT and to ensure compliance with the ownership limits. In addition, each stockholder shall upon demand be required to provide us with such information as we may request in good faith in order to determine our status as a REIT and to comply with the requirements of any taxing authority or governmental authority or to determine such compliance.

These ownership limits could delay, defer or prevent a transaction or a change in control that might involve a premium price for the common stock or otherwise be in the best interest of the stockholders.

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Common Stock

Voting Rights of Common Stock

Subject to the provisions of our charter regarding the restrictions on the transfer and ownership of shares of common stock, each outstanding share of common stock generally entitles the holder to one vote on all matters submitted to a vote of stockholders, including the election of directors, and, except for certain limited voting rights of holders of the Preferred Stock and as may be provided with respect to any other subsequently issued class or series of stock, the holders of such common stock possess the exclusive voting power. There is no cumulative voting in the election of directors, which means that the holders of a majority of the outstanding common stock, voting as a single class, generally can elect all of the directors and the holders of the remaining stock are not able to elect any directors. However, in certain circumstances the holders of the Preferred Stock will have the right to elect two additional directors to serve on our board of directors. See Preferred Stock Rights of Holders of the Preferred Stock Voting Rights below.

Distributions, Liquidation and Other Rights of Common Stock

All common stock offered by this prospectus will be duly authorized, fully paid and nonassessable. Holders of common stock are entitled to receive dividends when authorized by our board of directors and declared by us out of assets legally available for dividends and to share ratably in our assets legally available for distribution to the stockholders in the event of our liquidation, dissolution or winding-up after payment of, or adequate provision for, all of our known debts and liabilities and any rights of holders of senior securities. These rights are subject to the preferential rights of any other class or series of our stock, including the Preferred Stock, and to the provisions of our charter regarding restrictions on transfer of our stock.

Holders of shares of common stock have no conversion, sinking fund, redemption, exchange or appraisal rights, and have no preemptive rights to subscribe for any of our securities.

Other Matters

The registrar and transfer agent for our common stock is Computershare Shareowner Services LLC.

Rights Plan

On November 14, 2008, our board of directors adopted a stockholder rights plan, as set forth in a Rights Agreement, dated as of November 14, 2008, between the Company and Mellon Investor Services LLC, as rights agent (the Rights Plan). Pursuant to the terms of the Rights Plan, we declared a dividend of one preferred share purchase right (a Right) for each outstanding share of our common stock. The dividend was payable on November 28, 2008 to the stockholders of record as of the close of business on November 28, 2008.

The Rights currently trade with, and are inseparable from, shares of our common stock and the registered holders of our shares of common stock are the registered holders of the Rights associated with such shares. The Rights are currently evidenced only by the certificates, if any, that represent such shares of common stock. New Rights will accompany any new shares of common stock we issue after November 28, 2008 until the earlier of the Distribution Date (as defined below), the redemption or exchange of the Rights or the final expiration of the Rights Plan, each as described below.

Each Right allows its holder to purchase from us one one-thousandth of a share of Series D Preferred Stock for \$20.00, once the Rights become exercisable. This portion of a share of Series D Preferred Stock gives the stockholder approximately the same dividend, voting, and liquidation rights as would one share of common stock. Prior to exercise, the Right does not give its holder any dividend, voting or liquidation rights.

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The Rights will not be exercisable until the earlier of the following (the "Distribution Date"):

the close of business on the tenth day after the public announcement that a person or group has become an Acquiring Person by obtaining beneficial ownership of 20% or more of our outstanding common stock; or

the close of business on the tenth business day (or a later date determined by our board of directors) after a person or group begins, or publicly announces an intent to begin, a tender or exchange offer which, if completed, would result in that person or group becoming an Acquiring Person.

After the Distribution Date, the Rights will separate from the common stock and will be evidenced solely by Rights certificates that the rights agent will mail to all eligible holders of common stock. Any Rights held by an Acquiring Person or any associate or affiliate thereof will be void and may not be exercised.

If a person or group becomes an Acquiring Person, each Right will generally entitle the holder, except the Acquiring Person or any associate or affiliate thereof, to acquire, for the exercise price of \$20.00 per Right (subject to adjustment as provided in the Rights Plan), shares of our common stock (or, in certain circumstances, shares of Series D Preferred Stock) having a market value equal to twice the Rights then-current exercise price. In addition, if, after a person or group becomes an Acquiring Person, we are acquired in a merger or similar transaction, or sell a majority of our assets, in each case, after the Distribution Date, each Right will generally entitle the holder, except the Acquiring Person or any associate or affiliate thereof, to acquire, for the exercise price of \$20.00 per Right (subject to adjustment as provided in the Rights Plan), shares of the acquiring company having a market value equal to twice the Rights then-current exercise price.

Each one one-thousandth of a share of Series D Preferred Stock, if issued:

will not be redeemable;

will entitle holders to quarterly dividend payments of \$.001 per one one-thousandth of a share of Series D Preferred Stock or an amount equal to the dividend paid on one share of common stock, whichever is greater;

will entitle holders upon liquidation either to receive \$1 per one one-thousandth of a share of Series D Preferred Stock or an amount equal to the payment made on one share of common stock, whichever is greater;

will have the same voting power as one share of common stock; and

will entitle holders to a per share payment equal to the payment made on one share of common stock, if shares of our common stock are exchanged via merger, consolidation, or a similar transaction.

The value of one one-thousandth of a share of Series D Preferred Stock will generally approximate the value of one share of common stock.

On November 24, 2009, we extended the Rights Plan through November 30, 2012.

The Rights will expire on November 30, 2012, unless previously redeemed, or such later date as determined by our board of directors.

Our board of directors may cause the Rights to be redeemed for \$.001 per Right at any time prior to the close of business on the tenth business day (or a later date determined by the Board) after any person or group becomes an Acquiring Person. If the Board redeems any Rights, it must redeem all of the Rights. Once the Rights are redeemed, the only right of the holders of Rights will be to receive the redemption price of \$.001 per Right. The redemption price will be adjusted if we have a stock split or stock dividends of our common stock.

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After a person or group becomes an Acquiring Person, but before an Acquiring Person owns 50% or more of our outstanding common stock, our board of directors may extinguish the Rights by exchanging one share of common stock or an equivalent security for each Right, other than Rights held by the Acquiring Person and its associates and affiliates.

Our board of directors may adjust the purchase price of the shares of Series D Preferred Stock, the number of shares of Series D Preferred Stock issuable and the number of outstanding Rights to prevent dilution that may occur from a stock dividend, a stock split, a reclassification of the shares of Series D Preferred Stock or common stock.

The terms of the Rights Plan may be amended by our board of directors without the consent of the holders of the Rights; however, after a person or group becomes an Acquiring Person, our board of directors may not amend the Rights Plan in a way that adversely affects holders of the Rights.

Preferred Stock

General

Subject to limitations prescribed by Maryland law and our charter, our board of directors is authorized to issue, from the authorized but unissued shares of stock, shares of preferred stock in series and to establish from time to time the number of shares of preferred stock to be included in the series and to fix the designation and any preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends and other distributions, qualifications and terms and conditions of redemption of the shares of each series.

Future Preferred Stock

A prospectus supplement relating to any series of preferred stock being offered will include specific terms relating to the offering. They will include, where applicable:

the title of the series of shares of preferred stock and the number of shares constituting that series;

the number of shares of the series of preferred stock offered, the liquidation preference per share and the offering price of the shares of preferred stock;

the dividend rate(s), period(s) and/or payment date(s) or the method(s) of calculation for those values relating to the shares of preferred stock of the series;

the date from which dividends on shares of preferred stock of the series shall cumulate, if applicable;

our right, if any, to defer payment of dividends and the maximum length of any such deferral period;

the procedures for any auction and remarketing, if any, for shares of preferred stock of the series;

the provision for a sinking fund, if any, for shares of preferred stock of the series;

the provision for redemption or repurchase, if applicable, of shares of preferred stock of the series;

any listing of the series of shares of preferred stock on any securities exchange;

the terms and conditions, if applicable, upon which shares of preferred stock of the series will be convertible into shares of preferred stock of another series or common stock, including the conversion price, or manner of calculating the conversion price;

whether the preferred stock will be exchangeable into debt securities, and, if applicable, the exchange period, the exchange price, or how it will be calculated, and under what circumstances it may be adjusted;

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voting rights, if any, of the preferred stock;

restrictions on transfer, sale or other assignment, if any;

whether interests in shares of preferred stock of the series will be represented by global securities;

any other specific terms, preferences, rights, limitations or restrictions of the series of shares of preferred stock;

a discussion of material U.S. federal income tax considerations applicable to shares of preferred stock of the series;

the relative ranking and preferences of shares of preferred stock of the series as to dividend rights and rights upon liquidation, dissolution or winding up of our affairs;

any limitations on issuance of any series of shares of preferred stock ranking senior to or on a parity with the series of shares of preferred stock as to dividend rights and rights upon liquidation, dissolution or winding up of our affairs; and

any limitations on direct or beneficial ownership and restrictions on transfer of shares of preferred stock of the series, in each case as may be appropriate to preserve our status as a REIT under the Code.