

NATIONAL RETAIL PROPERTIES, INC.

Form 424B5

February 14, 2012

Table of Contents

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

**The information in this preliminary prospectus supplement and the accompanying prospectus is not complete and may be changed. This preliminary prospectus supplement and the accompanying prospectus are not an offer to sell these securities and they are not soliciting an offer to buy these securities in any jurisdiction where the offer or sale is not permitted.**

**SUBJECT TO COMPLETION, DATED FEBRUARY 14, 2012**

PROSPECTUS SUPPLEMENT

(To Prospectus dated February 27, 2009)

## Depository Shares

**Each Representing a 1/100<sup>th</sup> Interest in a Share of**

**% Series D Cumulative Redeemable Preferred Stock**

**(Liquidation Preference Equivalent to \$25.00 per Depository Share)**

We are offering \_\_\_\_\_ depository shares each representing a 1/100<sup>th</sup> interest in a share of our \_\_\_\_\_ % Series D Cumulative Redeemable Preferred Stock, par value \$0.01 per share (the "Series D Preferred Stock"). The liquidation preference of each share of the Series D Preferred Stock is \$2,500.00 per share (equivalent to \$25.00 per depository share).

We will pay cumulative cash dividends on the Series D Preferred Stock underlying the depository shares in the amount of \$ \_\_\_\_\_ per depository share each year, which equals a dividend rate of \_\_\_\_\_ % of the \$25.00 liquidation preference per depository share. Dividends on the Series D Preferred Stock will be payable quarterly in arrears, on or about March 15, June 15, September 15 and December 15 of each year. The first dividend on the Series D Preferred Stock underlying the depository shares sold in this offering will be paid on March 15, 2012 and represents a dividend equivalent of \$ \_\_\_\_\_ per depository share.

Generally, we may not redeem the Series D Preferred Stock (or the depository shares) until February \_\_\_\_\_, 2017, except in limited circumstances to preserve our status as a real estate investment trust ("REIT"). On and after February \_\_\_\_\_, 2017, we may, at our option, redeem the Series D Preferred Stock (and the depository shares), in whole or in part, at any time or from time to time, in cash at a redemption price of \$2,500.00 per share (equivalent to \$25.00 per depository share), plus any accrued and unpaid dividends to, but not including, the date of redemption. In addition, upon the occurrence of a Change of Control (as defined herein), as a result of which neither our common stock, par value \$0.01 per share (the "common stock") nor the common securities of the acquiring or surviving entity (or American Depositary Receipts ("ADRs") representing such securities) is listed on the New York Stock Exchange, Inc. (the "NYSE"), the NYSE Amex Equities (the "NYSE Amex"), or The NASDAQ Stock Market ("NASDAQ"), or listed or quoted on a successor exchange or quotation system, we may, at our option, redeem the Series D Preferred Stock (and the depository shares), in whole or in part within 120 days after the first date on which such Change of Control occurred, by paying \$2,500.00 per share (equivalent to \$25.00 per depository share), plus any accrued and unpaid dividends to, but not including, the date of redemption. If we exercise any of our redemption rights relating to the Series D Preferred Stock (and depository shares), the holders will not have the conversion right described below. The Series D Preferred Stock has no maturity and will remain outstanding indefinitely unless redeemed or otherwise repurchased or converted into common stock in connection with a Change of Control.

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

Upon the occurrence of a Change of Control, as a result of which neither our common stock nor the common securities of the acquiring or surviving entity (or ADRs representing such securities) is listed on the NYSE, the NYSE Amex or NASDAQ or listed or quoted on a successor exchange or quotation system, each holder of depositary shares representing interests in the Series D Preferred Stock will have the right (unless, prior to the Change of Control Conversion Date (as defined herein), we have provided or provide notice of our election to redeem the Series D Preferred Stock (and depositary shares)) to direct the depositary, on such holder's behalf, to convert some or all of the Series D Preferred Stock underlying the depositary shares held by such holder on the Change of Control Conversion Date into a number of shares of our common stock per share of Series D Preferred Stock to be converted equal to the lesser of:

the quotient obtained by dividing (i) the sum of the \$2,500.00 per share (equivalent to \$25.00 per depositary share) liquidation preference plus the amount of any accrued and unpaid dividends to, but not including, the Change of Control Conversion Date (unless the Change of Control Conversion Date is after a record date for a Series D Preferred Stock dividend payment and prior to the corresponding Series D Preferred Stock dividend payment date, in which case no additional amount for such accrued and unpaid dividends will be included in this sum) by (ii) the Common Stock Price (as defined herein); and

(the Share Cap), subject to certain adjustments;

subject, in each case, to an aggregate cap on the total number of common shares issuable upon exercise of the Change of Control Conversion Right (as defined herein) and to provisions for the receipt of alternative consideration as described in this prospectus supplement. Because each depositary share represents a 1/100<sup>th</sup> interest in a share of the Series D Preferred Stock, the number of shares of common stock ultimately received for each depositary share will be equal to the number of shares of common stock received upon conversion of each share of Series D Preferred Stock divided by 100. In the event that the conversion would result in the issuance of fractional shares of common stock, we will pay the holder of depositary shares cash in lieu of such fractional shares.

We intend to apply to list the depositary shares on the NYSE under the symbol NNNPRD. If our application is approved, we expect trading of the depositary shares on the NYSE to commence within the 30-day period after the initial delivery of the depositary shares. Our common stock is listed on the NYSE under the symbol NNN. On February 13, 2012, the last reported sales price for our common stock on the NYSE was \$27.01 per share.

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

	Per Depositary Share	Total
Public Offering Price <sup>(1)</sup>	\$	\$
Underwriting Discount	\$	\$
Proceeds to National Retail Properties, Inc. (before expenses)	\$	\$

<sup>(1)</sup> Plus accrued dividends, if any, from February 1, 2012.

We have granted the underwriters an option to purchase up to \_\_\_\_\_ additional depositary shares within 30 days from the date of this prospectus supplement at the public offering price per depositary share.

**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.**

*Joint Book-Running Managers*

**BofA Merrill Lynch**

**Citigroup**

**Wells Fargo Securities**

**RBC Capital Markets**

*Lead Managers*

**Raymond James**

**Stifel Nicolaus Weisel**

*Senior Co-Managers*

**BB&T Capital Markets**

**Janney Montgomery Scott**

**Morgan Keegan**

*Co-Managers*

**Capital One Southcoast  
Piper Jaffray  
SunTrust Robinson Humphrey**

**FBR Capital Markets  
PNC Capital Markets LLC**

The date of this prospectus supplement is February , 2012.

**Table of Contents**

*(continued from front cover)*

The shares of Series D Preferred Stock represented by the depositary shares will be deposited with American Stock Transfer & Trust Company, as depositary. As a holder of depositary shares, you will be entitled to all proportional rights, preferences and privileges of the Series D Preferred Stock represented thereby, including dividend, voting, redemption, conversion and liquidation rights and preferences. Holders of depositary shares representing interests in the Series D Preferred Stock generally have no voting rights, except if we fail to pay dividends for six or more quarterly periods, whether or not declared or consecutive, or as required by law. The Series D Preferred Stock is not subject to any sinking fund. The Series D Preferred Stock will rank senior to our common stock, with respect to dividend rights and rights upon liquidation, dissolution or winding up.

The underwriters expect to deliver the depositary shares to purchasers on or about February , 2012 through the book-entry facilities of The Depository Trust Company.

**Table of Contents**

**TABLE OF CONTENTS**

	<b>Page</b>
<b>Prospectus Supplement</b>	
<u>About this Prospectus Supplement</u>	S-i
<u>Forward-Looking Statements</u>	S-ii
<u>Summary</u>	S-1
<u>Risk Factors</u>	S-8
<u>Use of Proceeds</u>	S-11
<u>Ratio of Earnings to Combined Fixed Charges and Preferred Stock Dividends</u>	S-12
<u>Description of Series D Preferred Stock and Depositary Shares</u>	S-13
<u>Supplemental Material United States Federal Income Tax Considerations</u>	S-24
<u>Underwriting</u>	S-26
<u>Legal Matters</u>	S-31
<u>Experts</u>	S-31
<u>Where You Can Find More Information</u>	S-31
<b>Prospectus</b>	
<u>About this Prospectus</u>	1
<u>Risk Factors</u>	2
<u>Forward-Looking Statements</u>	2
<u>Where You Can Find More Information</u>	3
<u>National Retail Properties, Inc.</u>	5
<u>Use of Proceeds</u>	5
<u>Ratios of Earnings to Fixed Charges and Preferred Stock Dividends</u>	6
<u>Description of Debt Securities</u>	7
<u>Description of Preferred Stock</u>	18
<u>Description of Depositary Shares</u>	24
<u>Description of Common Stock</u>	27
<u>Description of Warrants</u>	30
<u>Federal Income Tax Considerations</u>	31
<u>Plan of Distribution</u>	48
<u>Legal Matters</u>	49
<u>Experts</u>	49

**Table of Contents**

**ABOUT THIS PROSPECTUS SUPPLEMENT**

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

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

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

**Table of Contents**

**FORWARD-LOOKING STATEMENTS**

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

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

our ability to locate suitable tenants for our properties;

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

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

our ability to successfully implement our selective acquisition strategy;

our ability to sell properties at an attractive price;

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

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

our ability to repay debt financing obligations;

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

the loss of any member of our management team;

our ability to be in compliance with certain debt covenants;

our ability to integrate acquired properties and operations into existing operations;

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

continued availability of debt or equity capital, as needed, to meet our liquidity needs;

the availability of other debt and equity financing alternatives;

volatility and general market conditions affecting our sources and costs of capital;

changes in interest rates under our credit facility and under any additional variable rate debt arrangements that we may enter into in the future;

our ability to maintain internal controls and processes to ensure all transactions are accounted for properly, all relevant disclosures and filings are timely made in accordance with all rules and regulations, and any potential fraud or embezzlement is thwarted or detected;

changes in accounting rules or the application or interpretation of such rules;

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

changes in federal or state tax rules or regulations that could have adverse tax consequences; and

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

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



**Table of Contents****SUMMARY**

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

**The Company**

We acquire, own, invest in and develop properties that are leased primarily to retail tenants under long-term net leases and held primarily for investment. As of December 31, 2011, we owned 1,422 properties, including 11 properties with retail operations that we operate, with an aggregate gross leasable area of approximately 16.4 million square feet, located in 47 states. Approximately 97.4% of our properties was leased or operated as of December 31, 2011.

We are a fully integrated real estate investment trust ( REIT ) for U.S. federal income tax purposes, formed in 1984.

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

**Recent Developments****Preliminary Financial Results**

On February 6, 2012, we announced our preliminary financial results for the quarter and year ended December 31, 2011. The following is a summary of the results announced, which results are unaudited and do not include all the information that will be contained in our audited financial statements for these periods, including the notes related thereto. We have not yet finalized our financial results for the quarter and year ended December 31, 2011, therefore information regarding these periods is subject to adjustments that could be material as we finalize our results.

	Quarter Ended December 31,		Year Ended December 31,	
	2011	2010	2011	2010
	(in thousands, except per share data)			
Revenues	\$ 74,400	\$ 59,516	\$ 265,793	\$ 227,888
Net earnings available to common stockholders	\$ 25,874	\$ 12,519	\$ 85,540	\$ 66,212
Net earnings per common share (diluted)	\$ 0.26	\$ 0.15	\$ 0.96	\$ 0.80

	December 31, 2011	December 31, 2010
	(in thousands)	
<b>Balance Sheet Summary</b>		
Total assets	\$ 3,434,429	\$ 2,713,575
Total liabilities	\$ 1,430,553	\$ 1,184,801
Total equity	\$ 2,003,876	\$ 1,528,774

**Common Dividend**

On January 13, 2012, we announced that our Board of Directors declared a quarterly cash dividend of 38.5 cents per share payable on February 15, 2012 to common stockholders of record as of January 31, 2012. The dividend represents an annualized rate of \$1.54 per share.

**Table of Contents*****Financing Update***

On December 5, 2011, we issued and sold 8,050,000 shares of our common stock pursuant to an underwritten public offering. We used the approximately \$198.2 million of net proceeds from the offering to repay the amount outstanding under our credit facility, to fund future property acquisitions and for general corporate purposes.

***Acquisitions Update***

In the three months ended December 31, 2011, we completed the acquisition of approximately \$327.1 million in our property portfolio, which includes 111 properties with an aggregate 975,000 square feet of gross leasable area.

***New Director***

On February 6, 2012, our Board of Directors appointed, pursuant to the recommendation of our Governance and Nominating Committee, Edward J. Fritsch to our Board of Directors, effective February 9, 2012. Mr. Fritsch, 53, is President, Chief Executive Officer and Director of Highwoods Properties, Inc., a real estate investment trust publicly traded on the NYSE.

**Ratio of Earnings to Combined Fixed Charges and Preferred Stock Dividends**

The table below sets forth our ratio of earnings to combined fixed charges and preferred stock dividends for the periods indicated. See Ratio of Earnings to Combined Fixed Charges and Preferred Stock Dividends in this prospectus supplement.

	<b>Nine Months</b>		<b>Year Ended December 31,</b>			
	<b>Ended</b>					
	<b>September</b>	<b>2010</b>	<b>2009</b>	<b>2008</b>	<b>2007</b>	<b>2006</b>
	<b>30,</b>					
	<b>2011</b>					
Ratio of Earnings to Combined Fixed Charges and Preferred Stock Dividends	1.88	1.81	1.61	2.01	1.85	1.69

**Table of Contents**

**The Offering**

The following is a brief summary of certain terms of this offering. For a more complete description of the terms of the depositary shares and the underlying Series D Preferred Stock, see "Description of Series D Preferred Stock and Depositary Shares" in this prospectus supplement and "Description of Preferred Stock" and "Description of Depositary Shares" in the accompanying prospectus.

Issuer	National Retail Properties, Inc.
Securities Offered	<p>depositary shares (                      depositary shares if the underwriters exercise their option to purchase additional depositary shares in full), each representing a 1/100<sup>th</sup> interest in a share of                      % Series D Cumulative Redeemable Preferred Stock (the "Series D Preferred Stock"). We reserve the right to re-open this series and issue additional depositary shares representing interests in the Series D Preferred Stock either through public or private sales at any time or from time to time.</p>
Dividends	<p>We will pay cumulative cash dividends on the Series D Preferred Stock underlying the depositary shares at the fixed rate of \$                      per depositary share each year, which is equivalent to                      % of the \$25.00 liquidation preference per depositary share. Dividends on the Series D Preferred Stock will be payable quarterly in arrears on or about March 15, June 15, September 15 and December 15 of each year. The first dividend on the Series D Preferred Stock sold in this offering will be paid on March 15, 2012 and will be in the amount of \$                      per share of Series D Preferred Stock, which represents a dividend of \$                      per depositary share.</p>
No Maturity	<p>The Series D Preferred Stock has no maturity date. We are not required to redeem the Series D Preferred Stock or the depositary shares and are not required to set aside funds to redeem the Series D Preferred Stock or the depositary shares. Accordingly, the Series D Preferred Stock and the depositary shares will remain outstanding indefinitely unless we decide to redeem the Series D Preferred Stock and the depositary shares at our option or, under limited circumstances where the holders of the depositary shares representing interests in the Series D Preferred Stock have a conversion right, the holders of the depositary shares direct the depositary to convert the Series D Preferred Stock into our common stock.</p>
Optional Redemption	<p>We may not redeem the Series D Preferred Stock underlying the depositary shares prior to                      , 2017, except as described below under "Special Optional Redemption" and in limited circumstances relating to our continuing qualification as a REIT. At any time on and after                      , 2017, we may, at our option, redeem the Series D Preferred Stock, in whole or from time to time in part, by paying \$2,500.00 per share (equivalent to \$25.00 per depositary share), plus any accrued and unpaid dividends to, but not including, the date of redemption. We refer to this redemption as an "optional redemption."</p>

---

**Table of Contents**

Special Optional Redemption

Upon the occurrence of a Change of Control (as defined below), we may, at our option, redeem the Series D Preferred Stock underlying the depositary shares, in whole or in part and within 120 days after the first date on which such Change of Control occurred, by paying \$2,500.00 per share (equivalent to \$25.00 per depositary share), plus any accrued and unpaid dividends to, but not including, the date of redemption. We refer to this redemption as a special optional redemption. If, prior to the Change of Control Conversion Date (as defined herein), we have provided or provide notice of exercise of any of our redemption rights relating to the Series D Preferred Stock (whether our optional redemption right or our special optional redemption right), the holders of depositary shares representing interests in the Series D Preferred Stock will not have the conversion right described below.

A Change of Control is when, after the original issuance of the Series D Preferred Stock, the following have occurred and are continuing:

the acquisition by any person, including any syndicate or group deemed to be a person under Section 13(d)(3) of the Exchange Act, of beneficial ownership, directly or indirectly, through a purchase, merger or other acquisition transaction or series of purchases, mergers or other acquisition transactions of shares of our Company entitling that person to exercise more than 50% of the total voting power of all shares of our Company entitled to vote generally in elections of directors (except that such person will be deemed to have beneficial ownership of all securities that such person has the right to acquire, whether such right is currently exercisable or is exercisable only upon the occurrence of a subsequent condition); and

following the closing of any transaction referred to in the bullet point above, neither we nor the acquiring or surviving entity has a class of common securities (or ADRs representing such securities) listed on the NYSE, the NYSE Amex or NASDAQ, or listed or quoted on an exchange or quotation system that is a successor to the NYSE, the NYSE Amex or NASDAQ.

Conversion Rights

Upon the occurrence of a Change of Control, each holder of depositary shares representing interests in the Series D Preferred Stock will have the right (unless, prior to the Change of Control Conversion Date, we have provided or provide notice of our election to redeem the Series D Preferred Stock) to direct the depositary, on such holder's behalf, to convert some or all of the Series D Preferred Stock underlying the depositary shares held by such holder on the Change of Control Conversion Date into a number of shares of our common stock (or equivalent value of alternative consideration) per share of Series D Preferred Stock to be converted equal to the lesser of:

the quotient obtained by dividing (1) the sum of the \$2,500.00 per share (equivalent to \$25.00 per depositary share) liquidation preference plus the amount of any accrued and unpaid dividends to, but not including, the Change of Control Conversion Date (unless

**Table of Contents**

the Change of Control Conversion Date is after a record date for a Series D Preferred Stock dividend payment and prior to the corresponding Series D Preferred Stock dividend payment date, in which case no additional amount for such accrued and unpaid dividends will be included in this sum) by (2) the Common Stock Price (as defined herein); and

(i.e., the Share Cap), subject to certain adjustments;

and subject, in each case, to an aggregate cap on the total number of shares of common stock (or alternative conversion consideration, as applicable) issuable upon exercise of the Change of Control Conversion Right of \_\_\_\_\_ shares of common stock (or equivalent alternative conversion consideration, as applicable), and subject, in each case, to provisions for the receipt of alternative consideration as described in this prospectus supplement.

If, prior to the Change of Control Conversion Date, we have provided or provide a redemption notice, whether pursuant to our special optional redemption right in connection with a Change of Control or our optional redemption right, holders of depositary shares representing interests in the Series D Preferred Stock will not have any right to direct the depositary to convert the Series D Preferred Stock in connection with the Change of Control Conversion Right (as defined herein) and any Series D Preferred Stock subsequently selected for redemption that has been tendered for conversion will be redeemed on the related date of redemption instead of converted on the Change of Control Conversion Date.

Because each depositary share represents a 1/100<sup>th</sup> interest in a share of the Series D Preferred Stock, the number of shares of common stock ultimately received for each depositary share will be equal to the number of shares of common stock received upon conversion of each share of Series D Preferred Stock divided by 100. In the event that the conversion would result in the issuance of fractional shares of common stock, we will pay the holder of depositary shares cash in lieu of such fractional shares.

For definitions of Change of Control Conversion Right, Change of Control Conversion Date and Common Stock Price and for a description of the adjustments and provisions for the receipt of alternative consideration that may be applicable to the Change of Control Conversion Right, see Description of the Series D Preferred Stock and Depositary Shares Conversion Rights.

Except as provided above in connection with a Change of Control, shares of the Series D Preferred Stock are not convertible into or exchangeable for any other securities or property.

Liquidation Preference

If we liquidate, dissolve or wind up, the holders of the depositary shares representing interests in the Series D Preferred Stock will have the right to receive \$25.00 per depositary share, plus any accrued and unpaid dividends to, but not including, the date of payment, before



**Table of Contents**

any payments are made to the holders of our common stock or any other equity securities that rank junior to the Series D Preferred Stock with respect to the payment of dividends and the distribution of assets in the event of our liquidation, dissolution or winding up.

Ranking

The Series D Preferred Stock underlying the depositary shares will, with respect to the payment of dividends and the distribution of assets in the event of our liquidation, dissolution or winding up, rank:

senior to our common stock and any other of our equity securities that we may later authorize or issue that by their terms rank junior to the Series D Preferred Stock;

on a parity with shares of our 7.375% Series C Cumulative Redeemable Preferred Stock, par value \$0.01 per share (the Series C Preferred Stock ), and with other series of our preferred stock or any other of our equity securities that we may later authorize or issue and that by their terms are on a parity with the Series D Preferred Stock (collectively, the Parity Preferred Stock ); and

junior to all of our existing and future indebtedness and any equity securities that we may later authorize or issue and that by their terms rank senior to the Series D Preferred Stock.

The terms of the Series D Preferred Stock do not limit our ability to (i) incur indebtedness that is senior to the Series D Preferred Stock or (ii) issue additional capital stock that is equal in rank therewith.

Voting Rights

Holders of the depositary shares representing interests in the Series D Preferred Stock will generally have no voting rights. However, if we do not pay dividends on any outstanding Series D Preferred Stock for six or more quarterly periods, whether or not declared or consecutive, holders of depositary shares representing interests in the Series D Preferred Stock, voting separately as a class with all other series of preferred stock upon which like voting rights have been conferred and are exercisable, will be entitled to vote for the election of two additional directors to serve on our board of directors to serve until we pay, or declare and set aside for payment, all dividends which we owe on the depositary shares representing interests in the Series D Preferred Stock. In addition, the affirmative vote of the holders of at least 66<sup>2</sup>/<sub>3</sub>% of the outstanding shares of Series D Preferred Stock and any shares of outstanding Parity Preferred Stock upon which like voting rights have been conferred is required for us to authorize, create or increase shares ranking senior to the Series D Preferred Stock or to effect certain amendments to our articles of incorporation that would materially and adversely affect the terms of the Series D Preferred Stock. Among other things, we may, without any vote of the holders of the depositary shares representing interests in the Series D Preferred Stock, authorize and issue additional shares of Series D Preferred Stock and Parity Preferred Stock. See Description of Series D Preferred Stock and Depositary Shares Voting Rights in this prospectus supplement.

In any matter in which the Series D Preferred Stock may vote, each depositary share will be entitled to 1/100<sup>th</sup> of a vote.





**Table of Contents**

Restrictions on Ownership	In order to assist us in maintaining our qualification as a REIT for U.S. federal income tax purposes, our articles of incorporation contain certain restrictions and limitations on ownership and transfer, including the limitation that no person may own, or be deemed to own by virtue of the attribution rules under the Internal Revenue Code of 1986, as amended (the Code), more than 9.8% of the value of our outstanding capital stock, subject to certain exceptions.
Listing	We intend to apply to list the depositary shares representing interests in the Series D Preferred Stock on the NYSE under the symbol NNNPRD. If our application is approved, we expect trading of the depositary shares on the NYSE to commence within the 30-day period after the initial delivery of the depositary shares.
Use of Proceeds	We estimate that the net proceeds of this offering, after deducting the underwriting discount and other estimated offering expenses payable by us, will be approximately \$ million (approximately \$ million if the underwriters exercise their over-allotment option in full). We intend to use the net proceeds of this offering for general corporate purposes, which may include redeeming our outstanding preferred securities and repaying the outstanding indebtedness under our credit facility. See Use of Proceeds in this prospectus supplement.
Risk Factors	See Risk Factors beginning on page S-8 of this prospectus supplement and beginning on page 8 of our Annual Report on Form 10-K for the year ended December 31, 2010, and other information included or incorporated by reference in this prospectus supplement and the accompanying prospectus for a discussion of the factors you should carefully consider before deciding to invest in the depositary shares and the Series D Preferred Stock.
Certain Federal Tax Considerations	Certain federal income tax considerations of purchasing, owning and disposing of the depositary shares representing interests in the Series D Preferred Stock are summarized in Supplemental Material United States Federal Income Tax Considerations in this prospectus supplement, which supplements the discussion under the heading Federal Income Tax Considerations in the accompanying prospectus.

---

**Table of Contents**

**RISK FACTORS**

*Investment in the depositary shares representing interests in the Series D Preferred Stock offered pursuant to this prospectus supplement and the accompanying prospectus involves risks. You should carefully consider the risks described below, as well as the risks described in the documents incorporated by reference in this prospectus supplement and the accompanying prospectus, before making a decision to invest in the depositary shares representing interests in the Series D Preferred Stock. These risks are not the only ones faced by us. The trading price of the depositary shares could decline due to any of these risks, and you may lose all or part of your investment. This prospectus supplement and the accompanying prospectus and the documents incorporated herein and therein by reference also contain forward-looking statements that involve risks and uncertainties. Actual results could differ materially from those anticipated in these forward-looking statements as a result of certain factors, including the risks faced by us described below and in the documents incorporated herein by reference, particularly our Annual Report on Form 10-K for the fiscal year ended December 31, 2010.*

**There is no established market for the depositary shares representing interests in the Series D Preferred Stock and the market value of the depositary shares could be substantially affected by various factors.**

The depositary shares are a new issue of securities with no established trading market. We intend to apply to list the depositary shares on the NYSE. We cannot assure you that our listing application will be approved by the NYSE. However, even if approved for listing by the NYSE, an active trading market on the NYSE for the depositary shares may not develop or last, in which case the trading price of the depositary shares could be adversely affected. If an active trading market does develop on the NYSE, the depositary shares may trade at prices higher or lower than their initial offering price.

The trading price of our depositary shares would also depend on many factors, including:

prevailing interest rates;

the market for similar securities;

general economic and financial market conditions;

our issuance of additional preferred equity or debt securities;

our financial condition, results of operations and prospects; and

the matters discussed in this prospectus supplement under the captions *Risk Factors* and *Forward-Looking Statements* and similar information contained in the documents incorporated herein by reference, particularly our Annual Report on Form 10-K for the fiscal year ended December 31, 2010.

We have been advised by some of the underwriters that they intend to make a market in our depositary shares, but they are not obligated to do so and may discontinue market-making at any time without notice.

**The Series D Preferred Stock will be subordinate to our existing and future indebtedness, and your interests could be diluted by the issuance of additional preferred stock, or depositary shares representing interests in preferred stock, and by other transactions.**

The Series D Preferred Stock will be subordinate to all of our, and our subsidiaries', existing and future indebtedness and to other non-equity claims on us and our assets available to satisfy claims against us, including claims in bankruptcy, liquidation or similar proceedings. Our credit facility and our other debt instruments may, from time to time, include restrictions on our ability to pay dividends to preferred stockholders. Our articles of incorporation currently authorizes the issuance of up to 15,000,000 shares of preferred stock in one or more series. As of February 13, 2012, 3,680,000 depositary shares each representing a 1/100<sup>th</sup> interest in a share of the Series C Preferred Stock were issued and outstanding,

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

which rank on a parity with the Series D Preferred Stock. In addition, our board of directors has the power under our articles of incorporation to classify any of our unissued preferred stock, and to reclassify any of our previously classified but unissued preferred stock of any series, from time to time, in one or more series of preferred stock. The issuance of additional preferred stock, or

S-8

## **Table of Contents**

depository shares representing interests in preferred stock, on a parity with (or, upon the affirmative vote of the holders of at least 66<sup>2/3</sup>% of the outstanding depository shares representing interests in the Series D Preferred Stock and Parity Preferred Stock upon which similar voting rights have been or are in the future conferred, voting as a single class, senior to) the Series D Preferred Stock would dilute the interests of the holders of the depository shares representing interests in the Series D Preferred Stock, and any issuance of preferred stock senior to the Series D Preferred Stock or of additional indebtedness could affect our ability to pay dividends on, redeem or pay the liquidation preference on the Series D Preferred Stock. Other than the conversion right afforded to holders of the depository shares representing interests in the Series D Preferred Stock that may occur in connection with a Change of Control as described under [Description of the Series D Preferred Stock and Depository Shares](#) [Conversion Rights](#) below, none of the provisions relating to the Series D Preferred Stock relate to or limit our indebtedness or afford the holders of the depository shares representing interests in the Series D Preferred Stock protection in the event of a highly leveraged or other transaction, including a merger or the sale, lease or conveyance of all or substantially all our assets or business, that might adversely affect such holders, so long as the rights of such holders are not materially and adversely affected.

### **We expect at least one rating agency to rate the Series D Preferred Stock below investment grade.**

Because we expect at least one rating agency to assign the Series D Preferred Stock underlying the depository shares a non-investment grade rating, the depository shares representing interests in the Series D Preferred Stock may be subject to a higher risk of price volatility than similar, higher-rated securities. Furthermore, increases in leverage or deteriorating outlooks for an issuer, or volatile markets, could lead to continued significant deterioration in market prices of below-investment grade rated securities. Ratings only reflect the views of the issuing rating agency or agencies and such ratings could at any time be revised downward or withdrawn entirely at the discretion of the issuing rating agency. Further, a rating is not a recommendation to purchase, sell or hold any particular security, including the Series D Preferred Stock and the depository shares. In addition, ratings do not reflect market prices or suitability of a security for a particular investor and any rating of the Series D Preferred Stock may not reflect all risks related to the Company and its business, or the structure or market value of the Series D Preferred Stock and the depository shares.

### **As a holder of depository shares representing interests in the Series D Preferred Stock, you have extremely limited voting rights.**

Your voting rights as a holder of depository shares will be limited. Our common stock is the only class of our securities that carries full voting rights. Voting rights for holders of depository shares will exist primarily with respect to the ability to elect (together with the holders of Parity Preferred Stock, including our Series C Preferred Stock, upon which similar voting rights have been or are in the future conferred) two additional directors to our board of directors in the event that six quarterly dividends (whether or not declared or consecutive) payable on the Series D Preferred Stock are in arrears, and with respect to voting on amendments to our articles of incorporation or articles supplementary (in some cases voting together with the holders of Parity Preferred Stock as a single class) that materially and adversely affect the rights of the holders of depository shares representing interests in the Series D Preferred Stock (and applicable Parity Preferred Stock) or create additional classes or series of our stock that are senior to the Series D Preferred Stock, provided that in any event adequate provision for redemption has not been made. Other than the limited circumstances described in this prospectus supplement, holders of depository shares will not have any voting rights. See [Description of the Series D Preferred Stock](#) [Voting Rights](#).

### **Our ability to pay dividends is limited by the requirements of Maryland law.**

Our ability to pay dividends on the Series D Preferred Stock is limited by the laws of Maryland. Under Maryland General Corporation Law, a Maryland corporation may not make a distribution if, after giving effect to the distribution, the corporation would not be able to pay its debts as the debts become due in the usual course of business, or the corporation's total assets would be less than the sum of its total liabilities plus the amount that would be needed, if the corporation were dissolved at the time of the distribution, to satisfy the preferential rights

**Table of Contents**

upon dissolution of shareholders whose preferential rights are superior to those receiving the distribution. Accordingly, we may not make a distribution on the Series D Preferred Stock if, after giving effect to the distribution, we would not be able to pay our debts as they become due in the usual course of business or our total assets would be less than the sum of our total liabilities plus the amount that would be needed to satisfy the preferential rights upon dissolution of the holders of any shares of the preferred shares then outstanding, if any, with preferences senior to those of the Series D Preferred Stock.

**We cannot assure you that we will be able to pay dividends regularly.**

Our ability to pay dividends in the future is dependent on our ability to operate profitably and to generate cash from our operations and the operations of our subsidiaries. We cannot guarantee that we will be able to pay dividends on a regular quarterly basis in the future. Furthermore, any new shares of common stock issued will substantially increase the cash required to continue to pay cash dividends at current levels. Any common stock or preferred stock that may in the future be issued to finance acquisitions, upon exercise of stock options or otherwise, would have a similar effect.

**The change of control conversion feature may not adequately compensate you, and the change of control conversion and redemption features of the Series D Preferred Stock may make it more difficult for a party to take over our company and may discourage a party from taking over our company.**

Upon the occurrence of a change of control the result of which our common stock and the common securities of the acquiring or surviving entity (or ADRs representing such securities) are not listed on the NYSE, the NYSE Amex or NASDAQ, or listed or quoted on an exchange or quotation system that is a successor to the NYSE, the NYSE Amex or NASDAQ, holders of the depositary shares representing interests in the Series D Preferred Stock will have the right (unless, prior to the Change of Control Conversion Date, we have provided or provide notice of our election to redeem the Series D Preferred Stock) to direct the depositary to convert some or all of the Series D Preferred Stock underlying their depositary shares into our common stock (or equivalent value of alternative consideration) and under these circumstances we will also have a special optional redemption right to redeem the Series D Preferred Stock. See Description of the Series D Preferred Stock Conversion Rights and Special Optional Redemption. Upon such a conversion, the holders will be limited to a maximum number of shares of our common stock equal to the Share Cap multiplied by the number of shares of Series D Preferred Stock converted. If the Common Stock Price is less than \$ (which is approximately % of the per share closing sale price of our common stock on February , 2012), subject to adjustment, the holders will receive a maximum of shares of our common stock per share of Series D Preferred Stock, which may result in a holder receiving value that is less than the liquidation preference of the Series D Preferred Stock. In addition, those features of the Series D Preferred Stock may have the effect of inhibiting a third party from making an acquisition proposal for our company or of delaying, deferring or preventing a change of control of our company under circumstances that otherwise could provide the holders of our common stock and depositary shares representing interests in the Series D Preferred Stock with the opportunity to realize a premium over the then-current market price or that stockholders may otherwise believe is in their best interests.

**Table of Contents**

**USE OF PROCEEDS**

We estimate that the net proceeds from this offering will be approximately \$      million (\$      million if the underwriters exercise their over-allotment option in full), after deducting the underwriting discount and other estimated expenses of this offering payable by us. We intend to use the net proceeds of this offering for general corporate purposes, which may include redeeming our preferred securities and repaying the outstanding indebtedness under our credit facility.

As of February 13, 2012, 3,680,000 depositary shares each representing a 1/100<sup>th</sup> interest in a share of the Series C Preferred Stock were outstanding. As of October 12, 2011, the Series C Preferred Stock became redeemable at any time at our option, in whole or in part, from time to time, at a redemption price of \$2,500.00 per share (equivalent to \$25.00 per depositary share), plus all dividends accrued and unpaid, whether or not declared, on the Series C Preferred Stock up to, but not including, the redemption date. As of February 13, 2012, the price to redeem all outstanding shares of Series C Preferred Stock was \$92,000,000. Borrowings outstanding under the credit facility were \$87.2 million as of February 13, 2012, and currently accrue interest at a rate of 1.76%. The credit facility expires on May 24, 2015, unless we exercise our option to extend the termination date by one year. Affiliates of Citigroup Global Markets Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated, Wells Fargo Securities, LLC, RBC Capital Markets, LLC and certain of the other underwriters in this offering are lenders under the credit facility and will receive their proportionate share of any amount repaid under the credit facility with net proceeds from this offering. Pending application of the net proceeds, we may invest the net proceeds in short-term income-producing investments. See Underwriting Conflicts of Interest in this prospectus supplement.

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

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

	Nine Months		Year Ended December 31,			
	Ended September 30, 2011	2010	2009	2008	2007	2006
Ratio of Earnings to Combined Fixed Charges and Preferred Stock Dividends	1.88	1.81	1.61	2.01	1.85	1.69

For the purpose of computing these ratios, earnings have been calculated by taking pre-tax income from continuing operations before adjustment for income from equity investees and adding fixed charges, distributed income of equity investees and subtracting capitalized interest. Fixed charges consist of the sum of interest costs, whether expensed or capitalized, and amortized premiums, discounts and capitalized expenses related to indebtedness. Preferred stock dividends are the amount of pre-tax earnings that are required to pay the dividends on outstanding preferred securities.

---

**Table of Contents**

**DESCRIPTION OF SERIES D PREFERRED STOCK AND DEPOSITARY SHARES**

*The following is a summary of the material terms and provisions of the Series D Preferred Stocks and depositary shares. The statements below describing our Series D Preferred Stock are in all respects subject to and qualified in their entirety by reference to the applicable provisions of our articles of incorporation, including the articles supplementary establishing the Series D Preferred Stock, and our bylaws, each of which is available from us as described in the "Where You Can Find More Information" section of this prospectus supplement and is incorporated by reference in this prospectus supplement. This description of the particular terms of the Series D Preferred Stock supplements the description of the general terms and provisions of our preferred stock set forth in the accompanying prospectus under "Description of Preferred Stock." The statements below describing our depositary shares are in all respects subject to and qualified in their entirety by reference to the Deposit Agreement, which will be filed with the SEC. This description of the particular terms of the depositary shares supplements the description of the general terms and provisions of depositary shares set forth in the accompanying prospectus under "Description of Depositary Shares." In the event of a conflict between this prospectus supplement and the accompanying prospectus, this prospectus supplement will govern.*

**General**

Under our articles of incorporation, we are authorized to issue up to 190,000,000 shares of common stock, par value \$0.01 per share, and 15,000,000 shares of preferred stock, par value \$0.01 per share. As of February 13, 2012, we had 105,192,104 shares of common stock outstanding and 3,680,000 depositary shares each representing a 1/100<sup>th</sup> interest in a share of Series C Preferred Stock outstanding.

Shares of preferred stock may be offered and sold from time to time, in one or more series, as authorized by our board of directors. Our board of directors is authorized under Maryland law and our articles of incorporation to set for each series of preferred stock the terms, preferences, conversion or other rights, voting powers, restrictions, limitations as to distributions, qualifications and terms or conditions of redemption. The Series D Preferred Stock is being issued pursuant to articles supplementary to our articles of incorporation that sets forth the terms of a series of preferred stock consisting of up to \_\_\_\_\_ shares, designated \_\_\_\_\_ % Series D Cumulative Redeemable Preferred Stock. Our board of directors may authorize the issuance and sale of additional shares of Series D Preferred Stock from time to time without the consent of existing holders of the depositary shares representing interests in the Series D Preferred Stock.

Each depositary share represents a 1/100<sup>th</sup> interest in a share of Series D Preferred Stock. The Series D Preferred Stock underlying the depositary shares will be deposited with American Stock Transfer & Trust Company, as depositary, under a deposit agreement among us, the depositary and the holders from time to time of the depositary shares. The depositary shares will be evidenced by depositary receipts issued pursuant to the deposit agreement. Subject to the terms of the deposit agreement, each record holder of depositary receipts evidencing depositary shares will be entitled to a proportional fractional interest (i.e., 1/100<sup>th</sup>) to all the rights and preferences of, and subject to all of the limitations of, the Series D Preferred Stock underlying the depositary shares (including dividend, voting, redemption, conversion and liquidation rights and preferences).

**Ranking**

The Series D Preferred Stock underlying the depositary shares will, with respect to the payment of dividends and the distribution of assets in the event of our liquidation, dissolution or winding up, rank:

senior to our common stock and any other of our equity securities that we may later authorize or issue that by their terms rank junior to the Series D Preferred Stock;

on a parity with shares of our 7.375% Series C Cumulative Redeemable Preferred Stock, par value \$0.01 per share (the "Series C Preferred Stock"), and with other series of our preferred stock or any other of our equity securities that we may later authorize or issue and that by their terms are on a parity with the Series D Preferred Stock (collectively, the "Parity Preferred Stock"); and



---

## Table of Contents

junior to any equity securities that we may later authorize or issue and that by their terms rank senior to the Series D Preferred Stock. The term equity securities does not include convertible debt securities, which will rank senior to the Series D Preferred Stock prior to conversion. In addition, the Series D Preferred Stock will be junior to all of our existing and future indebtedness and all of the existing or future indebtedness of our subsidiaries.

### **Dividends**

Holders of depositary shares representing interests in the Series D Preferred Stock will be entitled to receive, when and as authorized by our board of directors, out of funds legally available for the payment of dividends, cumulative cash dividends at the rate of % per annum of the \$2,500.00 per share (equivalent to \$25.00 liquidation preference per depositary share) liquidation preference, equivalent to \$ per annum per share (or \$ per annum per depositary share). Dividends on the Series D Preferred Stock will accrue and be cumulative from and including February , 2012, the date of original issue by us of the Series D Preferred Stock. Dividends will be payable quarterly in arrears on or about March 15, June 15, September 15 and December 15 of each year (or, if not a business day, the next succeeding business day). We refer to each such date as a Dividend Payment Date. The first dividend on the Series D Preferred Stock sold in this offering will be paid on March 15, 2012, which will be for less than a full quarter, and will be in the amount of \$ per share (or \$ per depositary share).

Any dividend, including any dividend payable on the Series D Preferred Stock for any partial dividend period, will be computed on the basis of a 360-day year consisting of twelve 30-day months. Dividends are payable to holders of record of depositary shares as they appear in the depositary's records at the close of business on the applicable record date, which will be the date that our board of directors designates for the payment of a dividend that is not more than 30 nor less than 10 days prior to the dividend payment date, which date we refer to as a dividend payment record date.

Our board of directors will not authorize, pay or set apart for payment by us any dividend on the Series D Preferred Stock at any time that:

the terms and provisions of any of our agreements, including any agreement relating to our indebtedness, prohibits such authorization, payment or setting apart for payment;

the terms and provisions of any of our agreements, including any agreement relating to our indebtedness, provides that such authorization, payment or setting apart for payment would constitute a breach of, or a default under, such agreement; or

the law restricts or prohibits the authorization or payment.

We may become a party to agreements that restrict or prevent the payment of dividends on, or the purchase or redemption of, our shares. Under certain circumstances, these agreements could restrict or prevent the payment of dividends on or the purchase or redemption of Series D Preferred Stock. These restrictions may be indirect (for example, covenants requiring us to maintain specified levels of net worth or assets) or direct. We do not believe that these restrictions currently have any adverse impact on our ability to pay dividends on the Series D Preferred Stock.

Notwithstanding the foregoing, dividends on the Series D Preferred Stock will accrue whether or not:

the terms and provisions of any of our agreements, including any agreement relating to our indebtedness, prohibits such authorization, payment or setting apart for payment;

we have earnings;

there are funds legally available for the payment of the dividends; or

the dividends are authorized.

S-14

## **Table of Contents**

Accrued but unpaid dividends on the Series D Preferred Stock will not bear additional interest, and the holders of depositary shares representing interests in the Series D Preferred Stock will not be entitled to any dividends in excess of full cumulative dividends as described above.

Any dividend payment made on the Series D Preferred Stock, including any capital gain dividends, will first be credited against the earliest accrued but unpaid dividend due with respect to such shares which remains payable.

If, for any taxable year, we elect to designate as capital gain dividends (as defined in Section 857 of the Internal Revenue Code of 1986, as amended (the Code)) a portion (the Capital Gains Amount) of the dividends, as determined for federal income tax purposes, that are paid or made available for the year to the holders of all classes of shares (the Total Dividends), then the portion of the Capital Gains Amount that will be allocable to the holders of depositary shares will be the Capital Gains Amount multiplied by a fraction, the numerator of which will be the total dividends (within the meaning of the Code) paid or made available to the holders of depositary shares for the year and the denominator of which will be the Total Dividends. We will not declare or pay any dividends or distributions, or set aside any funds for the payment of dividends or distributions, on our common stock or any other shares that rank junior to the Series D Preferred Stock, if any, or redeem or otherwise acquire our common stock or other junior shares, unless we also have declared and either paid or set aside for payment the full cumulative dividends on the Series D Preferred Stock and all shares that rank senior to or on a parity with the Series D Preferred Stock, including the Series C Preferred Stock, for all past dividend periods. This restriction will not limit our redemption or other acquisition of shares under incentive, benefit or share purchase plans for officers, directors or employees or others performing or providing similar services or for the purposes of enforcing restrictions upon ownership and transfer of our equity securities contained in our articles of incorporation in order to preserve our status as a REIT.

When dividends are not paid in full (or a sum sufficient for such full payment is not so set apart) upon the Series D Preferred Stock and the shares of any Parity Preferred Stock, all dividends declared upon the Series D Preferred Stock and each such Parity Preferred Stock shall be declared pro rata so that the amount of dividends declared per share of Series D Preferred Stock and such other class or series of equity securities shall in all cases bear to each other the same ratio that accrued dividends per share on the Series D Preferred Stock and such other class or series of equity securities (which shall not include any accrual in respect of unpaid dividends on such other class or series of equity securities for prior dividend periods if such other class or series of equity securities does not have a cumulative dividend) bear to each other.

## **Liquidation Preference**

Upon any voluntary or involuntary liquidation, dissolution or winding up of our affairs, the holders Series D Preferred Stock are entitled to be paid out of our assets legally available for distribution to our stockholders a liquidation preference of \$2,500.00 per share (equivalent to \$25.00 per depositary share), plus an amount equal to any accrued and unpaid dividends to the date of payment (whether or not declared), before any distribution or payment may be made to holders of shares of common stock or any other class or series of our equity stock ranking, as to liquidation rights, junior to the Series D Preferred Stock. If, upon our voluntary or involuntary liquidation, dissolution or winding up, our available assets are insufficient to pay the full amount of the liquidating distributions on all outstanding Series D Preferred Stock and the corresponding amounts payable on all shares of each other class or series of capital stock ranking, as to liquidation rights, on a parity with the Series D Preferred Stock, then the holders of depositary shares representing interests in the Series D Preferred Stock and each such other class or series of capital stock ranking, as to liquidation rights, on a parity with the Series D Preferred Stock will share ratably in any distribution of assets in proportion to the full liquidating distributions to which they would otherwise be respectively entitled. Holders of depositary shares representing interests in the Series D Preferred Stock will be entitled to written notice of any liquidation. After payment of the full amount of the liquidating distributions to which they are entitled, the holders of depositary shares representing interests in the Series D Preferred Stock will have no right or claim to any of our remaining assets.

Our consolidation or merger with or into any other entity or the sale, lease, transfer or conveyance of all or substantially all of our property or business will not be deemed to constitute our liquidation, dissolution or

---

**Table of Contents**

winding up. The Series D Preferred Stock will rank senior to the common stock as to priority for receiving liquidating distributions and on a parity with any future equity securities which, by their terms, rank on a parity with the Series D Preferred Stock.

**Optional Redemption**

We may not redeem the Series D Preferred Stock prior to February , 2017, except as described below and under the section Special Optional Redemption. At any time on and after February , 2017, upon no fewer than 30 days nor more than 60 days written notice, we may, at our option, redeem the Series D Preferred Stock, in whole or in part, from time to time, by paying \$2,500.00 per share (equivalent to \$25.00 per depositary share), plus any accrued and unpaid dividends to, but not including, the date of redemption, upon the giving of notice, as provided below. Whenever we redeem shares of our Series D Preferred Stock held by the depositary, the depositary will redeem as of the same redemption date a number of depositary shares representing the shares so redeemed and the depositary receipts evidencing such depositary shares.

We will give notice of redemption by mail to each holder of record of Series D Preferred Stock or depositary shares at the address shown on our share transfer books. A failure to give notice of redemption or any defect in the notice or in its mailing will not affect the validity of the redemption of any Series D Preferred Stock except as to the holder to whom notice was defective. Each notice will state the following:

the redemption date;

the redemption price;

the number of shares of Series D Preferred Stock and depositary shares to be redeemed;

the place(s) where the depositary receipts (or Series D Preferred Stock certificates, if no longer held in depositary form) are to be surrendered for payment; and

that dividends on the depositary shares and the Series D Preferred Stock will cease to accrue on the redemption date.

If fewer than all of the outstanding Series D Preferred Stock are to be redeemed, the shares to be redeemed will be determined pro rata, by lot or in such other manner as prescribed by our board of directors. In the event that the redemption is to be by lot, and if as a result of the redemption any holder of Series D Preferred Stock would own, or be deemed by virtue of certain attribution provisions of the Code to own, in excess of 9.8% in value of our issued and outstanding equity securities (which includes the depositary shares), then, except in certain instances, we will redeem the requisite number of shares of Series D Preferred Stock of that stockholder such that the stockholder will not own or be deemed by virtue of certain attribution provisions of the Code to own, subsequent to the redemption, in excess of 9.8% in value of our issued and outstanding equity securities (which includes the depositary shares).

If we redeem fewer than all of the shares of Series D Preferred Stock and depositary shares, the notice of redemption mailed to each holder will also specify the number of shares of Series D Preferred Stock, or depositary shares, that we will redeem from each holder. In this case, we will determine the number of shares of Series D Preferred Stock, or depositary shares, to be redeemed on a pro rata basis, by lot or by any other equitable method we may choose in our sole and absolute discretion.

On or after the redemption date, each holder of depositary shares to be redeemed must present and surrender the depositary receipts evidencing the depositary shares to the depositary at the place designated in the notice of redemption. If the Series D Preferred Stock is no longer held in depositary form, on or after the redemption date, each holder of Series D Preferred Stock to be redeemed must present and surrender their preferred certificates to us at the place designated in the notice of redemption. The redemption price of the shares will then be paid to or on the order of the person whose name appears on such depositary receipts or preferred certificates as the owner

## **Table of Contents**

thereof. Each surrendered depositary receipt or certificate will be canceled. In the event that fewer than all the depositary receipts or preferred certificates are to be redeemed, a new depositary receipt will be issued representing the unredeemed depositary shares.

If we have given a notice of redemption and have set aside sufficient funds for the redemption in trust for the benefit of the holders of the depositary shares or the Series D Preferred Stock called for redemption, then from and after the redemption date:

all dividends on the depositary shares designated for redemption in the notice will cease to accrue;

all rights of the depositary holders of the shares or preferred certificates, except the right to receive the redemption price thereof (including all accrued and unpaid dividends up to, but not including, the redemption date), will cease and terminate;

the depositary shares and preferred certificates will not thereafter be transferred (except with our consent) on the depositary's books or our books; and

the depositary shares or Series D Preferred Stock will not be deemed to be outstanding for any purpose whatsoever.

Notwithstanding the foregoing, unless the full cumulative dividends on all outstanding shares of Series D Preferred Stock for all past dividend periods have been paid or set aside, we generally may not redeem any shares of Series D Preferred Stock unless we redeem all of the shares of Series D Preferred Stock. This requirement will not prevent our purchase or acquisition of Series D Preferred Stock pursuant to a purchase or exchange offer made on the same terms to holders of all outstanding Series D Preferred Stock. Unless full cumulative dividends on all outstanding Series D Preferred Stock have been paid or declared and a sum sufficient for the payment of the dividends has been set apart for payment for all past dividend periods and the then-current dividend period, we will not purchase or otherwise acquire directly or indirectly any Series D Preferred Stock (except by exchange for our equity securities ranking junior to the Series D Preferred Stock as to dividend rights and liquidation preference).

Subject to applicable law, we may purchase Series D Preferred Stock in the open market, by tender or by private agreement. We are permitted to return any Series D Preferred Stock that we reacquire to the status of authorized but unissued shares.

Notwithstanding any other provision relating to redemption, including optional redemption or special optional redemption, of the Series D Preferred Stock, we may redeem any or all of the Series D Preferred Stock at any time, whether or not prior to February 1, 2017, if our board of directors determines that the redemption is necessary or advisable to preserve our status as a REIT.

### **Special Optional Redemption**

Upon the occurrence of a Change of Control, we may, at our option, redeem the Series D Preferred Stock, in whole or in part and within 120 days after the first date on which such Change of Control occurred, by paying \$2,500.00 per share (equivalent to \$25.00 per depositary share), plus any accrued and unpaid dividends to, but not including, the date of redemption. If, prior to the Change of Control Conversion Date, we have provided or provide notice of redemption with respect to the Series D Preferred Stock (whether pursuant to our optional redemption right described above or this special optional redemption right), the holders of depositary shares representing interests in the Series D Preferred Stock will not be permitted to exercise the conversion right described below under Conversion Rights in respect of their shares called for redemption.

We will mail to you, if you are a record holder of the Series D Preferred Stock, a notice of redemption no fewer than 30 days nor more than 60 days before the redemption date. We will send the notice to your address shown on our share transfer books. A failure to give notice of redemption or any defect in the notice or in its

**Table of Contents**

mailing will not affect the validity of the redemption of any Series D Preferred Stock except as to the holder to whom notice was defective. Each notice will state the following:

the redemption date;

the redemption price;

the number of shares of Series D Preferred Stock and depositary shares to be redeemed;

the place(s) where the depositary receipts (or Series D Preferred Stock certificates, if no longer held in depositary form) are to be surrendered for payment;

that the Series D Preferred Stock is being redeemed pursuant to our special optional redemption right in connection with the occurrence of a Change of Control and a brief description of the transaction or transactions constituting such Change of Control;

that the holders of depositary shares representing interests in the Series D Preferred Stock to which the notice relates will not be able to tender such shares of Series D Preferred Stock for conversion in connection with the Change of Control and each share of Series D Preferred Stock tendered for conversion that is selected, prior to the Change of Control Conversion Date, for redemption will be redeemed on the related date of redemption instead of converted on the Change of Control Conversion Date; and

that dividends on the depositary shares and the Series D Preferred Stock to be redeemed will cease to accrue on the redemption date. If we redeem fewer than all of the shares of Series D Preferred Stock, the notice of redemption mailed to each stockholder will also specify the number of shares of Series D Preferred Stock that we will redeem from each stockholder. In this case, we will determine the number of shares of Series D Preferred Stock to be redeemed on a pro rata basis, by lot or by any other equitable method we may choose.

If we have given a notice of redemption and have set aside sufficient funds for the redemption in trust for the benefit of the holders of depositary shares representing interests in the Series D Preferred Stock called for redemption, then from and after the redemption date, those shares of Series D Preferred Stock will be treated as no longer being outstanding, no further dividends will accrue and all other rights of the holders of those shares of Series D Preferred Stock will terminate. The holders of those shares of Series D Preferred Stock will retain their right to receive the redemption price for their shares and any accrued and unpaid dividends to but excluding the redemption date.

The holders of depositary shares representing interests in the Series D Preferred Stock at the close of business on a dividend record date will be entitled to receive the dividend payable with respect to the Series D Preferred Stock on the corresponding payment date notwithstanding the redemption of the Series D Preferred Stock between such record date and the corresponding payment date or our default in the payment of the dividend due. Except as provided above, we will make no payment or allowance for unpaid dividends, whether or not in arrears, on Series D Preferred Stock to be redeemed.

A Change of Control is when, after the original issuance of the Series D Preferred Stock, the following have occurred and are continuing:

the acquisition by any person, including any syndicate or group deemed to be a person under Section 13(d)(3) of the Exchange Act of beneficial ownership, directly or indirectly, through a purchase, merger or other acquisition transaction or series of purchases, mergers or other acquisition transactions of shares of our company entitling that person to exercise more than 50% of the total voting power of all shares of our company entitled to vote generally in elections of directors (except that such person will be deemed to have beneficial ownership of all securities that such person has the right to acquire, whether such right is currently exercisable or is

exercisable only upon the occurrence of a subsequent condition); and

S-18

---

**Table of Contents**

following the closing of any transaction referred to in the bullet point above, neither we nor the acquiring or surviving entity has a class of common securities (or ADRs representing such securities) listed on the NYSE, the NYSE Amex or NASDAQ, or listed or quoted on an exchange or quotation system that is a successor to the NYSE, the NYSE Amex or NASDAQ.

**Conversion**

Upon the occurrence of a Change of Control, each holder of depositary shares representing interests in the Series D Preferred Stock will have the right (unless, prior to the Change of Control Conversion Date, we have provided or provide notice of our election to redeem the depositary shares or the Series D Preferred Stock as described above under Redemption or Special Optional Redemption ) to direct the depositary, on such holder's behalf, to convert some or all of the shares of Series D Preferred Stock underlying the depositary shares held by such holder (the Change of Control Conversion Right ) on the Change of Control Conversion Date into a number of shares of our common stock (or equivalent value of alternative consideration) per share of Series D Preferred Stock, or the Common Stock Conversion Consideration, equal to the lesser of:

the quotient obtained by dividing (1) the sum of the \$2,500.00 per share (or \$25.00 per depositary share) liquidation preference plus the amount of any accrued and unpaid dividends to, but not including, the Change of Control Conversion Date (unless the Change of Control Conversion Date is after a record date for a Series D Preferred Stock dividend payment and prior to the corresponding Series D Preferred Stock dividend payment date, in which case no additional amount for such accrued and then remaining unpaid dividend will be included in this sum) by (2) the Common Stock Price (such quotient, the Conversion Rate); and

(i.e., the Share Cap), subject to certain adjustments.

The Share Cap is subject to pro rata adjustments for any share splits (including those effected pursuant to a distribution of shares of our common stock), subdivisions or combinations (in each case, a Share Split ) with respect to our common stock as follows: the adjusted Share Cap as the result of a Share Split will be the number of shares of our common stock that is equivalent to the product obtained by multiplying (1) the Share Cap in effect immediately prior to such Share Split by (2) a fraction, the numerator of which is the number of shares of our common stock outstanding after giving effect to such Share Split and the denominator of which is the number of shares of our common stock outstanding immediately prior to such Share Split.

For the avoidance of doubt, subject to the immediately succeeding sentence, the aggregate number of shares of our common stock (or equivalent Alternative Conversion Consideration (as defined below), as applicable) issuable in connection with the exercise of the Change of Control Conversion Right and in respect of the Series D Preferred Stock underlying the depositary shares initially offered hereby will not exceed shares of common stock (or equivalent Alternative Conversion Consideration, as applicable), subject to increase to the extent the underwriters' option to purchase additional depositary shares representing interests in the Series D Preferred Stock is exercised, not to exceed shares of common stock in the aggregate (or equivalent Alternative Conversion Consideration, as applicable) (the Exchange Cap ). The Exchange Cap is subject to pro rata adjustments for any Share Splits on the same basis as the corresponding adjustment to the Share Cap and is subject to increase in the event that additional shares of Series D Preferred Stock or depositary shares are issued in the future.

In the case of a Change of Control pursuant to which our common stock will be converted into cash, securities or other property or assets (including any combination thereof) (the Alternative Conversion Consideration ), a holder of depositary shares representing interests in the Series D Preferred Stock will receive upon conversion of such Series D Preferred Stock the kind and amount of Alternative Conversion Consideration which such holder would have owned or been entitled to receive upon the Change of Control had such holder held a number of shares of our common stock equal to the Common Stock Conversion Consideration immediately prior to the effective time of the Change of Control (the Alternative Conversion Consideration, and the Common Stock Conversion Consideration or the Alternative Conversion Consideration, as may be applicable to a Change of Control, is referred to as the Conversion Consideration ).



## Table of Contents

If the holders of our common stock have the opportunity to elect the form of consideration to be received in the Change of Control, the consideration that the holders of the depositary shares representing interests in the Series D Preferred Stock will receive will be the form and proportion of the aggregate consideration elected by the holders of our common stock who participate in the determination (based on the weighted average of elections) and will be subject to any limitations to which all holders of our common stock are subject, including, without limitation, pro rata reductions applicable to any portion of the consideration payable in the Change of Control.

We will not issue fractional shares of common stock upon the conversion of the Series D Preferred Stock. Instead, we will pay the cash value of such fractional shares in lieu of such fractional shares. Because each depositary share represents a 1/100<sup>th</sup> interest in a share of the Series D Preferred Stock, the number of shares of common stock ultimately received for each depositary share will be equal to the number of shares of common stock received upon conversion of each share of Series D Preferred Stock divided by 100. In the event that the conversion would result in the issuance of fractional shares of common stock, we will pay the holder of depositary shares the cash value of such fractional shares in lieu of such fractional shares.

Within 15 days following the occurrence of a Change of Control, we will provide to holders of the depositary shares representing interests in the Series D Preferred Stock a notice of occurrence of the Change of Control that describes the resulting Change of Control Conversion Right. This notice will state the following:

the events constituting the Change of Control;

the date of the Change of Control;

the last date on which the holders of the depositary shares representing interests in the Series D Preferred Stock may exercise their Change of Control Conversion Right;

the method and period for calculating the Common Stock Price;

the Change of Control Conversion Date;

that if, prior to the Change of Control Conversion Date, we have provided or provide notice of our election to redeem all or any portion of the Series D Preferred Stock or the depositary shares, holders will not be able to convert the Series D Preferred Stock and such shares will be redeemed on the related redemption date, even if such shares have already been tendered for conversion pursuant to the Change of Control Conversion Right;

if applicable, the type and amount of Alternative Conversion Consideration entitled to be received per share of Series D Preferred Stock;

the name and address of the paying agent and the conversion agent; and

the procedures that the holders of the depositary shares representing interests in the Series D Preferred Stock must follow to exercise the Change of Control Conversion Right.

We will issue a press release for publication on the Dow Jones & Company, Inc., Business Wire, PR Newswire or Bloomberg Business News (or, if these organizations are not in existence at the time of issuance of the press release, such other news or press organization as is reasonably calculated to broadly disseminate the relevant information to the public), or post notice on our website, in any event prior to the opening of business on the first business day following any date on which we provide the notice described above to the holders of the depositary shares

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

representing interests in the Series D Preferred Stock.

To exercise the Change of Control Conversion Right, each holder of depositary shares representing interests in the Series D Preferred Stock will be required to deliver, on or before the close of business on the Change of Control Conversion Date, the depositary receipts or certificates, if any, evidencing the depositary shares or Series D Preferred Stock, respectively, to be converted, duly endorsed for transfer, together with a written conversion

S-20

**Table of Contents**

notice completed, to the depositary, in the case of the depositary shares, or to our transfer agent, in the case of shares of the Series D Preferred Stock. The conversion notice must state:

the relevant Change of Control Conversion Date;

the number of depositary shares or shares of Series D Preferred Stock to be converted; and

that the depositary shares or the shares of Series D Preferred Stock are to be converted pursuant to the applicable provisions of the Series D Preferred Stock.

The Change of Control Conversion Date is the date the Series D Preferred Stock is to be converted, which will be a business day that is no fewer than 20 days nor more than 35 days after the date on which we provide the notice described above to the holders of the depositary shares representing interests in the Series D Preferred Stock.

The Common Stock Price will be: (1) the amount of cash consideration per share of common stock, if the consideration to be received in the Change of Control by the holders of our common stock is solely cash; and (2) the average of the closing prices for our common stock on the NYSE for the ten consecutive trading days immediately preceding, but not including, the effective date of the Change of Control, if the consideration to be received in the Change of Control by the holders of our common stock is other than solely cash.

Holders of the depositary shares representing interests in the Series D Preferred Stock may withdraw any notice of exercise of a Change of Control Conversion Right (in whole or in part) by a written notice of withdrawal delivered to the depositary, in the case of the depositary shares, or to our transfer agent, in the case of shares of the Series D Preferred Stock, prior to the close of business on the business day prior to the Change of Control Conversion Date. The notice of withdrawal must state:

the number of withdrawn depositary shares or shares of Series D Preferred Stock;

if certificated depositary shares or shares of Series D Preferred Stock have been issued, the receipt or certificate numbers of the withdrawn shares of Series D Preferred Stock; and

the number of depositary shares or shares of Series D Preferred Stock, if any, which remain subject to the conversion notice.

Notwithstanding the foregoing, if the Series D Preferred Stock is held in global form, the conversion notice and/or the notice of withdrawal, as applicable, must comply with applicable procedures of The Depository Trust Company.

Shares of Series D Preferred Stock as to which the Change of Control Conversion Right has been properly exercised and for which the conversion notice has not been properly withdrawn will be converted into the applicable Conversion Consideration in accordance with the Change of Control Conversion Right on the Change of Control Conversion Date, unless prior to the Change of Control Conversion Date we have provided or provide notice of our election to redeem such shares of Series D Preferred Stock, whether pursuant to our optional redemption right or our special optional redemption right. If we elect to redeem shares of Series D Preferred Stock that would otherwise be converted into the applicable Conversion Consideration on a Change of Control Conversion Date, such shares of Series D Preferred Stock will not be so converted and the holders of such shares will be entitled to receive on the applicable redemption date \$2,500.00 per share (or \$25.00 per depositary share), plus any accrued and unpaid dividends thereon to, but not including, the redemption date. See [Optional Redemption](#) and [Special Optional Redemption](#).

We will deliver amounts owing upon conversion no later than the third business day following the Change of Control Conversion Date.

In connection with the exercise of any Change of Control Conversion Right, we will comply with all federal and state securities laws and stock exchange rules in connection with any conversion of Series D Preferred Stock



## **Table of Contents**

into our common stock. Notwithstanding any other provision of the Series D Preferred Stock, no holder of Series D Preferred Stock or depositary shares will be entitled to convert such shares for our common stock to the extent that receipt of such common stock would cause such holder (or any other person) to exceed the share ownership limits contained in our charter and the articles supplementary setting forth the terms of the Series D Preferred Stock, unless we provide an exemption from this limitation for such holder. See Restrictions on Ownership and Transfer, below.

Except as otherwise provided above, neither the Series D Preferred Stock nor the depositary shares is convertible into or exchangeable for any other securities or property.

## **Voting Rights**

Except as described below, holders of depositary shares or Series D Preferred Stock will generally have no voting rights. In any matter in which the Series D Preferred Stock may vote (as expressly provided in our articles of incorporation or the articles supplementary, or as may be required by law), each Series D Preferred Stock shall be entitled to one vote. As a result, each depositary share will be entitled to 1/100<sup>th</sup> of a vote.

Whenever dividends on the Series D Preferred Stock are in arrears for six or more quarterly periods, whether or not declared or consecutive, the holders of depositary shares representing interests in the Series D Preferred Stock (voting separately as a class with all other Parity Preferred Stock) will be entitled to vote for the election of a total of two additional directors of the company, and the number of directors on the board of directors shall increase by two, at a special meeting called by the holders of record of at least 20% of the Series D Preferred Stock or the holders of any other series of Parity Preferred Stock so in arrears (unless such request is received less than 90 days before the date fixed for the next annual or special meeting of stockholders) or at the next annual meeting of stockholders, and at each subsequent annual meeting until all dividends accumulated on such shares of Series D Preferred Stock for the past dividend periods and the dividend for the then-current dividend period shall have been fully paid or declared and a sum sufficient for the payment thereof set aside for payment.

Any amendment, alteration, repeal or other change to any provision of our articles of incorporation, including the articles supplementary establishing the Series D Preferred Stock, whether by merger, consolidation or otherwise, in any manner that would materially and adversely affect the rights, preferences, powers or privileges of the Series D Preferred Stock cannot be made without the affirmative vote of holders of at least 66 <sup>2</sup>/<sub>3</sub>% of the outstanding Series D Preferred Stock, voting separately as a class. In addition, the creation, issuance or increase in the authorized number of shares of any class or series of stock having a preference as to dividends or distributions, whether upon liquidation, dissolution or otherwise, that is senior to the Series D Preferred Stock requires the affirmative vote of holders of at least 66 <sup>2</sup>/<sub>3</sub>% of the outstanding Series D Preferred Stock, voting separately as a class.

The following actions are not deemed to materially and adversely affect the rights, preferences, powers or privileges of the Series D Preferred Stock:

any increase in the amount of our authorized common stock or preferred stock or the creation or issuance of equity securities of any class or series ranking, as to dividends or liquidation preference, on a parity with, or junior to, the Series D Preferred Stock; or

the amendment, alteration or repeal or change of any provision of our articles of incorporation, including the articles supplementary establishing the Series D Preferred Stock, as a result of a merger, consolidation, reorganization or other business combination, if the Series D Preferred Stock (or shares into which the Series D Preferred Stock have been converted in any successor entity to us) remain outstanding with the terms thereof unchanged in all material respects.

## **Maturity**

The Series D Preferred Stock has no stated maturity date and will not be subject to any sinking fund or mandatory redemption provisions.

## **Table of Contents**

### **Ownership Limits and Restrictions on Transfer**

In order to maintain our qualification as a REIT for federal income tax purposes, ownership by any person of our outstanding equity securities (which includes the depositary shares) is restricted in our articles of incorporation. For further information regarding restrictions on ownership and transfer of the Series D Preferred Stock, see Description of Common Stock Restrictions on Ownership beginning on page 27 in the accompanying prospectus.

### **Surrender of Depositary Shares for Shares of Series D Preferred Stock**

Under certain circumstances, holders may be required to surrender depositary receipts to the depositary or us. In the event of such a surrender of depositary shares, the holder will be entitled to receive the number of whole or fractional shares of Series D Preferred Stock represented by the depositary shares. See Description of Depositary Shares Withdrawal of Shares and Amendment and Termination of the Deposit Agreement in the accompanying prospectus.

### **Stock Listing**

We intend to apply to list the depositary shares on the NYSE under the symbol NNNPRD. If our application is approved, we expect trading of the depositary shares on the NYSE to commence within the 30-day period after the initial delivery of the depositary shares. The Series D Preferred Stock underlying the depositary shares will not be listed, and we do not expect any trading market will develop for the Series D Preferred Stock except as represented by the depositary shares.

### **Transfer Agent and Registrar**

The registrar, transfer agent and distributions disbursing agent for the Series D Preferred Stock will be American Stock Transfer & Trust Company.

---

**Table of Contents**

**SUPPLEMENTAL MATERIAL**

**UNITED STATES FEDERAL INCOME TAX CONSIDERATIONS**

**General**

For a discussion of the taxation of us and the tax considerations relevant to stockholders generally, see *Federal Income Tax Considerations* beginning on page 31 of the accompanying prospectus. The following is a general discussion of the material U.S. federal income tax considerations applicable to the acquisition, ownership and disposition of the depositary shares and should be read in conjunction with the referenced sections in the accompanying prospectus. This discussion is based on the Internal Revenue Code of 1986, as amended (the *Code*), income tax regulations promulgated thereunder, judicial decisions, published positions of the Internal Revenue Service (*IRS*) and other applicable authorities, all as in effect as of the date hereof and all of which are subject to change, possibly with retroactive effect. This discussion is general in nature and is not exhaustive of all possible tax considerations, nor does the discussion address any state, local or foreign tax considerations or any U.S. tax considerations (e.g., estate or gift tax) other than U.S. federal income tax considerations, that may be applicable to particular shareholders. This discussion does not address all the tax consequences that may be relevant to a prospective shareholder in light of its particular circumstances or to certain types of shareholders subject to special treatment under the Code, such as financial institutions, brokers, dealers in securities and commodities, insurance companies, certain former U.S. citizens or long-term residents, regulated investment companies, real estate investment trusts, tax-exempt organizations, controlled foreign corporations, passive foreign investment companies, persons that acquire their shares in connection with employment or other performance of personal services, persons subject to the alternative minimum tax, persons that are, or that hold their depositary shares through, partnerships or other pass-through entities, U.S. persons whose functional currency is not the U.S. dollar, or persons that hold depositary shares as part of a straddle, hedge, conversion, synthetic security or constructive sale transaction for U.S. federal income tax purposes.

PROSPECTIVE INVESTORS SHOULD CONSULT THEIR OWN TAX ADVISORS REGARDING THE FEDERAL, STATE, LOCAL, FOREIGN AND OTHER TAX CONSEQUENCES OF THE ACQUISITION, OWNERSHIP AND DISPOSITION OF THE DEPOSITARY SHARES.

**Taxation of Holders of Depositary Shares**

Owners of the depositary shares will be treated for federal income tax purposes as if they were owners of the Series D Preferred Stock represented by such depositary shares. See *Federal Income Tax Considerations* beginning on Page 31 of the accompanying prospectus with respect to the tax treatment of our preferred shares, which include our Series D Preferred Stock (and the associated depositary shares).

**Redemption of Depositary Shares for Cash**

The accompanying prospectus under the caption *Federal Income Tax Considerations Taxation of Taxable U.S. Stockholders Redemption of Preferred Stock for Cash*, described the treatment of a taxable U.S. stockholder's adjusted tax basis in our preferred stock redeemed in a dividend equivalent redemption. The Treasury has subsequently proposed new regulations on the method of basis recovery in this situation that would alter this treatment. The proposed regulations would be effective for transactions that occur after the date the regulations are published as final Treasury regulations. There can, however, be no assurance as to whether, when and in what particular form such proposed Treasury regulations will ultimately be finalized. Prospective investors should consult their tax advisors regarding the United States federal income tax consequences of a redemption of their depositary shares.

**Conversion of Depositary Shares into Common Stock upon a Change of Control**

See the accompanying prospectus under the caption *Federal Income Tax Considerations Taxation of Taxable U.S. Stockholders Redemption or Conversion of Preferred Stock to Common Stock*, for the tax consequences of conversion of depositary shares into shares of our common stock. In addition, if a taxable U.S.

## **Table of Contents**

stockholder receives the Alternative Conversion Consideration (in lieu of shares of our common stock) in connection with the conversion of the taxable U.S. stockholder's depository shares, the tax treatment of the receipt of any such other consideration will depend on the nature of the consideration and the structure of the transaction that gives rise to the Change of Control, and it may be a taxable exchange. Taxable U.S. stockholders converting their depository shares should consult their tax advisors regarding the U.S. federal income tax consequences of any such conversion and of the ownership and disposition of the consideration received upon any such conversion.

### **Recent Tax Law Changes**

#### ***Medicare Tax***

For taxable years beginning after December 31, 2012, certain taxable U.S. shareholders who are individuals, estates or trusts will be subject to a 3.8% tax on all or a portion of their net investment income, which may include all or a portion of their dividends on depository shares and net gains from the taxable disposition of their depository shares. Taxable U.S. stockholders that are individuals, estates or trusts should consult their tax advisors regarding the applicability of the Medicare tax to any of their income or gains in respect of the depository shares.

#### ***Reporting and Withholding on Foreign Financial Accounts***

On March 18, 2010, the President signed the Hiring Incentives to Restore Employment Act (the HIRE Act) into law. This law imposes a 30% U.S. federal withholding tax on dividends on, and the gross proceeds from the sale or other disposition of, the depository shares to a foreign financial institution or non-financial foreign entity, unless (i) in the case of a foreign financial institution, such institution enters into an agreement with the U.S. government to withhold on certain payments and to collect and provide to the U.S. tax authorities substantial information regarding U.S. account holders of such institution (which includes certain equity and debt holders of such institution, as well as certain account holders that are foreign entities with U.S. owners) and to withhold on certain payments and (ii) in the case of a non-financial foreign entity, such entity provides the withholding agent with a certification identifying the direct and indirect U.S. owners of the entity. Although the withholding tax provisions of the HIRE Act were to have been effective beginning in 2013, the IRS has provided for a phased-in implementation of these provisions. Withholding on dividends, but not gross proceeds from the sale or other disposition of the depository shares, generally is to begin after December 31, 2013. Withholding on gross proceeds is generally to begin after December 31, 2014. Under certain circumstances, a non-U.S. shareholder might be eligible for refunds or credits of such taxes. Prospective investors should consult their tax advisors regarding the possible implications of this recently enacted legislation on the acquisition, ownership and disposition of the depository shares.

#### ***Extension of Reduced Tax Rates***

On December 17, 2010, the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (the Job Creation Act) was enacted. Among other things, the Job Creation Act extended until December 31, 2012 certain reduced tax rates that had been scheduled to expire after December 31, 2010, including the reduced 15% maximum rate of tax on capital gains, the reduced 35% maximum rate of tax on ordinary income, and the application of the capital gains tax rate to certain qualified dividend income discussed in the accompanying prospectus.



**Table of Contents****UNDERWRITING**

Citigroup Global Markets Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated, Wells Fargo Securities, LLC and RBC Capital Markets, LLC are acting as joint book-running managers of the offering, and as the representatives of the underwriters named below. Subject to the terms and conditions stated in the underwriting agreement, dated the date of this prospectus supplement, we have agreed to sell to each of the underwriters named below and each underwriter has severally and not jointly agreed to purchase from us, the number of depositary shares representing interests in the Series D Preferred Stock set forth opposite the underwriter's name.

Underwriter	Number of Depositary Shares
Citigroup Global Markets Inc.	
Merrill Lynch, Pierce, Fenner & Smith Incorporated	
Wells Fargo Securities, LLC	
RBC Capital Markets, LLC	
Raymond James & Associates, Inc.	
Stifel, Nicolaus & Company, Incorporated	
BB&T Capital Markets, a division of Scott & Stringfellow, LLC	
Janney Montgomery Scott LLC	
Morgan Keegan & Company, Inc.	
Capital One Southcoast, Inc.	
FBR Capital Markets & Co.	
Piper Jaffray & Co.	
PNC Capital Markets LLC	
SunTrust Robinson Humphrey, Inc.	
Total	

The underwriting agreement provides that the obligations of the underwriters to purchase the depositary shares included in this offering are subject to approval of legal matters by counsel and other customary conditions. The underwriters are obligated to purchase all of the depositary shares (other than those covered by the underwriters' option to purchase additional depositary shares described below) if they purchase any of the depositary shares.

Depositary shares sold by the underwriters to the public will initially be offered at the public offering price set forth on the cover of this prospectus supplement. Any depositary shares sold by the underwriters to securities dealers may be sold at a discount from the public offering price not to exceed \$ \_\_\_\_\_ per depositary share. If all the depositary shares are not sold at the public offering price, the underwriters may change the offering price and the other selling terms.

If the underwriters sell more depositary shares than the total number set forth in the table above, we have granted to the underwriters an option, exercisable for 30 days from the date of this prospectus supplement, to purchase up to \_\_\_\_\_ additional depositary shares at the public offering price less the underwriting discount. To the extent the option is exercised, each underwriter must purchase a number of additional depositary shares approximately proportionate to that underwriter's initial purchase commitment. Any depositary shares issued or sold under the option will be issued and sold on the same terms and conditions as the other depositary shares that are the subject of this offering.

We have agreed that, for a period of 30 days from the date of this prospectus supplement, we will not, without the prior written consent of Citigroup Global Markets Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated, Wells Fargo Securities, LLC and RBC Capital Markets, LLC dispose of or hedge any depositary shares, shares of the Series D Preferred Stock or any preferred equity securities substantially similar to and ranking on a parity with or senior to the Series D Preferred Stock or any securities convertible into or

**Table of Contents**

exchangeable for such securities, except for issuances (i) pursuant to the conversion or exchange of convertible or exchangeable securities or the exercise of warrants or options, in each case outstanding at the time the underwriting agreement is executed and delivered, (ii) of employee stock options and restricted shares pursuant to the terms of any equity incentive plan in effect at the time the underwriting agreement is executed and delivered, (iii) pursuant to our dividend reinvestment and stock purchase plan in effect at the time the underwriting agreement is executed and delivered, and (iv) of no more than 100 shares of such securities, for no consideration, to one or more persons unaffiliated with us as door or drawing prizes in connection with our marketing efforts.

No market currently exists for the depositary shares. We intend to apply to list the depositary shares on the NYSE under the symbol NNNPRD. If listing is approved, we expect trading to commence within 30 days after initial delivery of the depositary shares. The underwriters have advised us that they intend to make a market in the depositary shares before commencement of trading on the NYSE. They will have no obligation to make a market in the depositary shares, however, and if they make a market they may cease to do so at any time.

The following table shows the underwriting discounts and commissions that we are to pay to the underwriters in connection with this offering. These amounts are shown assuming both no exercise and full exercise of the underwriters' option to purchase additional depositary shares.

	No Exercise	Full Exercise
Per depositary share	\$	\$
Total	\$	\$

We estimate that the total expenses for this offering payable by us (excluding the underwriting discount) will be \$540,000.

In connection with the offering, the underwriters may purchase and sell depositary shares in the open market. Purchases and sales in the open market may include short sales, purchases to cover short positions, which may include purchases pursuant to the underwriters' option to purchase additional depositary shares, and stabilizing purchases.

Short sales involve secondary market sales by the underwriters of a greater number of depositary shares than they are required to purchase in the offering.

Covered short sales are sales of depositary shares in an amount up to the number of depositary shares represented by the underwriters' option to purchase additional depositary shares.

Naked short sales are sales of depositary shares in an amount in excess of the number of depositary shares represented by the underwriters' option to purchase additional depositary shares.

Covering transactions involve purchases of depositary shares either pursuant to the underwriters' option to purchase additional depositary shares or in the open market after the distribution has been completed in order to cover short positions.

To close a naked short position, the underwriters must purchase depositary shares in the open market after the distribution has been completed. A naked short position is more likely to be created if the underwriters are concerned that there may be downward pressure on the price of the depositary shares in the open market after pricing that could adversely affect investors who purchase in the offering.

To close a covered short position, the underwriters must purchase depositary shares in the open market after the distribution has been completed or must exercise the option to purchase additional depositary shares. In determining the source of depositary shares to close the covered short position, the underwriters will consider, among other things, the price of depositary shares available for purchase in the open market as compared to the price at which they may purchase depositary

shares through the option to purchase additional depositary shares.

Stabilizing transactions involve transactions such as the purchase of depositary shares.

S-27

## **Table of Contents**

Purchases to cover short positions and stabilizing purchases, as well as other purchases by the underwriters for their own accounts, may have the effect of preventing or retarding a decline in the market price of the depositary shares. They may also cause the price of the depositary shares to be higher than the price that would otherwise exist in the open market in the absence of these transactions. The underwriters may conduct these transactions on the NYSE, in the over-the-counter market or otherwise. If the underwriters commence any of these transactions, they may discontinue them at any time.

We have agreed to indemnify the underwriters against certain liabilities, including liabilities under the Securities Act, or to contribute to payments the underwriters may be required to make because of any of those liabilities.

## **Conflicts of Interest**

The underwriters are full service financial institutions engaged in various activities, which may include securities trading, commercial and investment banking, financial advisory, investment management, principal investment, hedging, financing and brokerage activities. The underwriters and their respective affiliates have in the past performed commercial banking, investment banking and advisory services for us from time to time for which they have received customary fees and reimbursement of expenses and may, from time to time, engage in transactions with and perform services for us in the ordinary course of their business for which they may receive customary fees and reimbursement of expenses. In the ordinary course of their various business activities, the underwriters and their respective affiliates may make or hold a broad array of investments and actively trade debt and equity securities (or related derivative securities) and financial instruments (which may include bank loans and/or credit default swaps) for their own account and for the accounts of their customers and may at any time hold long and short positions in such securities and instruments. Such investment and securities activities may involve our securities and instruments. Certain of the underwriters or their affiliates that have a lending relationship with us routinely hedge their credit exposure to us consistent with their customary risk management policies. Typically, such underwriters and their affiliates would hedge such exposure by entering into transactions which consist of either the purchase of credit default swaps or the creation of short positions in our securities, including potentially the depositary shares offered hereby. Any such short positions could adversely affect future trading prices of the depositary shares offered hereby. The underwriters and their affiliates may also make investment recommendations and/or publish or express independent research views in respect of such securities or financial instruments and may hold, or recommend to clients that they acquire, long and/or short positions in such securities and instruments.

An affiliate of Wells Fargo Securities, LLC has acted, and may in the future act, as broker in connection with purchases of certain real estate assets by us, including assets which may ultimately be purchased directly or indirectly with proceeds of this offering. Upon consummation of these purchases, such affiliate expects to receive customary brokerage fees paid by the seller.

In addition, affiliates of Citigroup Global Markets Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated, Wells Fargo Securities, LLC, RBC Capital Markets, LLC and certain of the other underwriters are lenders, and in some cases agents or managers for the lenders, under our credit facility and will receive their proportionate share of any amount repaid under the credit facility with the net proceeds from this offering. Upon such application, more than 5% of the proceeds of this offering (not including underwriting discounts) may be received by an underwriter or its affiliates. Nonetheless, in accordance with FINRA Rule 5121, the appointment of a qualified independent underwriter is not necessary in connection with this offering because we, as the issuer of the securities in this offering, are a real estate investment trust.

## **Settlement**

We expect that delivery of the depositary shares will be made to investors on or about February 1, 2012, which will be the fifth business day following the date of this prospectus supplement (such settlement being referred to as T+5). Under Rule 15c6-1 under the Exchange Act, trades in the secondary market are required to settle in three business days, unless the parties to any such trade expressly agree otherwise. Accordingly,

## **Table of Contents**

purchasers who wish to trade depositary shares prior to February 1, 2012 will be required, by virtue of the fact that the depositary shares initially settle in T+5, to specify an alternate settlement arrangement at the time of any such trade to prevent a failed settlement. Purchasers of the depositary shares who wish to trade the depositary shares prior to their date of delivery hereunder should consult their advisors.

### **Sales Outside the United States**

No action has been taken in any jurisdiction (except in the United States) that would permit a public offering of the depositary shares, or the possession, circulation or distribution of this prospectus supplement, the accompanying prospectus or any other material relating to us or the depositary shares in any jurisdiction where action for that purpose is required. Accordingly, the depositary shares may not be offered or sold, directly or indirectly, and none of this prospectus supplement, the accompanying prospectus or any other offering material or advertisements in connection with the depositary shares may be distributed or published, in or from any country or jurisdiction, except in compliance with any applicable rules and regulations of any such country or jurisdiction.

Each of the underwriters may arrange to sell the depositary shares offered hereby in certain jurisdictions outside the United States, either directly or through affiliates, where they are permitted to do so.

### **Notice To Prospective Investors In The European Economic Area**

In relation to each member state of the European Economic Area that has implemented the Prospectus Directive (each, a relevant member state), with effect from and including the date on which the Prospectus Directive is implemented in that relevant member state (the relevant implementation date), an offer of shares described in this prospectus supplement may not be made to the public in that relevant member state other than:

to any legal entity which is a qualified investor as defined in the Prospectus Directive;

to fewer than 100 or, if the relevant member state has implemented the relevant provision of the 2010 PD Amending Directive, 150 natural or legal persons (other than qualified investors as defined in the Prospectus Directive), as permitted under the Prospectus Directive, subject to obtaining the prior consent of the relevant Dealer or Dealers nominated by us for any such offer; or

in any other circumstances falling within Article 3(2) of the Prospectus Directive; provided that no such offer of shares shall require us or any underwriter to publish a prospectus pursuant to Article 3 of the Prospectus Directive.

For purposes of this provision, the expression an offer of securities to the public in any relevant member state means the communication in any form and by any means of sufficient information on the terms of the offer and the shares to be offered so as to enable an investor to decide to purchase or subscribe for the shares, as the expression may be varied in that member state by any measure implementing the Prospectus Directive in that member state, and the expression Prospectus Directive means Directive 2003/71/EC (and amendments thereto, including the 2010 PD Amending Directive, to the extent implemented in the relevant member state) and includes any relevant implementing measure in the relevant member state. The expression 2010 PD Amending Directive means Directive 2010/73/EU.

The sellers of the shares have not authorized and do not authorize the making of any offer of shares through any financial intermediary on their behalf, other than offers made by the underwriters with a view to the final placement of the shares as contemplated in this prospectus supplement. Accordingly, no purchaser of the shares, other than the underwriters, is authorized to make any further offer of the shares on behalf of the sellers or the underwriters.

## **Table of Contents**

### **Notice To Prospective Investors In The United Kingdom**

This prospectus supplement and the accompanying prospectus are only being distributed to, and is only directed at, persons in the United Kingdom that are qualified investors within the meaning of Article 2(1)(e) of the Prospectus Directive that are also (i) investment professionals falling within Article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (the Order) or (ii) high net worth entities, and other persons to whom it may lawfully be communicated, falling within Article 49(2)(a) to (d) of the Order (each such person being referred to as a relevant person). This prospectus supplement and its contents are confidential and should not be distributed, published or reproduced (in whole or in part) or disclosed by recipients to any other persons in the United Kingdom. Any person in the United Kingdom that is not a relevant person should not act or rely on this document or any of its contents.

### **Notice to Prospective Investors in Switzerland**

We have not and will not register with the Swiss Financial Market Supervisory Authority (FINMA) as a foreign collective investment scheme pursuant to Article 119 of the Federal Act on Collective Investment Scheme of June 23, 2006, as amended (CISA), and accordingly, the shares being offered pursuant to this prospectus supplement and the accompanying prospectus have not and will not be approved, and may not be licensable, with FINMA. Therefore, the shares have not been authorized for distribution by FINMA as a foreign collective investment scheme pursuant to Article 119 CISA and the shares offered hereby may not be offered to the public (as this term is defined in Article 3 CISA) in or from Switzerland. The shares may solely be offered to qualified investors, as this term is defined in Article 10 CISA, and in the circumstances set out in Article 3 of the Ordinance on Collective Investment Scheme of November 22, 2006, as amended (CISO), such that there is no public offer. Investors, however, do not benefit from protection under CISA or CISO or supervision by FINMA. This prospectus supplement and the accompanying prospectus and any other materials relating to the shares are strictly personal and confidential to each offeree and do not constitute an offer to any other person. This prospectus supplement and the accompanying prospectus may only be used by those qualified investors to whom they have been handed out in connection with the offer described herein and may neither directly or indirectly be distributed or made available to any person or entity other than their recipients. They may not be used in connection with any other offer and shall in particular not be copied and/or distributed to the public in Switzerland or from Switzerland. This prospectus supplement and the accompanying prospectus do not constitute an issue prospectus as that term is understood pursuant to Article 652a and/or 1156 of the Swiss Federal Code of Obligations. We have not applied for a listing of the shares on the SIX Swiss Exchange or any other regulated securities market in Switzerland, and consequently, the information presented in this prospectus supplement and the accompanying prospectus does not necessarily comply with the information standards set out in the listing rules of the SIX Swiss Exchange and corresponding prospectus schemes annexed to the listing rules of the SIX Swiss Exchange.

**Table of Contents**

**LEGAL MATTERS**

Certain legal matters will be passed upon for us by Pillsbury Winthrop Shaw Pittman LLP, Washington, D.C., as our securities and tax counsel. Certain legal matters will be passed upon for the underwriters by K&L Gates LLP.

**EXPERTS**

The consolidated financial statements of National Retail Properties, Inc. appearing in National Retail Properties, Inc.'s Annual Report (Form 10-K) for the year ended December 31, 2010 (including schedules appearing therein), and the effectiveness of National Retail Properties, Inc.'s internal control over financial reporting as of December 31, 2010, 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 consolidated financial statements are incorporated herein by reference in reliance upon such reports given on the authority of such firm as experts in accounting and auditing.

**WHERE YOU CAN FIND MORE INFORMATION**

We file annual, quarterly and current reports, proxy statements and other information with the Securities and Exchange Commission (the "SEC"). Our SEC filing number is 001-11290. You may read and copy any document that we have filed at the SEC's Public Reference Room at 100 F Street, N.E., Washington, D.C. 20549. You may obtain further information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. The SEC maintains a website that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC. Our filings are available to the public at the SEC's website at <http://www.sec.gov> and at our website at <http://www.nnnreit.com>. The information found on, or otherwise accessible through, our website is not and shall not be deemed part of, or incorporated by reference into, this prospectus supplement or the accompanying prospectus. Our common stock is listed on the New York Stock Exchange under the ticker symbol "NNN". You may inspect our reports, proxy statements and other information at the New York Stock Exchange, 20 Broad Street, New York, New York 10005.

We have filed with the SEC a registration statement (of which this prospectus supplement and the accompanying prospectus are a part) on Form S-3 under the Securities Act with respect to our securities. This prospectus supplement and the accompanying prospectus do not contain all of the information set forth in the registration statement, including the exhibits and schedules thereto, certain parts of which are omitted as permitted by the rules and regulations of the SEC.

We are incorporating by reference the information we file with the SEC, which means that we can disclose important information to you by referring you to those documents. The information we incorporate by reference is considered to be part of this prospectus supplement and the accompanying prospectus, except for any information superseded by information in this prospectus supplement. We incorporate by reference the documents listed below, which we have filed with the SEC under Sections 13(a), 13(c) and 15(d) of the Exchange Act.

Annual Report on Form 10-K for the fiscal year ended December 31, 2010, filed with the SEC on February 24, 2011.

Definitive Proxy Statement on Schedule 14A relating to the 2011 annual meeting of stockholders, filed with the SEC on March 31, 2011.

Quarterly Report on Form 10-Q for the quarter ended March 31, 2011, filed with the SEC on May 5, 2011.

**Table of Contents**

Quarterly Report on Form 10-Q for the quarter ended June 30, 2011, filed with the SEC on August 4, 2011.

Quarterly Report on Form 10-Q for the quarter ended September 30, 2011, filed with the SEC on November 8, 2011.

Current Report on Form 8-K filed with the SEC on February 22, 2011.

Current Report on Form 8-K filed with the SEC on May 20, 2011.

Current Report on Form 8-K filed with the SEC on June 1, 2011.

Current Report on Form 8-K filed with the SEC on June 28, 2011.

Current Report on Form 8-K filed with the SEC on July 1, 2011.

Current Report on Form 8-K filed with the SEC on July 6, 2011.

Current Report on Form 8-K filed with the SEC on September 12, 2011.

Current Report on Form 8-K filed with the SEC on December 5, 2011.

Current Report on Form 8-K filed with the SEC on February 9, 2012.

Current Report on Form 8-K filed with the SEC on February 14, 2012.

All documents that we file with the SEC under Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act after the date of this prospectus supplement but before we terminate the offering of our securities shall be deemed to be incorporated by reference in this prospectus supplement and the accompanying prospectus and will be part of this prospectus supplement and the accompanying prospectus from the date we file that document. Any information in that document that is meant to supersede or modify any existing statement in this prospectus supplement will so supersede or modify the statement as appropriate.

You may request a copy of any or all of the documents incorporated by reference in this prospectus supplement, except the exhibits to such documents (unless such exhibits are specifically incorporated by reference in such documents), at no cost, by writing or telephoning our offices at the following address:

National Retail Properties, Inc.  
450 South Orange Avenue, Suite 900  
Orlando, Florida 32801  
Attention: Kevin B. Habicht





**Table of Contents**

Prospectus

**National Retail Properties, Inc.**

**Debt Securities, Preferred Stock, Depositary Shares,  
Common Stock and Warrants**

We, National Retail Properties, Inc., may from time to time offer, in one or more series, separately or together, the following:

our debt securities, which may be either senior debt securities or subordinated debt securities;

shares of our preferred stock;

shares of our preferred stock represented by depositary shares;

shares of our common stock; and/or

warrants to purchase shares of our common or preferred stock.

Our common stock is listed on the New York Stock Exchange under the trading symbol `NNN`.

We will offer our securities in amounts, at prices and on terms to be determined at the time we offer such securities.

When we sell a particular series of securities, we will prepare a prospectus supplement describing the offering and the terms of that series of securities. Such terms may include limitations on direct or beneficial ownership and restrictions on transfer of our securities being offered that we believe are appropriate to preserve our status as a real estate investment trust, or REIT, for federal income tax purposes.

The applicable prospectus supplement will also contain information, where applicable, about certain United States federal income tax considerations relating to the securities covered by such prospectus supplement.

We may offer our securities directly, through agents we may designate from time to time, or to or through underwriters or dealers. If any agents or underwriters are involved in the sale of any of our securities, their names and any applicable purchase price, fee, commission or discount arrangement between or among them will be set forth, or will be calculable from the information set forth, in the applicable prospectus supplement. None of our securities may be sold without delivery of the applicable prospectus supplement describing the method and terms of the offering of such class or series of the securities.

**Investing in our securities involves risks. See Risk Factors on page 2 of this prospectus.**

**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. Any representation to the contrary is a criminal offense.**

**The date of this prospectus is February 27, 2009.**

**Table of Contents**

**TABLE OF CONTENTS**

	<b>Page</b>
<u>About this Prospectus</u>	1
<u>Risk Factors</u>	2
<u>Forward-Looking Statements</u>	2
<u>Where You Can Find More Information</u>	3
<u>National Retail Properties, Inc.</u>	5
<u>Use of Proceeds</u>	5
<u>Ratio of Earnings to Fixed Charges and Preferred Stock Dividends</u>	6
<u>Description of Debt Securities</u>	7
<u>Description of Preferred Stock</u>	18
<u>Description of Depositary Shares</u>	24
<u>Description of Common Stock</u>	27
<u>Description of Warrants</u>	30
<u>Federal Income Tax Considerations</u>	31
<u>Plan of Distribution</u>	48
<u>Legal Matters</u>	49
<u>Experts</u>	49

**Table of Contents**

**ABOUT THIS PROSPECTUS**

This prospectus is part of a registration statement that we filed with the Securities and Exchange Commission using a shelf registration process. Under this shelf process, we may sell:

debt securities,

preferred stock,

preferred stock represented by depositary shares,

common stock, and

warrants to purchase shares of common or preferred stock

either separately or in units, in one or more offerings. This prospectus provides you with a general description of those securities. We will offer our securities in amounts, at prices and on terms to be determined at the time we offer such securities. 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 in this prospectus. Before purchasing any securities, you should carefully read this prospectus and the applicable prospectus supplement and any applicable free writing prospectus together with the additional information described under the heading **Where You Can Find More Information**.

The registration statement that contains this prospectus (including the exhibits to the registration statement) contains additional information about National Retail Properties, Inc. and the securities offered under this prospectus. That registration statement can be read at the SEC's Internet site or at the SEC offices mentioned under the heading **Where You Can Find More Information**.

In this prospectus, the words **we**, **our**, **ours** and **us** refer to National Retail Properties, Inc. and its subsidiaries and joint ventures, unless the context indicates otherwise. The term **you** refers to a prospective investor.

**Table of Contents**

**RISK FACTORS**

Investing in our securities involves a high degree of risk. Please see the risk factors described under the caption "Risk Factors" in our Annual Report on Form 10-K for the fiscal year ended December 31, 2008, on file with the SEC, which is incorporated herein by reference, and in any subsequent Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q or Current Reports on Form 8-K incorporated by reference in this prospectus and any accompanying prospectus supplement. Before making an investment decision, you should carefully consider these risks as well as information we include or incorporate by reference in this prospectus and in any accompanying prospectus supplement. The risks and uncertainties we have described are those we believe to be the principal risks that could affect us, our business or our industry, and which could result in a material adverse impact on our financial condition or results of operation or could cause the market price of our securities to fluctuate or decline. However, additional risks and uncertainties not currently known to us or that we currently deem immaterial may affect our business operations and the market price of our securities.

**FORWARD-LOOKING STATEMENTS**

This prospectus contains and incorporates forward-looking statements within the meaning of Section 27A of the United States Securities Act of 1933, as amended, or the Securities Act, and Section 21E of the United States Securities Exchange Act of 1934, as amended, or the Exchange Act. Any statements about our expectations, beliefs, plans, objectives, assumptions or future events or performance are not historical facts and may be forward-looking. These statements are often, but not always, made through the use of words or phrases like anticipate, estimate, plans, projects, continuing, ongoing, target, expects, management believes, we believe, we intend, we may, we will, we should, negative of those terms, and similar words or phrases. We base these forward-looking statements on our expectations, assumptions, estimates and projections about our business and the industry in which we operate as of the date of this prospectus. These forward-looking statements are subject to a number of risks and uncertainties that cannot be predicted, quantified or controlled and that could cause actual results to differ materially from those set forth in, contemplated by, or underlying the forward-looking statements. Statements in this prospectus and in documents incorporated into this prospectus, including those set forth below in "Risk Factors," describe factors, among others, that could contribute to or cause these differences.

Because the factors discussed in this prospectus or incorporated by reference could cause actual results or outcomes to differ materially from those expressed in any forward-looking statements made by us or on our behalf, you should not place undue reliance on any such forward-looking statements. Further, any forward-looking statement speaks only as of the date on which it is made, and we undertake no obligation to update any forward-looking statement or statements to reflect events or circumstances after the date on which such statement is made or to reflect the occurrence of unanticipated events. New factors emerge from time to time, and it is not possible for us to predict which will arise. In addition, we cannot assess the impact of each factor on our business or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in any forward-looking statements.

**Table of Contents**

**WHERE YOU CAN FIND MORE INFORMATION**

We file annual, quarterly and current reports, proxy statements and other information with the Securities and Exchange Commission, or SEC. You may read and copy any document that we have filed at the SEC's Public Reference Room at 100 F Street, N.E., Washington, D.C. 20549 (our current Central Index Key is 0000751364). Please call the SEC at 1-800-SEC-0330 for further information on the operation of the Public Reference Room. The SEC maintains an Internet site that contains reports, proxy and information statements and other information regarding issuers that file electronically with the SEC. Our filings are available to the public at the SEC's website at <http://www.sec.gov>. Our common stock is listed on the New York Stock Exchange under the ticker symbol NNN. You may inspect our reports, proxy statements and other information at the New York Stock Exchange, 20 Broad Street, New York, New York 10005. In addition, we maintain a website that contains information about us at <http://www.nnnreit.com>. The information found on, or otherwise accessible through, our website is not incorporated into, and does not form a part of, this prospectus or any accompanying prospectus supplement or any other report or document we file with or furnish to the SEC.

We have filed with the SEC a registration statement (of which this prospectus is a part) on Form S-3 under the Securities Act of 1933, as amended, with respect to our securities. This prospectus and any accompanying prospectus supplement do not contain all of the information set forth in the registration statement, including the exhibits and schedules thereto, certain parts of which are omitted as permitted by the rules and regulations of the SEC. Statements contained in this prospectus and any accompanying prospectus supplement as to the contents of any contract or other document referred to in, or incorporated by reference in, this prospectus and any accompanying prospectus supplement are not necessarily complete and, where that contract is an exhibit to the registration statement, each statement is qualified in all respects by the exhibit to which the reference relates. Copies of this registration statement may be examined at the SEC's Public Reference Room and copies may be obtained therefrom upon payment of prescribed fees. This registration statement is also available to you on the SEC's website.

The SEC allows us to incorporate by reference the information we file with the SEC, which means that we can disclose important information to you by referring to those documents. The information incorporated by reference is an important part of this prospectus. Any statement contained in a document which is incorporated by reference in this prospectus is automatically updated and superseded if information contained in this prospectus, or information that we later file with the SEC, modifies or replaces this information. We incorporate by reference the following documents we filed with the SEC:

our Annual Report on Form 10-K for the fiscal year ended December 31, 2008, filed with the SEC on February 26, 2009;

our 2008 Definitive Proxy Statement, filed with the SEC on April 11, 2008; and

the description of our common stock contained in the Registration Statement on Form 8-A, filed with the SEC on July 22, 1992.

We are also incorporating by reference additional documents that we file with the SEC pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act of 1934, between the date of this prospectus and the termination of the offering of the securities described in this prospectus. We are not, however, incorporating by reference any documents or portions thereof, whether specifically listed above or filed in the future, that are not deemed filed with the SEC, including our compensation committee report and performance graph (incorporated by reference into the Annual Report on Form 10-K) or any information furnished pursuant to Items 2.02 or 7.01 of Form 8-K or certain exhibits furnished pursuant to Item 9.01 of Form 8-K.

**Table of Contents**

You may request a copy of any or all of the documents incorporated by reference in this prospectus, except the exhibits to such documents (unless such exhibits are specifically incorporated by reference in such documents), at no cost, by writing or calling our offices at the following address:

National Retail Properties, Inc.  
450 South Orange Avenue, Suite 900  
Orlando, Florida 32801  
Attention: Kevin B. Habicht  
(telephone number: (407) 265-7348)



**Table of Contents**

**NATIONAL RETAIL PROPERTIES, INC.**

We are a fully integrated real estate investment trust ( REIT ) for federal income tax purposes, formed in 1984.

Our operations are divided into two primary business segments: (i) investment assets, including real estate assets, mortgages and notes receivable (including structured finance investments) and commercial mortgage residual interests (collectively, Investment Assets ), and (ii) inventory real estate assets ( Inventory Assets ). The Investment Assets are operated through National Retail Properties, Inc. and its wholly owned subsidiaries. We acquire, own, invest in, manage and develop properties that are leased primarily to retail tenants under long-term net leases ( Investment Properties ).

As of December 31, 2008, we owned 1,005 Investment Properties, with an aggregate gross leasable area of 11,251,000 square feet, located in 44 states. In addition to the Investment Properties, as of December 31, 2008, we had \$60,472,000 in mortgages and notes receivables (including structured finance investments) and \$22,000,000 in commercial mortgage residual interests.

The Inventory Assets are operated through our taxable REIT subsidiary (the TRS ). The TRS, directly and indirectly, through investment interests, acquires and develops real estate primarily for the purpose of selling the real estate ( Inventory Properties or Inventory Portfolio ). As of December 31, 2008, the TRS owned 32 Inventory Properties.

**USE OF PROCEEDS**

Unless otherwise specified in the applicable prospectus supplement, we will use the net proceeds from the sale of securities for one or more of the following:

repayment of debt;

acquisition of additional properties;

facility improvements and expansion fundings;

redemption or repurchase of any preferred stock or debt outstanding; and

working capital and general corporate purposes.

**Table of Contents****RATIO OF EARNINGS TO FIXED CHARGES AND PREFERRED STOCK DIVIDENDS**

		Year Ended December 31,			
	2008	2007	2006	2005	2004
Consolidated ratio of earnings to fixed charges	2.76	3.60	4.42	2.76	2.87
Consolidated ratio of earnings to fixed charges and preferred dividends	2.51	3.23	3.99	2.43	2.46

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

---

**Table of Contents**

**DESCRIPTION OF DEBT SECURITIES**

The following is a general description of the debt securities that we may offer from time to time. The particular terms of the debt securities being offered and the extent to which such general provisions may apply are set forth in the Indenture (as defined in the following paragraph) or will be set forth in one or more indenture supplements and described in the applicable prospectus supplement. Therefore, you should read both the applicable prospectus supplement and the description of the debt securities set forth in this prospectus for a description of the terms of any series of our debt securities. We may also issue debt securities under a separate, new indenture other than the Indenture. If that occurs, we will describe any differences in the terms of any series or issue of debt securities in the prospectus supplement relating to that series or issue.

**General**

Our debt securities will be secured or unsecured direct obligations and may be senior or subordinated to our other indebtedness. Our debt securities will be issued under the Indenture, dated March 25, 1998, between us and U.S. Bank National Association (successor to Wachovia Bank, National Association (formerly First Union National Bank)), as trustee (the Indenture). The Indenture is filed as an exhibit to the registration statement of which this prospectus is a part. The Indenture is, and any supplement thereto will be, subject to, and governed by, the Trust Indenture Act of 1939, as amended. Any statements made in this prospectus that relate to the Indenture and our debt securities are only summaries of those provisions and are not meant to replace or modify those provisions. Capitalized terms used but not defined in this prospectus shall have the respective meanings set forth in the Indenture.

The Indenture permits:

the debt securities to be issued without limits as to aggregate principal amount,

the debt securities to be issued in one or more series, in each case as established from time to time by our Board of Directors or as set forth in the Indenture or one or more indentures supplemental to the Indenture,

debt securities of one series to be issued at varying times, and

a series to be reopened, without the consent of the holders of the debt securities of such series, for issuance of additional debt securities of such series.

We may, but need not, designate more than one trustee in connection with the Indenture, each with respect to one or more series of debt securities. Any trustee under the Indenture may resign or be removed with respect to one or more series of debt securities, and a successor trustee may be appointed to act with respect to such series. If two or more persons are acting as trustee with respect to different series of debt securities, each of those trustees will be considered a trustee of a trust under the Indenture separate and apart from the trust administered by any other trustee. Unless this prospectus states otherwise, a trustee will only be permitted to take action with respect to the one or more series of debt securities for which it is trustee under the Indenture.

The following summaries set forth certain general terms and provisions of the Indenture and our debt securities. The prospectus supplement relating to the series of debt securities being offered will contain further terms of the debt securities of that series, including the following specific terms:

(1) the title of the debt securities;

(2) the aggregate principal amount of the debt securities and any limit on the aggregate principal amount;

(3) the percentage of the principal amount at which the debt securities will be issued and, if applicable, the portion of the principal amount that is payable upon declaration of acceleration of the maturity of the debt securities, the portion of the principal amount of the debt securities that is convertible into shares of our common stock or other equity securities, or the method by which any such portion shall be determined;



**Table of Contents**

- (4) if such debt securities are convertible into equity, any limitation to the ownership or transferability of shares of our common stock or other equity securities into which such debt securities are convertible in connection with the preservation of our status as a REIT;
- (5) the date or dates, or the method for determining the date or dates, on which the principal of such debt securities will be payable;
- (6) the rate or rates (which may be fixed or variable), or the method by which such rate or rates shall be determined, at which such debt securities will bear interest, if any;
- (7) the date or dates, or the method for determining the date or dates, from which any interest will accrue, the interest payment dates, the record dates for interest payment, the persons to whom interest shall be payable, and how interest will be calculated if other than that of a 360-day year of twelve 30-day months;
- (8) the place or places where the principal of (and premium, if any) or interest, if any, on the debt securities will be payable, where the debt securities may be surrendered for conversion or registration of transfer or exchange, and where notices or demands to or upon us in respect to the debt securities and the applicable indenture may be served;
- (9) the period or periods within which, the price or prices at which, and the terms and conditions upon which the debt securities may be redeemed, as a whole or in part, at our option, if we have such an option;
- (10) our obligation, if any, to redeem, repay or purchase the debt securities, in whole or in part, pursuant to any sinking fund or analogous provision or at the option of a holder of the debt securities, and the periods, the prices, and other terms and conditions of such redemption, repayment or purchase;
- (11) if other than U.S. dollars, the currency or currencies, including terms and conditions, in which the debt securities are denominated and payable, which may be a foreign currency or units of two or more foreign currencies or a composite currency or currencies;
- (12) whether the amount of payments of principal (and premium, if any) or interest, if any, on the debt securities may be determined with reference to an index, formula or other method (which index, formula or method may, but need not be, based on a currency, currencies, currency unit or units or composite currency or currencies) and the manner in which any amounts shall be determined;
- (13) any additions to, modifications of or deletions from the terms of the debt securities with respect to the events of default or covenants set forth in the applicable indenture;
- (14) whether the debt securities will be issued in certificated or book-entry form;
- (15) whether the debt securities will be in registered or bearer form or both and, if and to the extent in registered form, the denominations of the debt securities if other than \$1,000 or any integral multiple of \$1,000 and, if and to the extent in bearer form, the denominations and their terms and conditions;
- (16) the applicability (or modification), if any, of the defeasance and covenant defeasance provisions described in this prospectus or in the applicable indenture;
- (17) the terms (and the class), if any, upon which such debt securities may be convertible into shares of our common stock or other equity securities and the terms and conditions upon which such conversion will be effected, including, without limitation, the initial conversion price or rate and the conversion period;
- (18) whether and under what circumstances we will pay additional amounts on the debt securities in respect of any tax, assessment or governmental charge and, if so, whether we will have the option to redeem the debt securities in lieu of making a payment;

## **Table of Contents**

(19) the provisions, if any, relating to the security provided for the debt securities; and

(20) any other terms of the debt securities not inconsistent with the provisions of the applicable indenture.

Certain of our debt securities may provide that if the maturity date is accelerated, we will be required to pay less than the entire principal amount. These securities are referred to as original issue discount securities. The prospectus supplement relating to these securities will describe any material U.S. federal income tax, accounting and other considerations that apply.

Except as may be set forth in the applicable prospectus supplement, our debt securities will not contain any provisions that would limit our ability to incur indebtedness or that would afford holders of our debt securities protection in the event of:

(1) a highly leveraged or similar action involving us; or

(2) a change of control of us.

However, the requirements for an entity to qualify as a REIT include certain restrictions on ownership and transfers of our shares of common stock and other equity securities. These restrictions may act to prevent or hinder a change of control. See Description of Common Stock Restrictions on Ownership. Provided below is a general description of the events of default and covenants contained in the Indenture. You should refer to the applicable prospectus supplement for information on any variances from this general description.

## **Denominations, Interest, Registration and Transfer**

Unless otherwise described in the applicable prospectus supplement, our debt securities of any series will be issuable in denominations of \$1,000 and integral multiples of \$1,000.

Unless otherwise specified in the applicable prospectus supplement, the principal of (and premium, if any) and interest on any series of debt securities will be payable at the applicable trustee's corporate trust office, the address of which will be set forth in the applicable prospectus supplement. We will retain the option to make interest payments by check, mailed to the address of the person entitled to the interest as it appears in the applicable register for such debt securities. We can also pay by wire transfer of funds to that person at an account maintained within the United States.

Any interest not paid or otherwise provided for when due with respect to a debt security will not be payable to the holder in whose name the debt security is registered on the date we have specified as the date a registered holder of the debt security as of that date would be entitled to receive the interest payment due (the record date). Instead, the interest may be paid to the person in whose name such debt security is registered at the close of business on the date the trustee has set as the date on which a registered holder as of that date would be entitled to receive the defaulted interest payment (the special record date). Notice of the payment will be given to the holder of that debt security not less than 10 days before the special record date. It may also be paid at any time in any other lawful manner, all as more completely described in the Indenture. If interest is not paid within 30 days of the due date, the trustee or holders of not less than 25% of the principal amount of the outstanding debt securities of that series may accelerate the securities. See Events of Default, Notice and Waiver.

Subject to certain limitations applicable to debt securities issued in book-entry form, our debt securities of any series:

will be exchangeable for other debt securities of the same series and of a like aggregate principal amount and tenor of different authorized denominations upon surrender of such debt securities at the corporate trust office of the applicable trustee; and

## **Table of Contents**

may be surrendered for conversion or registration of transfer at the corporate trust office of the applicable trustee. Every debt security surrendered for conversion, registration of transfer or exchange must be duly endorsed or accompanied by a written instrument of transfer. No service charge will be made for any registration of transfer or exchange of any debt securities, but we may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection with the registration or exchange. We may at any time change transfer agents or approve a change in the location through which any transfer agent acts. However, we will be required to maintain a transfer agent in each place of payment for such series. We may at any time designate additional transfer agents with respect to any series of debt securities.

Neither we nor any trustee will be required:

to issue, exchange or register the transfer of any debt securities of any series during a period beginning at the opening of business 15 days before any selection of debt securities of that series to be redeemed and ending at the close of business on the day of mailing of the relevant notice of redemption;

to exchange or register the transfer of any debt security, or portion of the security, called for redemption, except the unredeemed portion of any debt security being redeemed in part; or

to issue, exchange or register the transfer of any debt security which has been surrendered for repayment at the option of the holder, except the portion, if any, of such debt security not to be so repaid.

### **Merger, Consolidation or Sale**

The Indenture provides that we may consolidate with, or sell, lease or convey all or substantially all of our assets to, or merge with or into, any other corporation. Those transactions are permitted if:

we are the continuing corporation, or, if not, the resulting or acquiring entity assumes all of our responsibilities and liabilities under the Indenture, including the payment of all amounts due on the debt securities and performance of the covenants and conditions contained in the Indenture;

immediately after giving effect to such transaction and treating any indebtedness which becomes our obligation or an obligation of any of our subsidiaries as a result thereof as having been incurred by us or such subsidiary at the time of such transaction, no event of default under the Indenture, and no event which, after notice or the lapse of time, or both, would become such an event of default, shall have occurred and be continuing; and

an officer's certificate and legal opinion covering these conditions are delivered to the trustee.

### **Certain Covenants**

*Existence.* Except as permitted under Merger, Consolidation or Sale, the Indenture requires that we do or cause to be done all things necessary to preserve and keep in full force and effect our corporate existence, rights (by articles of incorporation, bylaws or statute) and franchises. We may, however, dispose of any right or franchise if we determine that the right or franchise is no longer desirable in the conduct of our business.

*Maintenance of Properties.* As required in the Indenture, we will maintain, keep in good condition and make all necessary repairs, renewals, replacements, betterments and improvements of our, or our subsidiaries' properties that we deem necessary so that the business carried on in connection with those properties may be properly and advantageously conducted at all times. We, or our subsidiaries may, however, sell or otherwise dispose for value our properties in the ordinary course of business.

*Insurance.* We, and our subsidiaries, will maintain the customary policies of insurance with responsible companies, taking into consideration prevailing market conditions and availability, for all of our properties and operations.



## **Table of Contents**

*Payment of Taxes and Other Claims.* We will pay or discharge or cause to be paid or discharged (or, if applicable, cause to be transferred to bond or other security), before the same shall become delinquent,

all taxes, assessments and governmental charges levied or imposed upon us or any of our subsidiaries or upon our income, profits or property or any of our subsidiaries, and

all lawful claims for labor, materials and supplies which, if unpaid, might by law become a lien upon our property or the property of any of our subsidiaries.

We will not however, pay or discharge (or transfer to bond or other security) or cause to be paid or discharged any such tax, assessment, charge or claim whose amount, applicability or validity is being contested in good faith by appropriate proceedings.

*Provision of Financial Information.* Whether or not we are subject to Section 13 or 15(d) of the Securities Exchange Act of 1934, the Indenture requires that we, within 15 days after each of the respective dates by which we would have been required to file annual reports, quarterly reports and other documents with the SEC if we were so subject,

transmit by mail to all holders of debt securities, as their names and addresses appear in the applicable register for such debt securities, without cost to such holders, copies of the annual reports, quarterly reports and other documents that we would have been required to file with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 if we were subject to such Sections,

file with the trustee copies of the annual reports, quarterly and other documents that we would have been required to file with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 if we were subject to such Sections, and

supply promptly upon written request and payment of the reasonable cost of duplication and delivery, copies of such documents to any prospective holder of debt securities.

*Additional Covenants.* If we make any additional covenants with respect to any series of debt securities we will describe those covenants in the applicable prospectus supplement.

## **Events of Default, Notice and Waiver**

The Indenture provides that the following events are Events of Default with respect to any series of debt securities issued:

failure to pay interest on any debt security of that series for 30 days after the payment is due;

failure to pay the principal of or any premium on any debt security of that series at its maturity;

failure to deposit any sinking fund payment when due on debt securities of that series;

failure to perform any of our other covenants in the Indenture (unless the covenant applies to a different series of debt securities issued under the Indenture), for 60 days after we receive written notice as provided in the Indenture;

default under any evidence of our indebtedness or any mortgage, indenture or other instrument under which such indebtedness is issued or by which such indebtedness is secured which results in the acceleration of indebtedness in an aggregate principal amount exceeding \$10,000,000, but only if such indebtedness is not discharged or such acceleration is not rescinded or annulled as provided in the Indenture;

any case, proceeding or other action under bankruptcy, insolvency, reorganization or relief of debtors laws is initiated by or against us (or any of our Significant Subsidiaries) in which the entity initiating the case, proceeding or other action seeks to have an order for relief entered with respect to it, or seeks

**Table of Contents**

to adjudicate us (or any of our Significant Subsidiaries) bankrupt or insolvent, or seeks reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to our (or any of our Significant Subsidiaries ) debts;

a court grants relief in connection with any of the cases, proceedings or other actions described above;

we (or any of our Significant Subsidiaries) seek appointment of a receiver, trustee, custodian, conservator or other similar official for us (or any of our Significant Subsidiaries) or for all or any substantial part of our (or any of our Significant Subsidiaries ) assets, or we (or any of our Significant Subsidiaries) make a general assignment for the benefit of our (or any of our Significant Subsidiaries ) creditors; and

any other event of default provided with respect to that series of debt securities.

The term **Significant Subsidiary** means each of our significant subsidiaries (as defined in Regulation S-X promulgated under the Securities Act of 1933, as amended) that, in general, meets any of the following tests:

- (i) our investments in the subsidiary or advances to it exceed 10% of our total assets; or
- (ii) our proportionate share of the subsidiary s total assets exceeds 10% of our total assets; or
- (iii) our equity in the income from the subsidiary s continuing operations exceeds 10% of our income.

If an Event of Default for any series of our outstanding debt securities occurs and is continuing, then the applicable trustee or the holders of at least 25% of the principal amount of the outstanding debt securities of that series may declare the principal amount (or, where applicable such portion of the principal amount as may be specified in the terms) of all of the debt securities of that series to be due and payable immediately by written notice to us (and to the applicable trustee if given by the holders). However, at any time after a declaration of acceleration has been made, the holders of a majority of the principal amount of debt securities of that series (or of each series of debt securities then outstanding under the Indenture, as the case may be) can rescind and annul the declaration and its consequences if:

we have deposited with the applicable trustee all required payments of the principal, premium and interest on the debt securities of such series (or of all debt securities then outstanding under the Indenture, as the case may be), plus certain fees, expenses, disbursements and advances of the applicable trustee; and

all events of default, other than the nonpayment of accelerated principal (or specified portion thereof), with respect to debt securities of such series (or of all debt securities then outstanding under the Indenture, as the case may be) have been cured or waived as provided in the Indenture.

The Indenture also provides that the holders of not less than a majority in principal amount of the debt securities of any series (or of each series of debt securities then outstanding under the Indenture, as the case may be) may waive any past default with respect to such series and its consequences, except a default:

in the payment of the principal, any premium or interest on any debt security of the series or

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

in respect of a covenant or provision contained in the Indenture that cannot be modified or amended without the consent of the holder of each outstanding debt security affected by that default.

The Indenture provides that the trustee is required to give notice to the holders of the debt securities within 90 days of a default under the indenture unless such default shall have been cured or waived. *However*, the trustee may withhold notice to the holders of any such series of debt securities of any default with respect to that series (except a default in the payment of the principal, any premium or interest on any debt security of that series or in the payment of any sinking fund installment in respect of any debt security of that series) if specified responsible officers of the trustee consider such withholding to be in the interest of the holders.

## **Table of Contents**

The Indenture provides that no holder of our debt securities of any series may institute any proceeding, judicial or otherwise, with respect to the Indenture or for any remedy, except in the case of the failure of the applicable trustee, for 60 days, to act after it has received a written request to institute proceedings in respect of an event of default from the holders of not less than 25% in principal amount of the outstanding debt securities of the series, as well as an offer of reasonable indemnity. This provision will not prevent, however, any holder of debt securities from instituting suit for the enforcement of payment of the principal of (and premium, if any) and interest on the debt securities held by that holder at the respective due dates.

Subject to provisions in the Indenture relating to its duties in case of default, the trustee is under no obligation to exercise any of its rights or powers under the Indenture at the request or direction of any holders of any series of debt securities then outstanding under the Indenture, unless those holders have offered to the trustee reasonable security or indemnity. The holders of a majority in principal amount of the outstanding debt securities of any series (or of each series of debt securities then outstanding under the Indenture, as the case may be) shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the trustee, or of exercising any trust or power conferred upon the trustee. However, the trustee may refuse to follow any direction which is in conflict with any law or the Indenture, which may involve such trustee in personal liability or which may be unduly prejudicial to the holders of debt securities of such series not involved.

Within 120 days after the close of each fiscal year, we are required to deliver to each trustee under the Indenture a certificate, signed by one of several specified officers, stating whether such officer has knowledge of any default under the Indenture and, if so, specifying the nature and status of each such default.

## **Modification of the Indenture**

Modifications and amendments of the Indenture may be made only with the consent of the holders of a majority in principal amount of all of our outstanding debt securities issued which are affected by such modification or amendment. The following modifications or amendments will not be effective against a holder without its consent:

a change in the stated maturity of the principal of, installment of interest or premium (if any) on the debt security;

a reduction in the principal amount of, or the rate of amount of interest on, or any premium payable upon redemption of, the debt security;

a reduction in the principal amount of an original issue discount security that would be due and payable upon declaration of acceleration of the maturity thereof or would be provable in bankruptcy, or adversely affect any right of repayment of the holder of any such debt security;

a change in the place of payment, or the currency or currencies, for payment of principal of, or premium, if any, or interest on any such debt security;

an impairment of the right to institute suit for the enforcement of any payment on or with respect to any such debt security;

a reduction in the percentage of outstanding debt securities of any series necessary to modify or amend the Indenture, to waive compliance with certain provisions of or certain defaults and consequences under, or to reduce the quorum or voting requirements set forth in the Indenture; or

a modification of any of the foregoing provisions or any of the provisions relating to the waiver of certain past defaults or certain covenants, except to increase the required percentage to effect such action or to provide that certain other provisions may not be modified or waived without the consent of the holder of such debt security.

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

The holders of a majority in aggregate principal amount of outstanding debt securities of each series may, on behalf of all holders of debt securities of that series, waive, insofar as that series is concerned, our compliance with certain of our covenants in the Indenture, including those described in Certain Covenants.

**Table of Contents**

We, and the trustee may modify or amend the Indenture without the consent of any holder of debt securities for any of the following purposes:

to evidence the succession of another person to us as obligor under the Indenture;

to add to our covenants for the benefit of the holders of all or any series of debt securities issued or to surrender any right or power conferred upon us in the Indenture;

to add events of default for the benefit of the holders of all or any series of debt securities issued;

to add or change any provisions of the Indenture to facilitate the issuance of, or to liberalize certain terms of, debt securities issued in bearer form, or to permit or facilitate the issuance of debt securities in uncertificated form, provided that such action shall not adversely affect the interests of the holders of such debt securities of any series in any material respect;

to change or eliminate any provision of the Indenture, provided that any such change or elimination shall become effective only when there are no debt securities outstanding of any previously created series issued which are entitled to the benefit of such provision;

to secure the debt securities issued;

to establish the form or terms of debt securities of any series issued, including the provisions and procedures, if applicable, for the conversion of such debt securities into                      shares of our common stock;

to provide for the acceptance of appointment by a successor trustee or facilitate the administration of the trusts under the Indenture by more than one trustee;

to cure any ambiguity, defect or inconsistency in the Indenture, provided that such action shall not adversely affect in any material respect the interests of holders of debt securities of any series issued; or

to supplement any of the provisions of the Indenture to the extent necessary to permit or facilitate defeasance and discharge of any series of such debt securities issued, provided that such action shall not adversely affect in any material respect the interests of the holders of the debt securities of any series issued.

The Indenture provides that in determining whether the holders of the requisite principal amount of outstanding debt securities of a series have given any request, demand, authorization, direction, notice, consent or waiver or whether a quorum is present at a meeting of holders of the debt securities,

the principal amount of an original issue discount security that shall be deemed to be outstanding shall be the amount of the principal that would be due and payable as of the date of such determination if the maturity were to be accelerated;

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

the principal amount of a debt security denominated in a foreign currency that shall be deemed outstanding shall be the U.S. dollar equivalent, determined on the issue date for such debt security, of the principal amount (or, in the case of an original issue discount security, the U.S. dollar equivalent on the issue date of such debt security of the amount determined as provided above);

the principal amount of an indexed security that shall be deemed outstanding shall be the principal face amount of such indexed security at original issuance, unless the Indenture otherwise provides; and

debt securities we own or any other obligor upon the debt securities or any of our affiliates or of such other obligor shall be disregarded.



---

**Table of Contents**

**Meetings of the Holders of Debt Securities**

The Indenture contains provisions for convening meetings of the holders of an issued series of debt securities. A meeting may be called at any time by the trustee and also, upon our request, or the request of holders of at least 25% in principal amount of the outstanding debt securities of such series, in any such case upon notice given as provided in the Indenture. Except for any consent that must be given by the holder of each debt security affected by certain modifications and amendments of the Indenture, any resolution presented at a meeting or adjourned meeting duly reconvened at which a quorum is present may be adopted by the affirmative vote of the holders of a majority in principal amount of the outstanding debt securities of that series. *However*, except as referred to above, any resolution with respect to any request, demand, authorization, direction, notice, consent, waiver or other action that may be made, given or taken by the holders of a specified percentage which is less than a majority, in principal amount of the outstanding debt securities of a series may be adopted at a meeting or adjourned meeting duly reconvened. Such resolution must be adopted at a meeting or adjourned meeting at which a quorum is present by the affirmative vote of the holders of that specified percentage in principal amount of the outstanding debt securities of that series. Any resolution passed or decision taken at any meeting of holders of debt securities of any series duly held in accordance with the Indenture will be binding on all holders of debt securities of that series. The quorum at any meeting called to adopt a resolution, and at any reconvened meeting, will be persons holding or representing a majority in principal amount of the outstanding debt securities of a series. *However*, if any action is to be taken at such meeting with respect to a consent or waiver which may be given by the holders of not less than a specified percentage in principal amount of the outstanding debt securities of a series, the persons holding or representing such specified percentage in principal amount of the outstanding debt securities of such series will constitute a quorum.

Notwithstanding the provisions described above, if any action is to be taken at a meeting of holders of debt securities of any series with respect to any request, demand, authorization, direction, notice, consent, waiver or other action that the Indenture expressly provides may be made, given or taken by the holders of a specified percentage in principal amount of all outstanding debt securities affected thereby, or of the holders of such series and one or more additional series:

there shall be no minimum quorum requirement for such meeting; and

the principal amount of the outstanding debt securities of such series that vote in favor of such request, demand, authorization, direction, notice, consent, waiver or other action shall be taken into account in determining whether such request, demand, authorization, direction, notice, consent, waiver or other action has been made, given or taken under the Indenture.

**Discharge, Defeasance and Covenant Defeasance**

Unless otherwise indicated in the applicable prospectus supplement, we may discharge certain obligations to holders of any series of debt securities that have not already been delivered to the trustee for cancellation and that either have become due and payable or will become due and payable within one year (or scheduled for redemption within one year) by irrevocably depositing with the trustee, in trust, funds in such currency or currencies, currency unit or units or composite currency or currencies in which such debt securities are payable in an amount sufficient to pay the entire indebtedness on such debt securities in respect of principal (and premium, if any) and interest to the date of such deposit (if such debt securities have become due and payable) or to the stated maturity or redemption date, as the case may be.

Unless otherwise indicated in the applicable prospectus supplement, we may elect either:

to defease and be discharged from any and all obligations (except for the obligation to pay additional amounts, if any, upon the occurrence of certain events of tax, assessment or governmental charge with respect to payments on such debt securities and the obligations to register the transfer or exchange of such debt securities, to replace temporary or mutilated, destroyed, lost or stolen debt securities, to maintain an office or agency in respect of such debt securities and to hold moneys for payment in trust) with respect to such debt securities ( defeasance ); or

**Table of Contents**

to be released from our obligations with respect to those debt securities under the Indenture (being the restrictions described under the caption "Certain Covenants") or if provided in the applicable prospectus supplement, our obligations with respect to any other covenant, and any omission to comply with such obligations shall not constitute a default or an event of default with respect to such debt securities ("covenant defeasance"), in either case upon our irrevocable deposit with the applicable trustee, in trust, of an amount, in such currency or currencies, currency unit or units or composite currency or currencies in which such debt securities are payable at stated maturity, or Government Obligations (as defined below), or both, applicable to such debt securities which through the scheduled payment of principal and interest in accordance with their terms will provide money in an amount sufficient to pay the principal of (and premium, if any) and interest on such debt securities, and any mandatory sinking fund or analogous payments thereon, on the scheduled due dates.

Such a trust may only be established if, among other things, we have delivered to the applicable trustee an opinion of counsel (as specified in the Indenture) confirming that:

the holders of such debt securities will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such defeasance or covenant defeasance; and

the holders will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such defeasance or covenant defeasance had not occurred.

The opinion of counsel, in the case of defeasance, must refer to and be based upon a ruling of the Internal Revenue Service or a change in applicable U.S. federal income tax law occurring after the date of the Indenture. In the event of such defeasance, the holders of such debt securities would thereafter be able to look only to such trust fund for payment of principal (and premium, if any) and interest.

Government Obligations means securities that are:

of the same government that issued the currency in which the series of debt securities are denominated and in which interest is payable; or

of government agencies backed by the full faith and credit of such government.

Unless otherwise provided in the applicable prospectus supplement, if after we have deposited funds and/or Government Obligations to effect defeasance or covenant defeasance with respect to debt securities of any series,

the holder of a debt security of such series is entitled to, and does, elect pursuant to the Indenture or the terms of such debt security to receive payment in a currency, currency unit or composite currency other than that in which such deposit has been made in respect of such debt security; or

a conversion event (as described below) occurs in respect of the currency, currency unit or composite currency in which such deposit has been made, the indebtedness represented by such debt security shall be deemed to have been, and will be, fully discharged and satisfied through the payment of the principal of (and premium, if any) and interest on such debt security as they become due out of the proceeds yielded by converting the amount so deposited in respect of such debt security into the currency, currency unit or composite currency in which such debt security becomes payable as a result of such election or such cessation of usage based on the applicable market exchange rate.

A conversion event is the cessation of use of:

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

a currency, currency unit or composite currency both by the government of the country which issued such currency and for the settlement of actions by a central bank or other public institution of or within the international banking community;

the European currency unit (the ECU ) both within the European Monetary System and for the settlement of transactions by public institutions of or within the European Communities; or

## **Table of Contents**

any currency unit or composite currency other than the ECU for the purposes for which it was established. Unless otherwise described in the applicable prospectus supplement, all payments of principal of (and premium, if any) and interest on any debt security that is payable in a foreign currency that ceases to be used by its government of issuance shall be made in U.S. dollars.

In the event we effect covenant defeasance with respect to any debt securities and such debt securities are declared due and payable because of the occurrence of any event of default, other than the event of default described in the fourth clause under Events of Default, Notice and Waiver with respect to the specified sections in the Indenture (which sections would no longer be applicable to such debt securities) or the ninth clause with respect to any other covenants as to which there has been covenant defeasance, the amount in such currency, currency unit or composite currency in which such debt securities are payable and Government Obligations on deposit with the applicable trustee, will be sufficient to pay amounts due on such debt securities at the time of their stated maturity but may not be sufficient to pay amounts due on such debt securities at the time of the acceleration resulting from such event of default. In any such event, we would remain liable to make payments of such amounts due at the time of acceleration.

The applicable prospectus supplement may further describe the provisions, if any, permitting such defeasance or covenant defeasance, including any modifications to the provisions described above, with respect to the debt securities of or within a particular series.

### **Convertible Debt Securities**

The terms and conditions, if any, upon which the debt securities are convertible into shares of our common stock will be set forth in the applicable prospectus supplement. Such terms will include:

whether such debt securities are convertible into shares of common stock;

the conversion price (or manner of calculation thereof);

the conversion period;

provisions as to whether conversion will be at our option or at the option of the holders; and

the events requiring an adjustment of the conversion price and provisions affecting conversion in the event of the redemption of such debt securities and any restrictions on conversion, including restrictions directed at maintaining our REIT status.

Reference is made to the section captioned Description of Common Stock for a general description of shares of our common stock to be acquired upon the conversion of debt securities, including a description of certain restrictions on the ownership of shares of our common stock.

### **Book-Entry Debt Securities**

The debt securities of a series may be issued in whole or in part in the form of one or more global securities that will be deposited with, or on behalf of, a depository identified in the applicable prospectus supplement relating to such series. Global securities may be issued in either registered or bearer form. The specific terms of the depository arrangement with respect to a series of debt securities will be described in the applicable prospectus supplement relating to such series.

---

**Table of Contents**

**DESCRIPTION OF PREFERRED STOCK**

The following is a general description of the preferred stock that we may offer from time to time. The particular terms of the preferred stock being offered and the extent to which such general provisions may apply will be set forth in the applicable prospectus supplement. The statements below describing our preferred stock are in all respects subject to and qualified in their entirety by reference to the applicable provisions of our articles of incorporation and our bylaws.

Our authorized capital stock consists of 190,000,000 shares of common stock, par value \$0.01 per share, 15,000,000 shares of preferred stock, par value \$0.01 per share, and 205,000,000 shares of excess stock, par value \$0.01 per share, issuable in exchange for capital stock as described below under **Description of Common Stock** **Restrictions on Ownership**. As of December 31, 2008, we had 36,800 shares of 7.375% Series C Cumulative Redeemable Preferred Stock, \$0.01 par value ( **Series C Preferred Stock** ), outstanding.

*Series C Preferred Stock.* In October 2006, we issued 36,800 shares of Series C Preferred Stock, which are represented by depositary shares, each depositary share representing a 1/100th fractional interest in a share of Series C Preferred Stock. We filed articles supplementary to our articles of incorporation (the **Articles Supplementary** ) that sets forth the terms of the Series C Preferred Stock and is incorporated herein by reference. Holders of Series C Preferred Stock are entitled to receive, when and as authorized by our Board of Directors, out of funds legally available for the payment of dividends, cumulative cash dividends at the rate of 7.375% of the \$2,500.00 liquidation preference per year. The Series C Preferred Stock is not redeemable prior to October 12, 2011, except under the circumstances described in the **Articles Supplementary**, and the Series C Preferred Stock has no stated maturity date and is not subject to any sinking fund or mandatory redemption provisions. Holders of Series C Preferred Stock generally have no voting rights (except on matters expressly provided in our articles of incorporation or the **Articles Supplementary** or as may be required by law, in which case each holder shall be entitled to one vote per share of Series C Preferred Stock). The Series C Preferred Stock is not convertible into or exchangeable for any other property or securities, except that the Series C Preferred Stock may be exchanged for **excess stock** in order to ensure that we remain qualified as a REIT for federal income tax purposes. Upon any voluntary or involuntary liquidation, dissolution or winding up of our affairs, the holders of Series C Preferred Stock are entitled to be paid out of our assets legally available for distribution to our stockholders a liquidation preference of \$2,500.00 per share, plus an amount equal to any accrued and unpaid dividends to the date of payment (whether or not declared), before any distribution or payment may be made to holders of shares of common stock or any other class or series of our equity stock ranking, as to liquidation rights, junior to the Series C Preferred Stock. The depositary shares representing the Series C Preferred Stock are currently listed on the New York Stock Exchange under the symbol **NNNPRC**. Please refer to the **Articles Supplementary** for more detail on the terms of our Series C Preferred Stock.

**General**

Under our articles of incorporation, our Board of Directors may from time to time establish and issue one or more series of preferred stock without stockholder approval. Our Board of Directors may, subject to the express provisions of any other series of preferred stock then outstanding, alter the designation, classify or reclassify any unissued preferred stock by setting or changing the number, designation, preference, conversion or other rights, voting powers, restrictions, limitations as to dividends, qualifications and terms or conditions of redemption of such series. The issuance of preferred stock could adversely affect the voting power, dividend rights and other rights of holders of common stock. Preferred stock will, when issued, be fully paid and nonassessable.

The prospectus supplement relating to any preferred stock offered under it will contain the specific terms, including:

the number of shares, designation or title of the shares and offering price of the shares;

the dividend rate on the shares of the series, if any, whether any dividends shall be cumulative and, if so, from which date or dates, and the relative rights of priority, if any, of payment of dividends on shares of the series;

## **Table of Contents**

the date from which dividends on the preferred stock will accumulate, if applicable;

the redemption rights, including conditions and the price(s), if any, for shares of the series;

the terms and amounts of any sinking fund for the purchase or redemption of shares of the series;

the rights of the shares of the series in the event of any voluntary or involuntary liquidation, dissolution or winding up of our affairs, and the relative rights of priority, if any, of payment of shares of the series;

whether the shares of the series will be convertible into shares of any other class or series, or any of our other securities, or securities of any other corporation or other entity, and, if so, the specification of the other class or series of the other security, the conversion price(s) or dates on which the shares will be convertible and all other terms and conditions upon which the conversion may be made;

restrictions on the issuance of shares of the same series or of any other class or series;

the voting rights, if any, of the holders of shares of the series; and

any other relative rights, preferences and limitations on that series.

### **Rank**

Unless otherwise specified in the prospectus supplement, our preferred stock, of a particular series, being issued will, with respect to dividend rights and rights upon our liquidation, dissolution or winding up, rank:

senior to all classes or series of our common stock, and to all equity securities ranking junior to preferred stock we have issued;

on a parity with our existing Series C Preferred Stock and all equity securities we have issued, the terms of which specifically provide that such equity securities rank on a parity with the preferred stock; and

junior to all preferred stock of a different series that we have issued the terms of which specifically provide that such equity securities rank senior to preferred stock of another series.

The term "equity securities" does not include convertible debt securities.

### **Dividends**

Holders of preferred stock of each series will be entitled to receive, when, as and if declared by our Board of Directors, out of our assets legally available for payment, cash dividends (or dividends in kind or in other property if expressly permitted and described in the applicable prospectus supplement) at such rates and on such dates as will be set forth in the applicable prospectus supplement. Each such dividend shall be payable to holders of record as they appear on our share transfer books on such record dates as shall be fixed by our Board of Directors.

Dividends on any series of preferred stock may be cumulative or non-cumulative, as provided in the applicable prospectus supplement. Dividends, if cumulative, will be cumulative from and after the date set forth in the applicable prospectus supplement. If our Board of Directors fails to declare a dividend payable on a dividend payment date on any series of preferred stock for which dividends are noncumulative, then the

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

holders of such series of preferred stock will have no right to receive a dividend in respect of the dividend period ending on such dividend payment date. We will have no obligation to pay the dividend accrued for such period, whether or not dividends on such series are declared payable on any future dividend payment date.

If preferred stock of any series is outstanding, we will not pay or declare a full dividend on a series of parity or junior preferred stock or common stock unless:

for preferred stock with cumulative dividends, we have declared and paid, or declared and set apart a sum sufficient to pay full cumulative dividends on the preferred stock through the then-current dividend period; or

## **Table of Contents**

for preferred stock lacking cumulative dividends, we have declared and paid, or declared and set apart a sum sufficient to pay full dividends for the then-current dividend period.

If dividends are not paid in full (or if a sum sufficient has not been set aside for full payment), then dividends for both that series and any parity series will be declared *pro rata*. Therefore, the amount of dividends declared per share of both series will maintain the same ratio that accrued dividends per share of each series bear to each other. Accrued dividends will not include any accumulation in respect of unpaid dividends for prior dividend periods if such shares of preferred stock do not have a cumulative dividend. No interest, or sum of money in lieu of interest, shall be payable for any dividend payment or payments on preferred stock of such series which may be in arrears.

Except as provided in the immediately preceding paragraph, unless we have paid, or declared and set apart a sum sufficient to pay the then current dividend (including dividend payments in arrears if dividends are cumulative) for a series of preferred stock, we will not declare dividends (other than in common stock or preferred stock ranking junior to the preferred stock of such series as to dividends and upon liquidation) or pay or set aside for payment or declare or make any other distribution upon shares of the common stock, junior stock or parity stock as to dividends or upon liquidation. Additionally, we shall not redeem, purchase or otherwise acquire for any consideration (or any moneys be paid to or made available for a sinking fund for the redemption of any such shares) any shares of common stock, junior stock or parity stock as to dividends or upon liquidation. However, we may convert or exchange those shares into junior stock as to dividends and upon liquidation.

## **Redemption**

If so provided in the applicable prospectus supplement, any series of our preferred stock will be subject to mandatory redemption or redemption at our option, in whole or in part, in each case upon the terms, at the times and at the redemption prices set forth in such prospectus supplement.

The prospectus supplement relating to a series of our preferred stock that is subject to mandatory redemption will specify:

the number of shares of such preferred stock that we will redeem in each year;

the year the redemption will commence;

the redemption price per share, together with an amount equal to all accrued and unpaid dividends to the date of redemption; and

whether the redemption price may be payable in cash or other property.

If the redemption price for our preferred stock of any series is payable only from the net proceeds of the issuance of our capital stock, the terms of such preferred stock may provide that, if we have not issued capital stock or to the extent the net proceeds from any issuance are insufficient to pay in full the aggregate redemption price then due, such preferred stock shall automatically and mandatorily be converted into the applicable class or series of our capital stock pursuant to conversion provisions specified in the applicable prospectus supplement.

We cannot redeem, purchase or otherwise acquire shares of a series of preferred stock unless:

for preferred stock with cumulative dividends, we have declared and paid, or declared and set apart a sum sufficient to pay full cumulative dividends on the preferred stock through the then-current dividend period; or

for preferred stock lacking cumulative dividends, we have declared and paid, or declared and set apart a sum sufficient to pay full dividends for the then-current dividend period.

The foregoing shall not prevent the purchase or acquisition of preferred stock of such series to preserve our REIT status or pursuant to a purchase or exchange offer made on the same terms to holders of all outstanding preferred stock of such series.





## **Table of Contents**

If fewer than all of our outstanding preferred stock of any series are to be redeemed, we will determine the number of shares to be redeemed. We may redeem the shares on a *pro rata* basis from the holders of record of those shares in proportion to the number of those shares held or for which redemption is requested by the holder (with adjustments to avoid redemption of fractional shares) or by lot in a manner we determine.

Notice of redemption will be mailed at least 30 days but not more than 60 days before the redemption date to each holder of record of preferred stock of any series to be redeemed at the address shown on our share transfer books. Each notice shall state:

the redemption date;

the number of shares and the series of preferred stock to be redeemed;

the redemption price;

the place or places where certificates for such shares are to be surrendered for payment of the redemption price;

that dividends on the shares to be redeemed will cease to accrue on such redemption date; and

the date upon which the holder's conversion rights, if any, as to such shares shall terminate.

If fewer than all of the preferred stock of any series are to be redeemed, the notice mailed to each holder shall also specify the number of shares of preferred stock to be redeemed from each holder. If notice of redemption of any preferred stock has been given and if we have set aside the funds necessary for such redemption in trust for the benefit of the holders of any of our preferred stock so called for redemption, then from and after the redemption date dividends will cease to accrue on the preferred stock, and all rights of the holders of the redeemable shares will terminate, except the right to receive the redemption price.

## **Liquidation Preference**

Upon any voluntary or involuntary liquidation, dissolution or winding up of our affairs, then, before any distribution or payment will be made to the holders of any shares of common stock or any other class or series of preferred stock ranking junior to the preferred stock in the distribution of assets upon any liquidation, dissolution or winding up of us, the holders of each series of preferred stock will be entitled to receive out of our assets legally available for distribution to stockholders liquidating distributions in the amount of the liquidation preference per share (set forth in the applicable prospectus supplement), plus an amount equal to all dividends accrued and unpaid (which shall not include any accumulation in respect of unpaid dividends for prior dividend periods if such preferred stock does not have a cumulative dividend). After payment of the full amount of the liquidating distributions to which they are entitled, the holders of preferred stock will have no right or claim to any of our remaining assets. In the event that, upon any such voluntary or involuntary liquidation, dissolution or winding up, our available assets are insufficient to pay the amount of the liquidating distributions on all our outstanding preferred stock and the corresponding amounts payable on all shares of other classes or series of our capital stock ranking on a parity with the preferred stock in the distribution of assets, then the holders of the preferred stock and all other such classes or series of capital stock shall share ratably in any such distribution of assets in proportion to the full liquidating distributions to which they would otherwise be respectively entitled.

If liquidating distributions shall have been made in full to all holders of preferred stock, our remaining assets will be distributed among the holders of any other classes or series of capital stock ranking junior to the preferred stock upon liquidation, dissolution or winding up, according to their respective rights and preferences and in each case according to their respective number of shares. For such purposes, our consolidation or merger with or into any other corporation, trust or entity, or the sale, lease or conveyance of all or substantially all of our property or business, shall not be deemed to constitute a liquidation, dissolution or winding up of us.



## **Table of Contents**

### **Voting Rights**

Holders of preferred stock will not have any voting rights, except as set forth below or as otherwise from time to time required by law or as indicated in the applicable prospectus supplement.

Unless provided otherwise for any series of preferred stock, so long as any shares of preferred stock remain outstanding, we will not, without the affirmative vote or consent of the holders of at least a majority of each series of preferred stock outstanding at the time, except with respect to the Series C Preferred Stock for which an affirmative vote or consent of at least two-thirds of the holders is required, given in person or by proxy, either in writing or at a meeting (such series voting separately as a class),

authorize or create, or increase the authorized or issued amount of, any class or series of our capital stock ranking senior to such series of preferred stock with respect to the payment of dividends or the distribution of assets upon liquidation, dissolution or winding up or reclassify any of our authorized capital shares into such shares, or create, authorize or issue any obligation or security convertible into or evidencing the right to purchase any such shares, or

amend, alter or repeal the provisions of our articles of incorporation or the designating amendment for such series of preferred stock, whether by merger, consolidation or otherwise (an Event), so as to materially and adversely affect any right, preference, privilege or voting power of such series of preferred stock or the holders thereof.

However, with respect to the occurrence of any of the Events set forth above, so long as the preferred stock remains outstanding with the terms materially unchanged, taking into account that upon the occurrence of an Event, we may not be the surviving entity, the occurrence of any such Event shall not be deemed to materially and adversely affect such rights, preferences, privileges or voting power of holders of preferred stock. Further,

any increase in the amount of the authorized preferred stock or the creation or issuance of any other series of preferred stock, or

any increase in the amount of authorized shares of such series or any other series of preferred stock, in each case ranking on a parity with or junior to the preferred stock of such series with respect to payment of dividends or the distribution of assets upon liquidation, dissolution or winding up,

shall not be deemed to materially and adversely affect such rights, preferences, privileges or voting powers.

The foregoing voting provisions will not apply if, at or prior to the time when the act with respect to which such vote would otherwise be required shall be effected, all outstanding shares of preferred stock of such series shall have been redeemed or called for redemption and sufficient funds shall have been deposited in trust to effect such redemption.

### **Conversion Rights**

The terms and conditions, if any, upon which any series of preferred stock is convertible into shares of our common stock will be set forth in the applicable prospectus supplement. Such terms will include:

the number of shares of common stock into which the shares of preferred stock are convertible;

the conversion price (or manner of calculation);

the conversion period;

provisions as to whether conversion will be at the option of the holders of preferred stock or us;

the events requiring an adjustment of the conversion price; and

provisions affecting conversion in the event of the redemption of such series of preferred stock.

## **Table of Contents**

### **Restrictions on Ownership**

As discussed below under Description of Common Stock Restrictions on Ownership, for us to qualify as a REIT under the U.S. Internal Revenue Code (the Code), not more than 50% in value of our outstanding equity securities of all classes may be owned, directly or indirectly, by five or fewer individuals (as defined in the Code to include certain entities) during the last half of a taxable year. To assist us in meeting this requirement, we may take certain actions to limit the beneficial ownership, directly or indirectly, by a single person of our outstanding equity securities, including any of our preferred stock. Therefore, the designating amendment for each series of preferred stock may contain provisions restricting the ownership and transfer of preferred stock.

### **Book-Entry Preferred Stock**

The preferred stock of a series may be issued in whole or in part in the form of one or more global securities that will be deposited with, or on behalf of, a depository identified in the applicable prospectus supplement relating to such series. Global securities may be issued in either registered or bearer form and in either temporary or permanent form. The specific terms of the depository arrangement with respect to a series of preferred stock will be described in the applicable prospectus supplement relating to such series.

### **Registrar and Transfer Agent**

The registrar and transfer agent for the preferred stock will be set forth in the applicable prospectus supplement. American Stock Transfer & Trust Company is the transfer agent of our existing Series C Preferred Stock.

## **Table of Contents**

### **DESCRIPTION OF DEPOSITARY SHARES**

The following is a general description of the depositary shares that we may offer from time to time. The particular terms of the depositary shares being offered and the extent to which such general provisions may apply will be set forth in the applicable prospectus supplement.

#### **General**

We may issue receipts for depositary shares, each of which will represent a fractional interest of a share of a particular series of a class of our preferred stock, as specified in the applicable prospectus supplement. We will deposit shares of preferred stock of each series represented by depositary shares under a separate deposit agreement among us, the applicable depositary and the holders from time to time of the depositary receipts. Generally, each owner of a depositary receipt will be entitled, in proportion to the fractional interest of a share of the particular series of shares of preferred stock represented by the appropriate depositary shares, to all the rights and preferences of those shares of preferred stock (including dividend, voting, conversion, redemption and liquidation rights). As of December 31, 2008, we had 3,680,000 depositary shares issued and outstanding, each depositary share representing a 1/100th fractional interest in a share of Series C Preferred Stock.

The depositary shares will be evidenced by depositary receipts issued pursuant to the applicable deposit agreement. Immediately following our issuance and delivery of our preferred stock to the depositary, we will cause the preferred stock depositary to issue, on our behalf, the depositary receipts. Upon request we will provide you with copies of the applicable form of deposit agreement and depositary receipt.

#### **Dividends and Other Distributions**

The depositary will distribute all cash dividends or other cash distributions received in respect of the preferred stock to the record holders of the applicable depositary receipts in proportion to the number of depositary receipts owned by such holder.

In the event of a distribution other than in cash, the depositary will distribute property received by it to the appropriate record holders of depositary receipts. If the depositary determines that it is not feasible to make such distribution, then it may, with our approval, sell such property and distribute the net proceeds to the record holders.

#### **Withdrawal of Shares**

Generally, if a holder surrenders depositary receipts at the corporate trust office of the preferred stock depositary (unless the related depositary shares have previously been called for redemption), the holder will be entitled to receive at that office the number of whole or fractional shares of preferred stock and any money or other property represented by the depositary shares. Holders of depositary receipts will be entitled to receive whole or fractional shares of the related preferred stock on the basis of the proportion of shares of preferred stock represented by each depositary share as specified in the applicable prospectus supplement. Thereafter, holders of such preferred stock will not be entitled to receive depositary shares for the preferred stock. If a holder seeks to withdraw more depositary shares than are available, then the preferred stock depositary will deliver to such holder at the same time a new depositary receipt evidencing such excess number of depositary shares.

#### **Redemption of Depositary Shares**

Whenever we redeem preferred stock held by the preferred stock depositary, the depositary will redeem as of the same redemption date the appropriate number of depositary shares, provided we shall have paid in full to the depositary the redemption price of the preferred stock to be redeemed plus an amount equal to any accrued and unpaid dividends (except, with respect to noncumulative shares of preferred stock, dividends for the current dividend period only) to the date fixed for redemption. The redemption price per depositary share will be equal to

## **Table of Contents**

the redemption price and any other amounts per share payable with respect to the preferred stock specified in the applicable prospectus supplement. If less than all the depositary shares are to be redeemed, the amount redeemed will be selected by the depositary by lot.

After the date fixed for redemption, the depositary shares called for redemption will no longer be outstanding. All rights of the holders will cease, except the right to receive money or other property that the holders of the depositary shares were entitled to receive upon such redemption. Payments will be made when holders surrender their depositary receipts to the depositary.

### **Voting of the Underlying Preferred Stock**

Upon receipt of notice of any meeting at which the holders of shares of preferred stock are entitled to vote, the depositary will mail the information contained in such notice of meeting to the record holders of the applicable depositary receipts. Each record holder of depositary receipts on the record date (which will be the same date as the record date for the preferred stock) will be entitled to instruct the depositary as to the exercise of the voting rights pertaining to the amount of shares of preferred stock represented by such holder's depositary shares. The depositary will vote in accordance with such instructions, and we will agree to take all reasonable action that may be deemed necessary by the depositary in order to enable the depositary to do so. The depositary will abstain from voting to the extent it does not receive specific instructions from the depositary receipts holders.

### **Liquidation Preference**

In the event of our liquidation, dissolution or winding up, whether voluntary or involuntary, each holder of a depositary receipt will be entitled to the fraction of the liquidation preference accorded each share of applicable preferred stock, as set forth in the appropriate prospectus supplement.

### **Conversion of Preferred Stock**

Our depositary shares, as such, are not convertible into shares of our common stock or any of our other securities or property. Nevertheless, if so specified in the applicable prospectus supplement, the depositary receipts may be surrendered by their holders to the depositary with written instructions to the depositary to instruct us to cause conversion of the shares of represented preferred stock into whole shares of common stock or preferred stock, as the case may be, and we will agree that upon receipt of such instructions and any amounts payable, we will convert the depositary shares utilizing the same procedures as those provided for delivery of shares of preferred stock to effect such conversion. If the depositary shares are to be converted in part only, one or more new depositary receipts will be issued for any depositary shares not to be converted. No fractional shares of common stock will be issued upon conversion, and if such conversion will result in a fractional share being issued, we will pay an amount in cash equal to the value of the fractional interest based upon the closing price of the common stock on the last business day prior to the conversion.

### **Amendment and Termination of the Deposit Agreement**

We and the depositary may, at any time, agree to amend the form of depositary receipt and any provision of the deposit agreement. However, any amendment that materially and adversely alters the rights of the holders of depositary receipts will not be effective unless that amendment has been approved by the existing holders of at least a majority of the depositary shares.

We may terminate the deposit agreement upon not less than 30 days' prior written notice to the preferred stock depositary if:

the termination is to preserve our status as a REIT or

a majority of each class of preferred stock affected by the termination consents to the termination,



## **Table of Contents**

whereupon the depositary will deliver or make available to each holder of depositary receipts, upon surrender of the depositary receipts held by such holder, such number of whole or fractional shares of preferred stock as are represented by the depositary shares evidenced by such depositary receipts.

In addition, the deposit agreement will automatically terminate if:

all outstanding depositary shares shall have been redeemed;

there shall have been a final distribution in respect of the related preferred stock in connection with our liquidation, dissolution or winding up and such distribution shall have been distributed to the holders of the applicable depositary receipts; or

each share of related preferred stock shall have been converted into capital stock not so represented by depositary shares.

### **Charges of Preferred Stock Depositary**

We will pay all transfer and other taxes and governmental charges arising solely from the existence of the deposit agreement. In addition, we will pay the fees and expenses of the depositary in connection with the performance of its duties under the deposit agreement. However, unless otherwise specified in the applicable prospectus supplement, holders of depositary receipts will pay the fees and expenses of the depositary for any duties requested by such holders to be performed which are outside of those expressly provided for in the deposit agreement.

### **Resignation and Removal of Depositary**

The depositary may resign at any time by delivering to us notice of its election to do so. We may at any time remove the depositary. Any such resignation or removal will take effect upon the appointment of a successor depositary, which must be appointed within 60 days after delivery of the notice of resignation or removal and, as in the case of the original preferred stock depositary, must be a bank or trust company having its principal office in the United States and having a combined capital and surplus of at least \$50,000,000.

### **Miscellaneous**

The depositary will forward to holders of depositary receipts any reports and communications from us, including our annual reports and Exchange Act filings, which are received by the depositary with respect to the related preferred stock. The holders of depositary receipts shall have the rights to inspect the transfer books of the depositary and the list of holders of depositary receipts as provided in the applicable deposit agreement or as required by law.

We, as well as the depositary, will not be liable if either of us is prevented from or delayed in, by law or any circumstances beyond its control, performing its obligations under the deposit agreement. Our obligations and those of the depositary under the deposit agreement will be limited to performing our respective duties in good faith and without negligence, gross negligence or willful misconduct, and neither of us will be obligated to prosecute or defend any legal proceeding relating to any depositary receipts, depositary shares or shares of preferred stock unless satisfactory indemnity is furnished. We and the depositary may rely on written advice of counsel or accountants, or information provided by persons presenting shares of preferred stock represented by depositary receipts, holders of depositary receipts or other persons believed to be competent to give such information, and on documents believed to be genuine and signed by a proper party.

If the depositary shall receive conflicting claims, requests or instructions from any holders of depositary receipts, on the one hand, and us, on the other hand, the depositary shall be entitled to act on our claims, requests or instructions.

---

**Table of Contents**

**DESCRIPTION OF COMMON STOCK**

The following description of our common stock sets forth certain general terms and provisions of the common stock to which any prospectus supplement may relate, including a prospectus supplement providing that common stock will be issuable upon conversion of our debt securities or our preferred stock or upon the exercise of our warrants to purchase common stock. The statements below describing the common stock are in all respects subject to and qualified in their entirety by reference to the applicable provisions of our articles of incorporation and bylaws.

**General**

Our authorized capital stock consists of 190,000,000 shares of common stock, par value \$0.01 per share, 15,000,000 shares of preferred stock, par value \$0.01 per share, and 205,000,000 shares of excess stock, par value \$0.01 per share, issuable in exchange for capital stock as described below under Restrictions on Ownership. As of December 31, 2008, we had outstanding 78,415,307 shares of common stock. All issued and outstanding shares of common stock are duly authorized, validly issued, fully paid and nonassessable.

The holders of common stock elect all directors and are entitled to one vote per share on all matters submitted to a vote of the stockholders. Stockholders are entitled to receive dividends when, as and if declared by our Board of Directors out of funds legally available for that purpose. Upon our liquidation, dissolution or winding up, holders of common stock are entitled to share *pro rata* in any distribution to stockholders. Holders of common stock have no preemptive, subscription or conversion rights. The common stock will, when issued, be fully paid and nonassessable and will not be subject to preemptive or other similar rights.

**Restrictions on Ownership**

For us to qualify as a REIT, not more than 50% in value of our outstanding capital stock may be owned, directly or indirectly, by five or fewer individuals (as defined in the Code to include certain entities) during the last half of a taxable year. The shares must be beneficially owned (without reference to any rules of attribution) 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; and certain other requirements must be satisfied. See Federal Income Tax Considerations Taxation of National Retail Properties, Inc.

To ensure that five or fewer individuals do not own more than 50% in value of the outstanding common stock, our articles of incorporation provide that, subject to certain exceptions, no holder may own, or be deemed to own by virtue of the attribution provisions of the Code, more than 9.8% in value of the outstanding capital stock. Our Board of Directors may waive this ownership limit if evidence satisfactory to us and our tax counsel is presented that such ownership will not then or in the future jeopardize our status as a REIT. As a condition of such waiver, our Board of Directors may require opinions of counsel satisfactory to it and/or an undertaking from the applicant with respect to preserving our status as a REIT.

This ownership limit will not be automatically removed even if the REIT provisions of the Code are changed so as to no longer contain any ownership concentration limitation or if the ownership concentration limitation is increased. In addition to preserving our status as a REIT, this ownership limit may prevent any person or small group of persons from acquiring unilateral control of us.

If the ownership, transfer or acquisition of shares of common stock, or change in our capital structure or other event or transaction would result in:

any person owning (applying certain attribution rules) capital stock in excess of the ownership limit,

fewer than 100 persons owning our capital stock,

our being closely held within the meaning of Section 856(h) of the Code, or

our otherwise failing to qualify as a REIT,



**Table of Contents**

then the ownership, transfer or acquisition, or change in capital structure or other event or transaction that would have such effect will be void as to the purported transferee or owner, and the purported transferee or owner will not have or acquire any rights to the capital stock to the extent required to avoid such a result. Capital stock owned, transferred or proposed to be transferred in excess of the ownership limit or which would otherwise jeopardize our status as a REIT will automatically be converted to excess stock. A holder of excess stock is not entitled to distributions, voting rights, and other benefits with respect to such shares except for the right to payment of the purchase price for the shares (or, in the case of a devise or gift or similar event which results in the issuance of excess stock, the fair market value at the time of such devise or gift or event) and the right to certain distributions upon liquidation. Any dividend or distribution paid to a proposed transferee or holder of excess stock shall be repaid to us upon demand. Excess stock shall be subject to our repurchase at our election. The purchase price of any excess stock shall be equal to the lesser of:

the price paid in such purported transaction (or, in the case of a devise or gift or similar event resulting in the issuance of excess stock, the fair market value at the time of such devise or gift or event), or

the fair market value of such common stock on the date on which we or our designee determines to exercise its repurchase right. If the foregoing transfer restrictions are determined to be void or invalid by virtue of any legal decision, statute, rule or regulation, then the purported transferee of any excess stock may be deemed, at our option, to have acted as an agent on our behalf in acquiring such excess stock and to hold such excess stock on our behalf.

For purposes of our articles of incorporation, the term person shall mean:

an individual;

a corporation;

a partnership;

an estate;

a trust (including a trust qualified under Section 401(a) or 501(c)(17) of the Code);

a portion of a trust permanently set aside to be used exclusively for the purposes described in Section 642(c) of the Code;

an association;

a private foundation within the meaning of Section 509(a) of the Code;

a joint stock company or other entity; or

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

a group as that term is used for purposes of Section 13(d)(3) of the Securities Exchange Act of 1934.

The term *person* shall not include an underwriter which participated in a public offering of our capital stock for a period of sixty (60) days following the purchase by such underwriter of capital stock therein, provided that the foregoing exclusions shall apply only if the ownership of such capital stock by such underwriter would not cause us to fail to qualify as a REIT by reason of being *closely held* within the meaning of Section 856(a) of the Code or otherwise cause us to fail to qualify as a REIT.

All certificates representing capital stock will bear a legend referring to the restrictions described above.

Our articles of incorporation provide that all persons who own, directly or by virtue of the attribution provisions of the Code, more than 5.0% of the outstanding capital stock, or such lower percentage as may be required pursuant to regulations under the Code or as may be requested by our Board of Directors, must file a written notice with us no later than January 31 of each year with respect to the prior year containing:

the name and address of such owner,

the number of shares of capital stock owned by such holder and

a description of how such shares are held.

## **Table of Contents**

In addition, each stockholder shall be required to disclose, upon demand, to us in writing such information that we may request in good faith in order to determine our status as a REIT or to comply with the requirements of any taxing authority or governmental agency.

The ownership limitations described above may have the effect of precluding acquisitions of control of us by a third party.

### **Certain Provisions of Maryland Law and Our Articles of Incorporation and Bylaws**

The following summary of certain provisions of the Maryland General Corporation Law and our articles of incorporation and bylaws is not complete. You should read the Maryland General Corporation Law and our articles of incorporation and bylaws for more complete information.

***Limitation of Liability of Directors and Officers.*** Our articles of incorporation provide that, to the fullest extent that limitations on the liability of directors and officers are permitted by the Maryland General Corporation Law, no director or officer shall be liable to us or our stockholders for money damages. The Maryland General Corporation Law provides that we may restrict or limit the liability of directors or officers for money damages except

to the extent anyone actually received an improper benefit or profit in money, property or services; or

a judgment or other final adjudication adverse to the person is entered in a proceeding based on a finding that the person's action was material to the cause of action adjudicated and the action or failure to act was the result of bad faith or active and deliberate dishonesty.

***Indemnification of Directors and Officers.*** Our articles of incorporation and bylaws permit us to indemnify any of our employees or agents and require us to indemnify our directors and officers to the fullest extent permitted by Maryland law. The bylaws require us to indemnify each director or officer and to pay or reimburse, in advance of the final disposition of a proceeding, reasonable expenses incurred by a present or former director or officer or any person who, while a director, is or was serving at our request as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, who is made a party to a proceeding by reason of his or her status as a director, officer, employee or agent, to the fullest extent provided by Maryland law. Our articles of incorporation and bylaws permit us to cover directors and officers under our directors' and officers' liability insurance.

The Maryland General Corporation Law provides that we may indemnify directors and officers unless:

the director actually received an improper benefit or profit in money, property or services;

the act or omission of the director was material to the matter giving rise to the proceeding and was committed in bad faith or was the result of active and deliberate dishonesty; or

in a criminal proceeding, the director had reasonable cause to believe that the act or omission was unlawful.

***Meetings of Stockholders.*** Our bylaws provide for an annual meeting of stockholders to elect individuals to the Board of Directors and transact such other business as may properly be brought before the meeting. Special meetings of stockholders may be called by the Chairman of the Board of Directors, the Chief Executive Officer or a majority of the members of the Board of Directors and shall be called by the Secretary at the request in writing of the holders of not less than a majority of the outstanding shares of common stock entitled to vote.

Our bylaws provide that any action required or permitted to be taken at a meeting of stockholders may be taken by unanimous written consent without a meeting. The written consent must, among other items, specify the action to be taken and be signed by each stockholder entitled to vote on the matter.

### **Transfer Agent**

American Stock Transfer & Trust Company is the transfer agent of the common stock.

**Table of Contents**

**DESCRIPTION OF WARRANTS**

We may issue warrants for the purchase of common or preferred stock. If we offer warrants, we will describe the terms in a prospectus supplement. Warrants may be offered independently, together with other securities offered by any prospectus supplement, or through a dividend or other distribution to stockholders and may be attached to or separate from other securities. We will issue the warrants under warrant agreements to be entered into between us and a bank or trust company, as warrant agent, all as shall be set forth in the applicable prospectus supplement. A warrant agent would act solely as our agent in connection with the warrants of a particular series and would not assume any obligation or relationship of agency or trust for or with any holders or beneficial owners of such warrants.

The following are some of the warrant terms that could be described in a prospectus supplement:

the title of the warrant;

the aggregate number of warrants;

price or prices at which the warrant will be issued;

the designation, number and terms of the preferred shares or common shares that may be purchased on exercise of the warrant;

the date, if any, on and after which the warrant and the related securities will be separately transferable;

the price at which each security purchasable on exercise of the warrant may be purchased;

the dates on which the right to purchase the securities purchasable on exercise of the warrant will begin and end;

the minimum or maximum number of securities that may be purchased at any one time;

any anti-dilution protection;

information with respect to book-entry procedures, if any;

a discussion of material federal income tax considerations; and

any other warrant terms, including terms relating to transferability, exchange or exercise of the warrant.



---

**Table of Contents**

**FEDERAL INCOME TAX CONSIDERATIONS**

**Introduction**

The following sections summarize the material federal income tax issues that you may consider relevant. Because this section is a summary, it does not address all of the tax issues that may be important to you. For example, this discussion addresses only common or preferred stock held as a capital asset. In addition, this section does not address the tax issues that may be important to certain types of stockholders that are subject to special treatment under the federal income tax laws, such as financial institutions, brokers, dealers in securities and commodities, insurance companies, former U.S. citizens or long-term residents, regulated investment companies, real estate investment trusts, tax-exempt organizations (except to the extent discussed in [Taxation of Tax-Exempt U.S. Stockholders](#) below), persons subject to the alternative minimum tax, persons that are, or that hold their stock through, partnerships or other pass-through entities, U.S. stockholders whose functional currency is not the U.S. dollar, persons that hold stock as part of a straddle, hedge, conversion, synthetic security or constructive sale transaction for U.S. federal income tax purposes, or non-U.S. individuals and foreign corporations (except to the extent discussed in [Taxation of Non-U.S. Stockholders](#) below). This summary does not address any aspect of state, local or foreign taxation or any U.S. federal tax other than the income tax and only to the extent specifically provided herein certain excise taxes potentially applicable to REITs.

This summary is based upon the provisions of the Code, the regulations of the U.S. Department of Treasury ( [Treasury](#) ) promulgated thereunder and judicial and administrative rulings now in effect, all of which are subject to change or differing interpretations, possibly with retroactive effect.

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

**Taxation of National Retail Properties, Inc.**

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

We elected to be taxed as a REIT under the federal income tax laws when we filed our 1984 federal income tax return. We have operated in a manner intended to qualify as a REIT and we intend to continue to operate in that manner. This section discusses the laws governing the federal income tax treatment of a REIT and its stockholders. These laws are highly technical and complex.

In the opinion of our tax counsel, Pillsbury Winthrop Shaw Pittman LLP, (i) we qualified as a REIT under Sections 856 through 859 of the Code with respect to our taxable years ended December 31, 1984 through December 31, 2008; and (ii) we are organized in conformity with the requirements for qualification as a REIT under the Code, and our current method of operation and ownership will enable us to meet the requirements for qualification and taxation as a REIT for the current taxable year and for future taxable years, provided that we have operated and continue to operate in accordance with various assumptions and factual representations made by us concerning our business, properties and operations. We may not, however, have met or continue to meet such requirements. You should be aware that opinions of counsel are not binding on the Internal Revenue Service ( [IRS](#) ) or any court. Our qualification as a REIT depends on our ability to meet, on a continuing basis, certain qualification tests set forth in the federal tax laws. Those qualification tests involve the percentage of income that we earn from specified sources, the percentage of our assets that fall within certain categories, the diversity of the ownership of our stock, and the percentage of our earnings that we distribute. We describe the REIT qualification tests in more detail below. Pillsbury Winthrop Shaw Pittman LLP will not monitor our compliance with the requirements for REIT qualification on an ongoing basis. Accordingly, our actual operating results may not satisfy the qualification tests. For a discussion of the tax treatment of us and our stockholders if we fail to qualify as a REIT, see [Requirements for REIT Qualification](#) [Failure to Qualify](#).

**Table of Contents**

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

we will pay federal income tax on taxable income (including net capital gain) that we do not distribute to our stockholders during, or within a specified time period after, the calendar year in which the income is earned;

we may be subject to the alternative minimum tax on any items of tax preference that we do not distribute or allocate to our stockholders;

we will pay income tax at the highest corporate rate on (i) net income from the sale or other disposition of property acquired through foreclosure that we hold primarily for sale to customers in the ordinary course of business and (ii) other non-qualifying income from foreclosure property;

we will pay a 100% tax on net income from certain sales or other dispositions of property (other than foreclosure property) that we hold primarily for sale to customers in the ordinary course of business ( prohibited transactions );

if we fail to satisfy the 75% gross income test or the 95% gross income test (as described below under Requirements for REIT Qualification Income Tests ), but nonetheless continue to qualify as a REIT because we meet certain other requirements, we will pay a 100% tax on (i) the gross income attributable to the greater of the amount by which we fail, respectively, the 75% or 95% gross income test, multiplied, in either case, by (ii) a fraction intended to reflect our profitability;

if we fail, in more than a de minimis fashion, to satisfy one or more of the asset tests for any quarter of a taxable year, but nonetheless continue to qualify as a REIT because we qualify under certain relief provisions, we may be required to pay a tax of the greater of \$50,000 or a tax computed at the highest corporate rate on the amount of net income generated by the assets causing the failure from the date of failure until the assets are disposed of or we otherwise return to compliance with the asset test;

if we fail to satisfy one or more of the requirements for REIT qualification (other than the income tests or the asset tests), we nevertheless may avoid termination of our REIT election in such year if the failure is due to reasonable cause and not due to willful neglect, but we would also be required to pay a penalty of \$50,000 for each failure to satisfy the REIT qualification requirements;

if we fail to distribute during a calendar year at least the sum of (i) 85% of our REIT ordinary income for such year, (ii) 95% of our REIT capital gain net income for such year, and (iii) any undistributed taxable income from prior periods, we will pay a 4% excise tax on the excess of such required distribution over the amount we actually distributed;

we may be required to pay monetary penalties to the IRS in certain circumstances, including if we fail to meet record-keeping requirements intended to monitor our compliance with the rules relating to the composition of a REIT's stockholders;

we may elect to retain and pay income tax on our net long-term capital gain; or

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

if we acquire any asset from a C corporation (i.e., a corporation generally subject to full corporate-level tax) in a merger or other transaction in which we acquire a carryover basis in the asset (i.e., basis determined by reference to the C corporation's basis in the asset (or another asset)), and we recognize gain on the sale or disposition of such asset during the 10-year period after we acquire such asset, we will pay tax at the highest regular corporate rate applicable on the lesser of (i) the amount of gain that we recognize at the time of the sale or disposition and (ii) the amount of gain that we would have recognized if we had sold the asset at the time we acquired the asset.

---

**Table of Contents**

***Requirements for REIT Qualification***

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

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

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

We believe we have issued sufficient stock with sufficient diversity of ownership to satisfy requirements 5 and 6 set forth above. In addition, our articles of incorporation restricts the ownership and transfer of our equity securities so that we should continue to satisfy requirements 5 and 6. The provisions of our articles of incorporation restricting the ownership and transfer of our equity securities are described in Description of Common Stock Restrictions on Ownership.

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

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

and items of income, deduction, and credit of such subsidiary will be treated as our assets, liabilities, and items of income, deduction, and credit. We believe our direct corporate subsidiaries are qualified REIT subsidiaries, except for those that are taxable REIT subsidiaries. Accordingly, they are not subject to federal corporate income taxation, though they may be subject to state and local taxation.

**Table of Contents**

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

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

At least 75% of our gross income (excluding gross income from prohibited transactions, certain real estate liability hedges and, after July 30, 2008, certain foreign currency hedges entered into and certain recognized real estate foreign exchange gains) for each taxable year must consist of defined types of income that we derive, directly or indirectly, from investments relating to real property or mortgages on real property or qualified temporary investment income (the 75% gross income test). Qualifying income for purposes of the 75% gross income test includes rents from real property, interest on debt secured by mortgages on real property or on interests in real property, gain from the sale of real estate assets, and dividends or other distributions on and gain from the sale of shares in other REITs; and

At least 95% of our gross income (excluding gross income from prohibited transactions, certain real estate liability hedges and, after July 30, 2008, certain foreign currency hedges entered into and certain recognized passive foreign exchange gains) for each taxable year must consist of income that is qualifying income for purposes of the 75% gross income test, dividends, other types of interest, gain from the sale or disposition of stock or securities, or any combination of the foregoing (the 95% gross income test).

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

**Rental Income.** Our primary source of income derives from leasing properties. There are various limitations on whether rent that we receive from real property that we own and lease to tenants will qualify as rents from real property (which is qualifying income for purposes of the 75% and 95% gross income tests) under the REIT tax rules.

If the rent is based, in whole or in part, on the income or profits of any person although, generally, rent may be based on a fixed percentage or percentages of receipts or sales, the rent will not qualify as rents from real property. Our leases provide for either fixed rent, sometimes with scheduled escalations, or a fixed minimum rent and a percentage of gross receipts in excess of some threshold. We have not entered into any lease based in whole or part on the net income of any person and do not anticipate entering into such arrangements unless we determine in our discretion that such arrangements will not jeopardize our status as a REIT.

Except in certain limited circumstances involving taxable REIT subsidiaries, if we or someone who owns 10% or more of our stock owns 10% or more of a tenant from whom we receive rent, the tenant is deemed a related party tenant, and the rent paid by the related party tenant will not qualify as rents from real property. Our ownership and the ownership of a tenant is determined based on direct, indirect and constructive ownership. The constructive ownership rules generally provide that if 10% or more in value of our stock is owned, directly or indirectly, by or for any person, we are considered as owning the stock owned, directly or indirectly, by or for such person. The applicable attribution rules, however, are highly complex and difficult to apply, and we may inadvertently enter into leases with tenants who, through application of such rules, will constitute related party tenants. In such event, rent paid by the related party tenant will not qualify as rents from real property, which may jeopardize our status as a REIT. We will use our best efforts not to rent any property to a related party tenant (taking into account the applicable constructive ownership rules), unless we determine in our discretion that the rent received from such related party tenant will not jeopardize our status as a REIT.

---

**Table of Contents**

In the case of certain rent from a taxable REIT subsidiary which would, but for this exception, be considered rent from a related party tenant, the space leased to the taxable REIT subsidiary must be part of a property at least 90% of which is rented to persons other than taxable REIT subsidiaries and related party tenants, and the amounts of rent paid to us by the taxable REIT subsidiary must be substantially comparable to the rents paid by such other persons for comparable space.

If the rent attributable to any personal property leased in connection with a lease of property is more than 15% of the total rent received under the lease, all of the rent attributable to the personal property will fail to qualify as rents from real property. We have not leased a significant amount of personal property under our current leases. If any incidental personal property has been leased, or we lease personal property in connection with a future lease, we believe that rent under each lease from the personal property has been or will be less than 15% of total rent from that lease or that the amount of rent attributable to the personal property will not jeopardize our status as a REIT.

In general, if we furnish or render services to our tenants, other than through a taxable REIT subsidiary or an independent contractor who is adequately compensated and from whom we do not derive revenue, the income received from the tenants may not be deemed rents from real property. We may provide services directly, if the services are usually or customarily rendered in connection with the rental of space for occupancy only and are not otherwise considered to be provided for the tenant's convenience. In addition, we may render directly a de minimis amount of non-customary services to the tenants of a property without disqualifying the income as rents from real property, as long as our income from the services does not exceed 1% of our income from the related property. We have not provided noncustomary services to leased properties other than through an independent contractor. In the future, we intend that any services provided will not cause rents to be disqualified as rents from real property.

Based on, and subject to, the foregoing, we believe that rent from our leases should generally qualify as rents from real property for purposes of the 75% and 95% gross income tests, except in amounts that should not jeopardize our status as a REIT. As described above, however, the IRS may assert successfully a contrary position and, therefore, prevent us from qualifying as a REIT.

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

charge rent for any property that is based in whole or in part on the income or profits of any person (except by reason of being based on a percentage of receipts or sales, as described above);

rent any property to a related party tenant (taking into account the applicable constructive ownership rules and the exception for taxable REIT subsidiaries), unless we determine in our discretion that the rent received from such related party tenant is not material and will not jeopardize our status as a REIT;

derive rental income attributable to personal property (other than personal property leased in connection with the lease of real property, the amount of which is less than 15% of the total rent received under the lease); and

perform services considered to be provided for the convenience of the tenant that generate rents exceeding 1% of all amounts received or accrued during the taxable year with respect to such property, other than through an independent contractor from whom we derive no revenue, through a taxable REIT subsidiary, or if the provision of such services will not jeopardize our status as a REIT.

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

*Treatment of Structured Finance Loans.* Structured finance loans that we originate generally will not be secured by a direct interest in real property, but by ownership interests in an entity owning real property. In Revenue Procedure 2003-65, the IRS established a safe harbor under which interest from loans secured by a first





---

**Table of Contents**

priority security interest in ownership interests in a partnership or limited liability company owning real property will be treated as qualifying income for both the 75% and 95% gross income tests, and such loans will be treated as qualifying real estate assets for purposes of the 75% asset test, provided several requirements are satisfied. If a structured finance loan does not qualify for the Revenue Procedure 2003-65 safe harbor, the interest income from the loan will be qualifying income for purposes of the 95% gross income test, but may not be qualifying income for purposes of the 75% gross income test. In addition, if the structured finance loan is not a real estate asset and does not qualify as straight debt or as one of certain other disregarded instruments, we will be subject to the 10% asset test relating to value with respect to such loan. We believe that our structured finance loans generally either qualify for the Revenue Procedure 2003-65 safe harbor, are otherwise treated as real estate assets that generate qualifying income under both the 75% and 95% gross income tests and are qualifying assets for purposes of the asset tests, or qualify as straight debt that generate qualifying income under the 95% gross income test but generate nonqualifying income for purposes of the 75% gross income test.

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

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

for which the related loan was acquired by the REIT at a time when default was not imminent or anticipated; and

for which the REIT makes a proper election to treat the property as foreclosure property.

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

the last day of the third taxable year following the taxable year in which the REIT acquired the property (or longer if an extension is granted by the Secretary of the Treasury);

the first day on which a lease is entered into with respect to such property that, by its terms, will give rise to income that does not qualify under the 75% gross income test or any amount is received or accrued, directly or indirectly, pursuant to a lease entered into on or after such day that will give rise to income that does not qualify under the 75% gross income test;

the first day on which any construction takes place on such property (other than completion of a building, or any other improvement, where more than 10% of the construction of such building or other improvement was completed before default became imminent); or

the first day that is more than 90 days after the day on which such property was acquired by the REIT and the property is used in a trade or business that is conducted by the REIT (other than through an independent contractor from whom the REIT itself does not derive or receive any income).

*Tax on Prohibited Transactions.* A REIT will incur a 100% tax on net income derived from any prohibited transaction. A prohibited transaction generally is a sale or other disposition of property (other than foreclosure property) that the REIT holds primarily for sale to customers in the ordinary course of a trade or business. With respect to prohibited transactions occurring after July 30, 2008, any foreign currency gain (as defined in Section 988(b)(1) of the Code) and any foreign currency loss (as defined in Section 988(b)(2) of the Code) will be taken into account in determining the amount of income subject to the 100% penalty tax. The prohibited transaction rules do not apply to property held by a taxable REIT subsidiary of a REIT. We believe that none of



---

**Table of Contents**

our assets (other than certain assets held through our taxable REIT subsidiaries) are held for sale to customers and that a sale of any such asset would not be in the ordinary course of our business. Whether a REIT holds an asset primarily for sale to customers in the ordinary course of a trade or business depends, however, on the facts and circumstances in effect from time to time, including those related to a particular asset.

The Code provides a safe harbor that, if met, allows us to avoid being treated as engaged in a prohibited transaction. In order to meet the safe harbor, (i) we must have held the property for at least 2 years (and, in the case of property which consists of land or improvements not acquired through foreclosure, we must have held the property for 2 years for the production of rental income), (ii) we must not have made aggregate expenditures includible in the basis of the property during the 2-year period preceding the date of sale that exceed 30% of the net selling price of the property, and (iii) during the taxable year the property is disposed of, we must not have made more than 7 property sales or, alternatively, the aggregate adjusted basis or fair market value of all of the properties sold by us during the taxable year must not exceed 10% of the aggregate adjusted basis or 10% of the fair market value, respectively, of all of our assets as of the beginning of the taxable year. If the 7 sale limitation in (iii) above is not satisfied, substantially all of the marketing and development expenditures with respect to the property must be made through an independent contractor from whom we do not derive or receive any income. For sales on or prior to July 30, 2008, the 2-year periods referenced in (i) and (ii) above were 4 years, and the 10% fair market value test described in the alternative in (iii) above did not apply. We believe we have complied with the terms of the safe-harbor provision and we will attempt to comply with the safe harbor in the future. We may fail to comply with the safe-harbor provision or may own property that could be characterized as property held primarily for sale to customers in the ordinary course of a trade or business.

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

*Hedging Transactions.* Except to the extent provided by Treasury regulations, any income we derive from a hedging transaction (which may include entering into interest rate swaps, caps, and floors, options to purchase these items, and futures and forward contracts) which is clearly identified as such as specified in the Code, including gain from the sale or disposition of such a transaction, will not constitute gross income for purposes of either the 75% or 95% gross income test, and therefore will be exempt from these tests, but only to the extent that the transaction hedges indebtedness incurred or to be incurred by us to acquire or carry real estate assets or is entered into primarily to manage the risk of foreign currency fluctuations with respect to qualifying income under the 75% or 95% gross income test. Real estate liability hedging transactions entered into on or before July 30, 2008, however, will likely generate nonqualifying income for purposes of the 75% gross income test, and foreign currency hedges entered into on or before July 30, 2008 will likely generate nonqualifying income for purposes of both the 75% and 95% gross income tests. Moreover, income from any hedging transaction not described above will likely continue to be treated as nonqualifying for both the 75% and 95% gross income tests.

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

---

**Table of Contents**

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

At least 75% of the value of our total assets must consist of cash or cash items (including certain receivables), government securities, real estate assets, or qualifying temporary investments (the 75% asset test).

Real estate assets include interests in real property, interests in mortgages on real property and stock in other REITs.

Interests in real property include an interest in mortgage loans or land and improvements thereon, such as buildings or other inherently permanent structures (including items that are structural components of such buildings or structures), a leasehold of real property, and an option to acquire real property (or a leasehold of real property).

Qualifying temporary investments are investments in stock or debt instruments during the one-year period following our receipt of new capital that we raise through equity or long-term (at least five-year) debt offerings.

For investments not included in the 75% asset test, (A) the value of our interest in any one issuer's securities, which does not include our equity ownership of other REITs, any taxable REIT subsidiary or qualified REIT subsidiary, may not exceed 5% of the value of our total assets (the 5% asset test), (B) we may not own more than 10% of the voting power or value of any one issuer's outstanding securities (which does not include our equity ownership in other REITs, any qualified REIT subsidiary or any taxable REIT subsidiary) (the 10% asset test), (C) the value of our securities in one or more taxable REIT subsidiaries may not exceed 25% of the value of our total assets, and (D) no more than 25% of the value of our total assets may consist of the securities of taxable REIT subsidiaries and our assets that are not qualifying assets for purposes of the 75% asset test. For purposes of the 10% asset test that relates to value, the following are not treated as securities: (i) loans to individuals and estates, (ii) securities issued by REITs, (iii) accrued obligations to pay rent; (iv) certain debt meeting the definition of straight debt if neither we nor a taxable REIT subsidiary that we control hold more than 1% of the issuer's securities that do not qualify as straight debt, and (v) debt issued by a partnership if the partnership meets the 75% gross income test with respect to its own gross income.

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

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

**Relief from Consequences of Failing to Meet Asset Tests.** If we fail to satisfy one or more of the asset tests for any quarter of a taxable year, we nevertheless may qualify as a REIT for such year if we qualify for relief under certain provisions of the Code. Those relief provisions are available for failures of the 5% asset test and the 10% asset test if (i) the failure is due to the ownership of assets that do not exceed the lesser of 1% of our total assets or \$10 million, and (ii) the failure is corrected or we otherwise return to compliance with the applicable asset test within 6 months following the quarter in which it was discovered. In addition, should we fail to satisfy any of the asset tests other than failures addressed in the previous sentence, we may nevertheless qualify as a REIT for such year if (i) the failure is due to reasonable cause and not due to willful neglect, (ii) we file a schedule with a description of each asset causing the failure in accordance with regulations prescribed by the Treasury, (iii) the failure is corrected or we otherwise return to compliance with the asset tests within 6 months following the quarter in which the failure was discovered, and (iv) we pay a tax consisting of the greater of

---

**Table of Contents**

\$50,000 or a tax computed at the highest corporate rate on the amount of net income generated by the assets causing the failure from the date of failure until the assets are disposed of or we otherwise return to compliance with the asset tests. We may not qualify for the relief provisions in all circumstances.

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

We generally must pay such distributions in the taxable year to which they relate, or in the following taxable year if we (i) declare a dividend in one of the last three months of the calendar year to which the dividend relates which is payable to stockholders of record as determined in one of such months, and pay the distribution during January of the following taxable year, or (ii) declare the distribution before we timely file our federal income tax return for such year and pay the distribution on or before the first regular dividend payment date after such declaration.

We will pay federal income tax at regular corporate rates on taxable income (including net capital gain) that we do not distribute to stockholders. Furthermore, we will incur a 4% nondeductible excise tax if we fail to distribute during a calendar year (or, in the case of distributions with declaration and record dates falling in the last three months of the calendar year, by the end of January following such calendar year) at least the sum of (1) 85% of our REIT ordinary income for such year, (2) 95% of our REIT capital gain income for such year, and (3) any undistributed taxable income from prior periods. The excise tax is on the excess of such required distribution over the amounts we actually distributed. We may elect to retain and pay income tax on the net long-term capital gain we receive in a taxable year. See Taxation of Taxable U.S. Stockholders. For purposes of the 4% excise tax, we will be treated as having distributed any such retained amount. We have made, and we intend to continue to make, timely distributions sufficient to satisfy the annual distribution requirements.

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

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

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

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

---

## **Table of Contents**

***Failure to Qualify.*** If we fail to qualify as a REIT in any taxable year, and no relief provision applied, we would be subject to federal income tax (including any applicable alternative minimum tax) on our taxable income at regular corporate rates. In calculating our taxable income in a year in which we fail to qualify as a REIT, we would not be able to deduct amounts paid out to stockholders and we would not be required to distribute any amounts to stockholders in such year. In such event, to the extent of our current or accumulated earnings and profits, all distributions to stockholders would be taxable as ordinary income. Any such dividends should, however, be qualified dividend income, which is taxable at long-term capital gain rates for individual stockholders who satisfy certain holding period requirements for tax years through 2010. Furthermore, subject to certain limitations of the Code, corporate stockholders might be eligible for the dividends received deduction. Unless we qualified for relief under specific statutory provisions, we also would be disqualified from taxation as a REIT for the four taxable years following the year during which we ceased to qualify as a REIT. We cannot predict whether in all circumstances we would qualify for such statutory relief.

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

As used herein, the term taxable U.S. stockholder means a taxable beneficial owner of our common or preferred stock that for U.S. federal income tax purposes is:

a citizen or resident of the United States;

a corporation created or organized in or under the laws of the United States, any of its states or the District of Columbia;

an estate whose income is subject to U.S. federal income taxation regardless of its source; or

a trust if (1) a U.S. court is able to exercise primary supervision over the administration of such trust and one or more U.S. persons have the authority to control all substantial decisions of the trust, or (2) it has a valid election in effect to be treated as a U.S. person. If a partnership, including an entity or arrangement that is treated as a partnership for U.S. federal income tax purposes, is a beneficial owner of our common or preferred stock, the treatment of a partner in the partnership will generally depend on the status of the partner and the activities of the partnership.

For U.S. federal income tax purposes, holders of depositary share receipts will be treated as if they held the equivalent fraction of the underlying preferred stock. Accordingly, the discussion below with respect to the consequences of holding our preferred stock applies equally to holders of our depositary receipts.

***Dividends and Other Taxable U.S. Stockholder Distributions.*** As long as we qualify as a REIT, a taxable U.S. stockholder must take into account distributions on our common or preferred stock out of our current or accumulated earnings and profits (and that we do not designate as capital gain dividends or retained long-term capital gain) as ordinary income. Such distributions will not qualify for the dividends received deduction generally available to corporations. In addition, dividends paid to taxable U.S. stockholders generally will not qualify for the 15% tax rate (applicable to tax years through 2010) for qualified dividend income.

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

---

**Table of Contents**

A taxable U.S. stockholder will recognize distributions that we designate as capital gain dividends as long-term capital gain (to the extent they do not exceed our actual net capital gain for the taxable year) without regard to the period for which the taxable U.S. stockholder has held its common or preferred stock. See **Capital Gains and Losses** below. Subject to certain limitations, we will designate whether our capital gain dividends are taxable at the usual capital gains rate or at the higher rate applicable to depreciation recapture. A corporate taxable U.S. stockholder, however, may be required to treat up to 20% of certain capital gain dividends as ordinary income.

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

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

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

***Capital Gains and Losses.*** A taxpayer generally must hold a capital asset for more than one year for gain or loss derived from its sale or exchange to be treated as long-term capital gain or loss. The highest marginal individual income tax rate on ordinary income significantly exceeds the maximum tax rate on long-term capital gain applicable to non-corporate taxpayers. The maximum tax rate on long-term capital gain from the sale or exchange of Section 1250 property (i.e., depreciable real property) is, to the extent that such gain would have been treated as ordinary income if the property were Section 1245 property, higher than the maximum long-term capital gain rate otherwise applicable. With respect to distributions that we designate as capital gain dividends and any retained capital gain that is deemed to be distributed, we may designate (subject to certain limits) whether such a distribution is taxable to our non-corporate stockholders at the lower or higher rate. A taxable U.S. stockholder required to include retained long-term capital gains in income will be deemed to have paid, in the taxable year of the inclusion, its proportionate share of the tax paid by us in respect of such undistributed net capital gains. Taxable U.S. stockholders subject to these rules will be allowed a credit or a refund, as the case may be, for the tax deemed to have been paid by such stockholders. Taxable U.S. stockholders will increase their basis in their stock by the difference between the amount of such includible gains and the tax

---

**Table of Contents**

deemed paid by the taxable U.S. stockholder in respect of such gains. In addition, the characterization of income as capital gain or ordinary income may affect the deductibility of capital losses. A non-corporate taxpayer may generally deduct capital losses not offset by capital gains against its ordinary income only up to a maximum annual amount of \$3,000. A non-corporate taxpayer may carry forward unused capital losses indefinitely. A corporate taxpayer must pay tax on its net capital gain at ordinary corporate rates. A corporate taxpayer can deduct capital losses only to the extent of capital gains, with unused losses being carried back three years and forward five years.

***Redemption of Preferred Stock for Cash.*** The treatment accorded to any redemption by us for cash (as distinguished from a sale, exchange or other disposition) of preferred stock can only be determined on the basis of particular facts as to each holder at the time of redemption. As stated above, in general a taxable U.S. stockholder of preferred stock will recognize capital gain or loss measured by the difference between the amount received upon the redemption and such holder's adjusted tax basis in the preferred stock redeemed (provided the preferred stock is held as a capital asset) if such redemption (i) results in a complete termination of the holder's interest in all classes of our stock under Section 302(b)(3) of the Code, (ii) is substantially disproportionate with respect to the holder's interest in our stock under Section 302(b)(2) of the Code (which will not be the case if only preferred stock is redeemed, since they generally do not have voting rights), or (iii) is not essentially equivalent to a dividend with respect to the holder of preferred stock under Section 302(b)(1) of the Code. In applying these tests, there must be taken into account not only the preferred stock owned by the taxable U.S. stockholder, but also such holder's ownership of our common stock and any other options (including stock purchase rights) to acquire any of the foregoing. The holder of preferred stock also must take into account any such securities (including options) which are considered to be owned by such holder by reason of the constructive ownership rules set forth in Sections 318 and 302(c) of the Code.

If a particular taxable U.S. stockholder of preferred stock owns (actually or constructively) none of our common stock or an insubstantial percentage of our outstanding common stock, then based upon current law, it is probable that the redemption of preferred stock from such a holder would be considered not essentially equivalent to a dividend. However, whether a dividend is not essentially equivalent to a dividend depends on all of the facts and circumstances, and a taxable U.S. stockholder of preferred stock intending to rely on any of these tests at the time of redemption should consult the holder's own tax advisor to determine their application to the holder's particular situation. If the redemption does not meet any of the tests under Section 302 of the Code, then the redemption proceeds received from the preferred stock will be treated as a distribution on the preferred stock. If the redemption is taxed as a dividend, the taxable U.S. stockholder's adjusted tax basis in the preferred stock will be transferred to any other stock held by the holder. If the holder of preferred stock owns none of our other stock, under certain circumstances, such basis may be transferred to a related person, or it may be lost entirely.

The Treasury previously proposed regulations which would have altered the method for recovering a taxable U.S. stockholder's adjusted tax basis in any of our preferred stock redeemed in a dividend equivalent redemption. Under the proposed Treasury regulations, a holder would be treated as realizing a capital loss on the date of the dividend equivalent redemption equal to the adjusted tax basis of the stock redeemed, subject to adjustments. The recognition of such loss would generally be deferred until the occurrence of specified events, such as, for example, the holder's ceasing to actually or constructively own any stock. However, the proposed Treasury regulations have since been withdrawn by the Treasury. Although presumably the existing methods for recovering adjusted tax basis continue to apply in such a redemption, the Treasury is considering other methods for basis recovery, and new regulations addressing this treatment could be promulgated in the future. We urge you to consult your tax advisor concerning the treatment of a cash redemption of our preferred stock or depository shares.

***Redemption or Conversion of Preferred Stock to Common Stock.*** Assuming that preferred stock will not be redeemed or converted at a time when there are distributions in arrears, in general, no gain or loss will be recognized for federal income tax purposes upon the redemption or conversion of our preferred stock at the



**Table of Contents**

option of the holder solely into common stock. The basis that a taxable U.S. stockholder will have for tax purposes in the common stock received will be equal to the adjusted basis the holder had in the preferred stock so redeemed or converted and, provided that the preferred stock was held as a capital asset, the holding period for the common stock received will include the holding period for the preferred stock redeemed or converted. A holder, however, will generally recognize gain or loss on the receipt of cash in lieu of a fractional common share in an amount equal to the difference between the amount of cash received and the holder's adjusted basis in such fractional share.

If a redemption or conversion occurs when there is a dividend arrearage on the preferred stock and the fair market value of the common stock exceeds the issue price of the preferred stock, a portion of the common stock received might be treated as a dividend distribution taxable as ordinary income.

**Adjustments to Conversion Price.** Under Section 305 of the Code, holders of preferred stock may be deemed to have received a constructive distribution of stock that is taxable as a dividend where the conversion ratio is adjusted to reflect a cash or property distribution with respect to the common stock into which it is convertible. An adjustment to the conversion price made pursuant to a *bona fide*, reasonable adjustment formula that has the effect of preventing dilution of the interest of the holders, however, will generally not be considered to result in a constructive distribution of stock. Certain of the possible adjustments that may be provided in issuances of our preferred stock may not qualify as being pursuant to a *bona fide*, reasonable adjustment formula. In such a case, if a nonqualifying adjustment were made, the holders of preferred stock might be deemed to have received a taxable stock dividend.

**Passive Activity and Investment Income Limitations.** Distributions from us and gain from the disposition of common or preferred stock will not be treated as passive activity income and, therefore, taxable U.S. stockholders will not be able to apply any passive activity losses against such income. Dividends from us (to the extent they do not constitute a return of capital or capital gain dividends) and, on an elective basis, capital gain dividends and gain from the disposition of common or preferred stock generally will be treated as investment income for purposes of the investment income limitation.

**Current Tax Rates.** The maximum tax rate on the long-term capital gains of domestic non-corporate taxpayers is 15% for taxable years beginning on or before December 31, 2010. The tax rate on qualified dividend income is the same as the maximum capital gains rate, and is substantially lower than the maximum rate on ordinary income. Because, as a REIT, we are not generally subject to tax on the portion of our REIT taxable income or capital gains distributed to our stockholders, our distributions are not generally eligible for the tax rate on qualified dividend income. As a result, our ordinary REIT distributions are taxed at the higher tax rates applicable to ordinary income. However, with respect to non-corporate taxpayers, the 15% rate does generally apply to:

a stockholder's long-term capital gain, if any, recognized on the disposition of our common or preferred stock;

distributions we designate as long-term capital gain dividends (except to the extent attributable to real estate depreciation, in which case the 25% tax rate applies);

distributions attributable to dividends we receive from non-REIT corporations (including any taxable REIT subsidiaries); and

distributions to the extent attributable to income upon which we have paid corporate tax (for example, the tax we would pay if we distributed less than all of our taxable REIT income).

Without legislation, for non-corporate taxpayers the maximum tax rate on long-term capital gains will increase to 20% in 2011, and qualified dividend income will no longer be taxed at a preferential rate compared to ordinary income.

**Table of Contents**

**Information Reporting and Backup Withholding.** Taxable U.S. stockholders that are exempt recipients (such as corporations) generally will not be subject to U.S. backup withholding and related information reporting on payments of dividends on, and the proceeds from the disposition of, our common or preferred stock unless, when required, they fail to demonstrate their status as exempt recipients. In general, we will report to our other stockholders and to the IRS the amount of distributions we pay during each calendar year, and the amount of tax we withhold, if any. Under the backup withholding rules, a stockholder may be subject to backup withholding (currently at the rate of 28%) with respect to dividends unless such holder (1) is a corporation or comes within certain other exempt categories and, when required, demonstrates this fact or (2) provides a taxpayer identification number, certifies as to no loss of exemption from backup withholding, and otherwise complies with the applicable requirements of the backup withholding rules. A stockholder who does not provide us with its correct taxpayer identification number also may be subject to penalties imposed by the IRS. In addition, we may be required to withhold a portion of capital gain distributions to any stockholders who fail to certify their non-foreign status to us. Backup withholding is not an additional tax and may be credited against a stockholder's regular U.S. federal income tax liability or refunded by the IRS.

**Taxation of Tax-Exempt U.S. Stockholders**

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

the UBTI Percentage is at least 5%;

we qualify as a REIT by reason of the modification of the 5/50 Rule that allows the beneficiaries of the pension trust to be treated as holding our stock in proportion to their actuarial interests in the pension trust; and

we are a pension-held REIT (i.e., either (1) one pension trust owns more than 25% of the value of our stock or (2) a group of pension trusts individually holding more than 10% of the value of our stock collectively owns more than 50% of the value of our stock).

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

---

**Table of Contents****Taxation of Non-U.S. Stockholders**

The rules governing U.S. federal income taxation of non-U.S. stockholders (defined below) are complex. This section is only a summary of such rules. We urge non-U.S. stockholders to consult their own tax advisors to determine the impact of federal, state, and local income tax laws on ownership of our common or preferred stock, including any reporting requirements. As used herein, the term "non-U.S. stockholder" means any taxable beneficial owner of our common or preferred stock (other than a partnership or entity that is treated as a partnership for U.S. federal income tax purposes) that is not a taxable U.S. stockholder.

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

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

**Capital Gain Dividends.** Provided that a particular class of our stock is "regularly traded" on an established securities market in the United States, and the non-U.S. stockholder does not own more than 5% of the stock of such class at any time during the one-year period preceding the distribution, then amounts distributed with respect to that stock that are designated as capital gains from our sale or exchange of U.S. real property interests (defined below) are treated as ordinary dividends taxable as described above under "Ordinary Dividends."

If the foregoing exceptions do not apply, for example because the non-U.S. stockholder owns more than 5% of the relevant class of our stock, the non-U.S. stockholder will incur tax on distributions that are attributable to gain from our sale or exchange of U.S. real property interests under the provisions of the Foreign Investment in Real Property Tax Act of 1980 ("FIRPTA"). The term "U.S. real property interests" includes certain interests in real property and stock in corporations at least 50% of whose assets consists of interests in real property, but

**Table of Contents**

excludes mortgage loans and mortgage-backed securities. Under FIRPTA, a non-U.S. stockholder is taxed on distributions attributable to gain from sales of U.S. real property interests as if such gain were effectively connected with a U.S. business of the non-U.S. stockholder. A non-U.S. stockholder thus would be taxed on such a distribution at the normal capital gain rates applicable to taxable U.S. stockholders (subject to applicable alternative minimum tax and a special alternative minimum tax in the case of a nonresident alien individual). A corporate non-U.S. stockholder not entitled to treaty relief or exemption also may be subject to the 30% branch profits tax on distributions subject to FIRPTA. We must withhold 35% of any distribution that we could designate as a capital gain dividend. However, if we make a distribution and later designate it as a capital gain dividend, then (although such distribution may be taxable to a non-U.S. stockholder) it is not subject to withholding under FIRPTA. Instead, we must make up the 35% FIRPTA withholding from distributions made after the designation, until the amount of distributions withheld at 35% equals the amount of the distribution designated as a capital gain dividend. A non-U.S. stockholder may receive a credit against its FIRPTA tax liability for the amount we withhold.

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

***Sale of Stock.*** A non-U.S. stockholder generally will not incur tax under FIRPTA on gain from the sale of its stock as long as we are a domestically controlled REIT. A domestically controlled REIT is a REIT in which at all times during a specified testing period non-U.S. persons held, directly or indirectly, less than 50% in value of the stock. We anticipate that we will continue to be a domestically controlled REIT. In addition, a non-U.S. stockholder that owns, actually or constructively, 5% or less of a class of our outstanding stock at all times during a specified testing period will not incur tax under FIRPTA on a sale of such stock if the stock is regularly traded on an established securities market. If neither of these exceptions were to apply, the gain on the sale of the stock would be taxed under FIRPTA, in which case a non-U.S. stockholder would be required to file a U.S. federal income tax return and would be taxed in the same manner as taxable U.S. stockholders with respect to such gain (subject to applicable alternative minimum tax and a special alternative minimum tax in the case of nonresident alien individuals), and, if the stock sold was not regularly traded on an established securities market or we were not a domestically-controlled REIT, the purchaser of the stock may be required to withhold and remit to the IRS 10% of the purchase price. Additionally, a corporate non-U.S. stockholder may also be subject to the 30% branch profits tax on gains from the sale of stock taxed under FIRPTA.

A non-U.S. stockholder will incur tax on gain not subject to FIRPTA if (1) the gain is effectively connected with the non-U.S. stockholder's U.S. trade or business, in which case the non-U.S. stockholder will be subject to the same treatment as taxable U.S. stockholders with respect to such gain, or (2) the non-U.S. stockholder is a nonresident alien individual who was present in the U.S. for 183 days or more during the taxable year, in which case the non-U.S. stockholder will incur a 30% tax on his capital gains. Capital gains dividends not subject to FIRPTA will be subject to similar rules. A non-U.S. stockholder that is treated as a corporation for U.S. federal income tax purposes and has effectively connected income (as described in the first point above) may also, under certain circumstances, be subject to an additional branch profits tax, which is generally imposed on a foreign corporation on the deemed repatriation from the United States of effectively connected earnings and profits, at a 30% rate, unless the rate is reduced or eliminated by an applicable income tax treaty.

***Wash Sales.*** In general, special wash sale rules apply if a stockholder owning more than 5% of our common or preferred stock avoids a taxable distribution of gain recognized from the sale or exchange of U.S. real property interests by selling our stock before the ex-dividend date of the distribution and then, within a designated period, enters into an option or contract to acquire shares of the same or a substantially identical class of our stock. If a wash sale occurs, then the seller/repurchaser will be treated as having gain recognized from the sale or exchange of U.S. real property interests in the same amount as if the avoided distribution had actually been received. Non-U.S. stockholders should consult their own tax advisors on the special wash sale rules that apply to non-U.S. stockholders.

## **Table of Contents**

**Information Reporting and Backup Withholding.** We must report annually to the IRS and to each non-U.S. stockholder the amount of distributions paid to such holder and the tax withheld with respect to such distributions, regardless of whether withholding was required. Copies of the information returns reporting such distributions and withholding may also be made available to the tax authorities in the country in which the non-U.S. stockholder resides under the provisions of an applicable income tax treaty.

Backup withholding (currently at the rate of 28%) and additional information reporting will generally not apply to distributions to a non-U.S. stockholder provided that the non-U.S. stockholder certifies under penalty of perjury that the stockholder is a non-U.S. stockholder, or otherwise establishes an exemption. As a general matter, backup withholding and information reporting will not apply to a payment of the proceeds of a sale of stock effected at a foreign office of a foreign broker. Information reporting (but not backup withholding) will apply, however, to a payment of the proceeds of a sale of stock by a foreign office of a broker that:

is a U.S. person;

derives 50% or more of its gross income for a specified three-year period from the conduct of a trade or business in the U.S.;

is a controlled foreign corporation (generally, a foreign corporation controlled by stockholders that are United States persons) for U.S. tax purposes; or

that is a foreign partnership, if at any time during its tax year more than 50% of its income or capital interests are held by U.S. persons or if it is engaged in the conduct of a trade or business in the U.S.,

unless the broker has documentary evidence in its records that the holder or beneficial owner is a non-U.S. stockholder and certain other conditions are met, or the stockholder otherwise establishes an exemption. Payment of the proceeds of a sale of stock effected at a U.S. office of a broker is subject to both backup withholding and information reporting unless the stockholder certifies under penalty of perjury that the stockholder is a non-U.S. stockholder, or otherwise establishes an exemption. Backup withholding is not an additional tax and may be credited against a non-U.S. stockholder's U.S. federal income tax liability or refunded to the extent excess amounts are withheld, provided that the required information is supplied to the IRS.

## **Other Tax Consequences**

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

**Table of Contents**

**PLAN OF DISTRIBUTION**

We may sell the securities being offered by this prospectus in one or more of the following ways from time to time: (1) through underwriters or dealers; (2) through agents; (3) in at the market offerings to or through a market maker or into an existing trading market or securities exchange or otherwise; (4) directly to purchasers; or (5) through a combination of any of these methods of sale. Any such underwriter or agent involved in the offer and sale of the offered securities will be named in the applicable prospectus supplement.

Underwriters may offer and sell our securities at a fixed price or prices, which may be changed, at market prices prevailing at the time of sale, at prices related to the prevailing market prices or at negotiated prices. We also may, from time to time, authorize underwriters acting as our agents to offer and sell our securities upon the terms and conditions set forth in an applicable prospectus supplement. In connection with the sale of our securities, underwriters may be deemed to have received compensation from us in the form of underwriting discounts or commissions and may also receive commissions from purchasers of our securities for whom they may act as agent. Underwriters may sell our securities to or through dealers, and such dealers may receive compensation in the form of discounts, concessions from the underwriters or commissions from the purchasers for whom they may act as agent.

Any underwriting compensation we pay to underwriters or agents in connection with the offering of our securities and any discounts, concessions or commissions allowed by underwriters to participating dealers will be set forth in the applicable prospectus supplement. Underwriters, dealers and agents participating in the distribution of the offered securities may be deemed to be underwriters, and any discounts and commissions received by them and any profit realized by them on resale of the our securities may be deemed to be underwriting discounts and commissions under the Securities Act of 1933. Underwriters, dealers and agents may be entitled, under agreements entered into with us, to indemnification against and contribution toward certain civil liabilities, including liabilities under the Securities Act of 1933, as amended.

If so indicated in the applicable prospectus supplement, we will authorize dealers acting as our agents to solicit offers by certain institutions to purchase our securities from us at the public offering price set forth in such prospectus supplement pursuant to delayed delivery contracts providing for payment and delivery on the date or dates stated in such prospectus supplement. Each contract will be for an amount not less than, and the aggregate principal amount of securities sold pursuant to contracts shall be not less or more than, the respective amounts stated in the applicable prospectus supplement. Institutions with whom contracts, when authorized, may be made include commercial and savings banks, insurance companies, pension funds, investment companies, educational and charitable institutions, and other institutions, but will in all cases be subject to our approval. Contracts will not be subject to any conditions except (i) the purchase by an institution of the offered securities covered by its contracts shall not at the time of delivery be prohibited under the laws of any jurisdiction in the United States to which such institution is subject and (ii) if the offered securities are being sold to underwriters, we shall have sold to such underwriters the total principal amount of our securities less the principal amount thereof covered by contracts.

Certain of the underwriters and their affiliates may be customers of, engage in transactions with and perform services for us and our subsidiaries in the ordinary course of business.

The securities may or may not be listed on a national securities exchange or traded in the over-the-counter market. No assurance can be given as to the liquidity of the trading market for any such securities.

If underwriters or dealers are used in the sale, until the distribution of the securities is completed, the SEC rules may limit the ability of any such underwriters and selling group members to bid for and purchase the securities. As an exception to these rules, representatives of any underwriters are permitted to engage in certain transactions that stabilize the price of the securities. Such transactions may consist of bids or purchases for the purpose of pegging, fixing or maintaining the price of the securities. If the underwriters create a short position in

## **Table of Contents**

the securities in connection with the offerings (in other words, if they sell more securities than are set forth on the cover page of the prospectus supplement) the representatives of the underwriters may reduce that short position by purchasing securities in the open market. The representatives of the underwriters may also elect to reduce any short position by exercising all or part of any over-allotment option described in the prospectus supplement. The representatives of the underwriters may also impose a penalty bid on certain underwriters and selling group members. This means that if the representatives purchase securities in the open market to reduce the underwriters' short position or to stabilize the price of the securities, they may reclaim the amount of the selling concession from the underwriters and selling group members who sold those shares as part of the offering. In general, purchases of a security for the purpose of stabilization or to reduce a short position could cause the price of the security to be higher than it might be in the absence of such purchases. The imposition of a penalty bid might also have an effect on the price of the securities to the extent that it discourages resales of the securities. We make no representation or prediction as to the direction or magnitude of any effect that the transactions described above may have on the price of the securities. In addition, the representatives of any underwriters may determine not to engage in such transactions or that such transactions, once commenced, may be discontinued without notice.

## **LEGAL MATTERS**

The validity of our securities will be passed upon for us by Pillsbury Winthrop Shaw Pittman LLP, a limited liability partnership including professional corporations. In addition, the description of federal income tax considerations contained in this prospectus under "Federal Income Tax Considerations" is, to the extent that it constitutes matters of law, summaries of legal matters or legal conclusions, the opinion of Pillsbury Winthrop Shaw Pittman LLP.

## **EXPERTS**

The consolidated financial statements of National Retail Properties, Inc. appearing in National Retail Properties, Inc.'s Annual Report on Form 10-K for the year ended December 31, 2008 (including schedules appearing therein) and the effectiveness of National Retail Properties, Inc.'s internal control over financial reporting as of December 31, 2008 have been audited by Ernst and Young LLP, independent registered public accounting firm, as set forth in their reports thereon, included therein, and incorporated herein by reference. Such consolidated financial statements and schedules are incorporated herein by reference in reliance upon such reports given on the authority of such firm as experts in accounting and auditing.

Table of Contents

**Depository Shares**  
**National Retail Properties, Inc.**  
**Each Representing a 1/100<sup>th</sup> Interest in a Share of**  
**% Series D Cumulative Redeemable Preferred Stock**  
**(Liquidation Preference Equivalent to \$25.00 per Depository Share)**

**PROSPECTUS SUPPLEMENT**

February , 2012

**BofA Merrill Lynch**

**Citigroup**

**Wells Fargo Securities**

**RBC Capital Markets**

**Raymond James**

**Stifel Nicolaus Weisel**

**BB&T Capital Markets**



**Janney Montgomery Scott**

**Morgan Keegan**

**Capital One Southcoast**

**FBR Capital Markets**

**Piper Jaffray**

**PNC Capital Markets LLC**

**SunTrust Robinson Humphrey**