

FEDERAL REALTY INVESTMENT TRUST

Form 424B5

February 25, 2011

Table of Contents

Filed Pursuant to Rule 424(b)(5)  
Registration No. 333-160009

**CALCULATION OF REGISTRATION FEE**

<b>Title of Each Class of Securities to be Registered</b>	<b>Proposed Maximum Aggregate Offering Price</b>	<b>Amount of Registration Fee(1)</b>
Common Shares of Beneficial Interest, \$0.01 par value(2)	\$300,000,000	\$34,830

(1) The filing fee is calculated in accordance with Rule 457(o), based on the proposed maximum aggregate offering price, and Rule 457(r) under the Securities Act of 1933, as amended, and relates to the Registration Statement on Form S-3 (No. 333-160009) filed on June 16, 2009.

(2) Includes associated rights to purchase common shares of beneficial interest of the registrant.

**Table of Contents**

**PROSPECTUS SUPPLEMENT**

(TO PROSPECTUS DATED JUNE 16, 2009)

**\$300,000,000**

**Common Shares of Beneficial Interest**

We have entered into an equity distribution agreement with Wells Fargo Securities, LLC, or the Agent, relating to our common shares of beneficial interest, par value \$.01 per share, offered by this prospectus supplement and the accompanying prospectus pursuant to a continuous offering program. In accordance with the terms of the equity distribution agreement, we may from time to time offer and sell common shares having an aggregate offering price of up to \$300,000,000 through the Agent as our sales agent.

Our common shares are listed on the New York Stock Exchange under the symbol FRT. On February 22, 2011, the last reported sale price of our common shares on the NYSE was \$81.51 per share.

Sales of our common shares, if any, under this prospectus supplement and the accompanying prospectus may be made in negotiated transactions or transactions that are deemed to be at the market offerings, including sales made directly on the NYSE or sales made to or through a market maker other than on an exchange. The Agent is not required to sell any specific number or dollar amount of common shares, but as instructed by us will make all sales using commercially reasonable efforts, as our sales agent and subject to the terms of the equity distribution agreement. The offering of common shares pursuant to the equity distribution agreement will terminate upon the earlier of (1) the sale of common shares having an aggregate offering price of \$300,000,000 and (2) the termination of the equity distribution agreement.

We will pay the Agent a commission that will not exceed, but may be lower than, 2.0% of the gross sales price per share of common shares sold through it under the equity distribution agreement.

**Investing in our common shares involves risks. See Risk Factors beginning on page S-3 of this prospectus supplement, page 2 of the accompanying prospectus and in our Annual Report on Form 10-K for the year ended December 31, 2010, filed with the Securities and Exchange Commission on February 15, 2011.**

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.

**Wells Fargo Securities**

**The date of this prospectus supplement is February 24, 2011.**

**Table of Contents**

**TABLE OF CONTENTS**

**Prospectus Supplement**

	<b>Page</b>
<u>About this Prospectus Supplement</u>	ii
<u>Cautionary Statement Concerning Forward-Looking Statements</u>	iii
<u>Prospectus Supplement Summary</u>	S-1
<u>Risk Factors</u>	S-3
<u>Use of Proceeds</u>	S-3
<u>Supplemental Material Federal Income Tax Considerations</u>	S-4
<u>Plan of Distribution (Conflicts of Interest)</u>	S-6
<u>Experts</u>	S-7
<u>Legal Matters</u>	S-7

**Prospectus**

	<b>Page</b>
<u>About this Prospectus</u>	1
<u>Risk Factors</u>	2
<u>Forward-Looking Information</u>	2
<u>The Company</u>	3
<u>Use of Proceeds</u>	4
<u>Ratios of Earnings to Combined Fixed Charges and Preferred Share Dividends</u>	4
<u>Description of Debt Securities</u>	5
<u>Description of Shares of Beneficial Interest</u>	19
<u>Material Federal Income Tax Considerations</u>	36
<u>Plan of Distribution</u>	53
<u>Legal Matters</u>	55
<u>Experts</u>	55
<u>Where You Can Find More Information</u>	55

**Table of Contents**

**ABOUT THIS PROSPECTUS SUPPLEMENT**

You should read this prospectus supplement along with the accompanying prospectus, as well as the information incorporated by reference herein and therein, carefully before you invest in our common shares. These documents contain important information you should consider before making your investment decision. This prospectus supplement and the accompanying prospectus contain the terms of this offering of common shares. The accompanying prospectus contains information about our securities generally, some of which does not apply to the common shares covered by this prospectus supplement. This prospectus supplement may add, update or change information contained in or incorporated by reference in the accompanying prospectus. If the information in this prospectus supplement is inconsistent with any information contained in or incorporated by reference in the accompanying prospectus, the information in this prospectus supplement will apply and will supersede the inconsistent information contained in or incorporated by reference in the accompanying prospectus.

It is important for you to read and consider all information contained in this prospectus supplement and the accompanying prospectus in making your investment decision. You should also read and consider the additional information incorporated by reference in this prospectus supplement and the accompanying prospectus. See [Where You Can Find More Information](#) in the accompanying prospectus.

References to we, us, our or ours refer to Federal Realty Investment Trust and its directly and indirectly owned subsidiaries, unless the context otherwise requires. The term you refers to a prospective investor.

**You should rely only on the information contained in or incorporated by reference in this prospectus supplement, the accompanying prospectus and any related free writing prospectus required to be filed with the Securities and Exchange Commission, or the SEC. We have not, nor has the Agent, authorized any other person to provide you with additional or different information. If anyone provides you with additional or different information, you should not rely on it. We are not, nor is the Agent, making an offer to sell the common shares in any jurisdiction where the offer or sale is not permitted. You should assume that the information appearing in this prospectus supplement, the accompanying prospectus, any such free writing prospectus and the documents incorporated by reference herein and therein is accurate only as of their respective dates. Our business, financial condition, results of operations and prospects may have changed since those dates.**

**Table of Contents**

**CAUTIONARY STATEMENT CONCERNING FORWARD-LOOKING STATEMENTS**

This prospectus supplement, the accompanying prospectus and documents that we incorporate by reference into this prospectus supplement and the accompanying prospectus contain statements that are not based on historical facts, including statements or information with words such as may, will, could, should, plans, intends, expects, believes, estimates, anticipates, continues, and similar words. These statements are forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, or the Act, Section 21E of the Securities Exchange Act of 1934, as amended, or the Exchange Act, and the Private Securities Litigation Reform Act of 1995. In particular, the risk factors included or incorporated by reference in this prospectus supplement and the accompanying prospectus describe forward-looking information. The risk factors contained in our Annual Report on Form 10-K for the year ended December 31, 2010, filed with the Securities and Exchange Commission, or the SEC, on February 15, 2011, describe risks that may affect these statements but are not all-inclusive, particularly with respect to possible future events. Many things can happen that can cause actual results to be different from those we describe. These factors include, but are not limited to:

risks that our tenants may not pay rent, may vacate early or may file for bankruptcy, or that we may be unable to renew leases or re-let space at favorable rents as leases expire;

risks that we may not be able to proceed with or obtain necessary approvals for any redevelopment or renovation project, and that completion of anticipated or ongoing property redevelopment or renovation projects that we do pursue may cost more, take more time to complete or fail to perform as expected;

risks that the number of properties we acquire for our own account, and therefore the amount of capital we invest in acquisitions, may be impacted by our real estate partnerships;

risks normally associated with the real estate industry, including risks that:

occupancy levels at our properties and the amount of rent that we receive from our properties may be lower than expected,

competition for acquisitions could result in increased prices for acquisitions,

environmental issues may develop at our properties and result in unanticipated costs, and

because real estate is illiquid, we may not be able to sell properties when appropriate;

risks that our growth will be limited if we cannot obtain additional capital;

risks of financing, such as our ability to consummate additional financings or obtain replacement financing on terms which are acceptable to us, our ability to meet existing or future financial covenants and the limitations imposed on our operations by those covenants, and the possibility of increases in interest rates that would result in increased interest expense; and

risks related to our status as a real estate investment trust, commonly referred to as a REIT, for federal income tax purposes, such as the existence of complex tax regulations relating to our status as a REIT, the effect of future changes in REIT requirements as a result of

## Edgar Filing: FEDERAL REALTY INVESTMENT TRUST - Form 424B5

new legislation, and the adverse consequences of the failure to qualify as a REIT.

Given these uncertainties, readers are cautioned not to place undue reliance on these forward-looking statements or those incorporated by reference into this prospectus supplement and the accompanying prospectus. Except as may be required by law, we make no promise to update any of the forward-looking statements whether as a result of new information, future events or otherwise.

**Table of Contents**

**PROSPECTUS SUPPLEMENT SUMMARY**

*The following is only a summary. It should be read together with the more detailed information included elsewhere in this prospectus supplement and the accompanying prospectus. In addition, important information is incorporated by reference into this prospectus supplement and the accompanying prospectus.*

**The Trust**

Federal Realty Investment Trust is an equity real estate investment trust, or REIT, specializing in the ownership, management and redevelopment of high-quality retail and mixed-use properties located primarily in densely populated and affluent communities in strategically selected metropolitan markets in the Northeast and Mid-Atlantic regions of the United States, as well as in California. As of December 31, 2010, we owned or had a majority interest in community and neighborhood shopping centers and mixed-use properties which are operated as 85 predominantly retail real estate projects comprising approximately 18.3 million square feet. In total, the real estate properties were 93.9% leased and 93.2% occupied at December 31, 2010. A joint venture in which we own a 30% interest owned seven retail real estate projects totaling approximately 1.0 million square feet as of December 31, 2010. In total, the joint venture properties in which we own an interest were 91.0% leased and 90.4% occupied at December 31, 2010. We have paid quarterly dividends to our shareholders continuously since our founding in 1962 and have increased our dividends per common share for 43 consecutive years.

We were founded in 1962 as a REIT under the laws of the District of Columbia and re-formed as a REIT in the state of Maryland in 1999. We operate in a manner intended to qualify as a REIT for tax purposes pursuant to provisions of the Internal Revenue Code of 1986, as amended, or the Code. Our principal executive offices are located at 1626 East Jefferson Street, Rockville, Maryland 20852. Our telephone numbers are (301) 998-8100 and (800) 658-8980. Our website address is [www.federalrealty.com](http://www.federalrealty.com). The information contained on our website is not a part of this prospectus supplement or the accompanying prospectus and is not incorporated herein or therein by reference.

**Table of Contents**

**The Offering**

For a more complete description of the terms of the common shares being offered by this prospectus supplement and the accompanying prospectus, see **Description of Shares of Beneficial Interest** in the accompanying prospectus.

Common shares offered	Common shares with an aggregate offering price of up to \$300,000,000.
New York Stock Exchange symbol	FRT
Use of proceeds	We intend to use the net proceeds from this offering for general corporate purposes. See <b>Use of Proceeds</b> on page S-3 for more information.
Material U.S. federal income tax considerations	For a description of material U.S. federal income tax considerations of an investment in our common shares, please review the disclosure in this prospectus supplement under <b>Supplemental Material Federal Income Tax Considerations</b> and the accompanying prospectus under <b>Material Federal Income Tax Considerations</b> .
Risk factors	Investing in our common shares involves risks. Please review the risk factors discussed beginning on page S-3 of this prospectus supplement, page 2 of the accompanying prospectus and in our Annual Report on Form 10-K for the year ended December 31, 2010, filed with the SEC on February 15, 2011, and the other information contained or incorporated by reference in this prospectus supplement and the accompanying prospectus for a discussion of factors you should consider before deciding to invest in our common shares. You may obtain a copy of our Annual Report on Form 10-K and the other documents incorporated by reference in this prospectus supplement and the accompanying prospectus by following the procedures described under <b>Where You Can Find More Information</b> on page 55 of the accompanying prospectus.



**Table of Contents**

**RISK FACTORS**

*Investing in our common shares involves a significant degree of risk. Before you decide to purchase our common shares, you should carefully consider the following risk factors, together with all of the other information contained or incorporated by reference in this prospectus supplement, including the additional risk factors beginning on page 2 of the accompanying prospectus and in our Annual Report on Form 10-K for the year ended December 31, 2010, filed with the SEC on February 15, 2011. The risks and uncertainties described in the risk factors are not the only ones we may confront. Additional risks and uncertainties not currently known to us or that we currently deem immaterial also may impair our business operations. If any of those risks actually occur, our financial condition, operating results and prospects could be materially adversely affected. This section contains forward-looking statements.*

***You may experience significant dilution as a result of this offering and additional issuances of our securities, which could harm the market price of our common shares***

Our declaration of trust permits our board of trustees to authorize, without shareholder approval, the issuance of additional common or preferred shares or securities convertible or exchangeable into equity securities. We may, from time to time and at any time, seek to offer and sell common or preferred shares or other securities, including sales of common shares in this offering through the Agent, based on market conditions and other factors that may be beyond our control.

This offering may have a dilutive effect on our earnings per share and funds from operations per share after giving effect to the issuance of our common shares in this offering and the receipt of the expected net proceeds. The actual amount of dilution from this offering, or from any future offering of common or preferred shares, will be based on numerous factors, particularly the use of proceeds and the return generated by such investment, and cannot be determined at this time. The market price of our common shares could decline as a result of sales of a large number of our common shares in the market pursuant to this offering, or otherwise, or as a result of the perception or expectation that such sales could occur.

***Holders of our debt or preferred shares have liquidation and other rights that are senior to the rights of the holders of our common shares, and any future issuance of debt or preferred shares could adversely affect the market price of our common shares.***

As of December 31, 2010, we had approximately \$1.8 billion of debt outstanding and 399,896 shares of our 5.417% Series 1 Cumulative Convertible Preferred Shares, or the Series 1 Preferred Shares, were issued and outstanding. Holders of our debt and preferred shares have liquidation rights and other rights that are senior to our common shares. Upon any voluntary or involuntary liquidation, dissolution or winding up, payment will be made to holders of our debt and preferred shares, including our Series 1 Preferred Shares, before any payment is made to the holders of our common shares. This will reduce the amount of our assets, if any, available for distribution to holders of our common shares. Because our decision to issue debt and preferred shares is dependent on market conditions and other factors that may be beyond our control, we cannot predict or estimate the amount, timing or nature of our future issuances. Any such future issuance could reduce the market price of our common shares.

**USE OF PROCEEDS**

We intend to use the net proceeds from this offering to fund potential acquisition opportunities, fund our redevelopment pipeline, repay amounts outstanding under our revolving credit facility, and/or for general corporate purposes. Our revolving credit facility bears interest at LIBOR plus 42.5 basis points and matures on July 27, 2011. An affiliate of the Agent is a lender under our revolving credit facility and will receive a pro rata portion of any proceeds used to repay amounts outstanding under the revolving credit facility.

---

**Table of Contents**

**SUPPLEMENTAL MATERIAL FEDERAL INCOME TAX CONSIDERATIONS**

For a discussion of the taxation of us and the tax considerations relevant to shareholders generally, see *Material Federal Income Tax Considerations* beginning on page 36 of the accompanying prospectus. The following sections summarize the supplemental material U.S. federal income tax considerations that you may consider relevant relating to the acquisition, ownership and disposition of our common shares and should be read in conjunction with the accompanying prospectus.

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 shares held as capital assets (generally property held for investment) within the meaning of Section 1221 of the Code. This discussion is based on current law and does not purport to deal with all aspects of U.S. federal income taxation that may be relevant to a prospective shareholder in light of its particular circumstances or to certain types of shareholders 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. Shareholders* in the accompanying prospectus), 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 shares through, partnerships or other pass-through entities, U.S. shareholders whose functional currency is not the U.S. dollar, persons that hold shares 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. Shareholders* in the accompanying prospectus). In addition, this discussion is general in nature and is not exhaustive of all possible tax considerations, nor does it address any aspect of state, local or foreign taxation or any U.S. federal tax (e.g., estate or gift tax) other than the income tax.

This summary is based upon the provisions of the Code, the regulations of the U.S. Department of 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 SHARES, OUR ELECTION TO BE TAXED AS A REIT AND THE EFFECT OF POTENTIAL CHANGES IN APPLICABLE TAX LAWS.**

**Recent Legislation**

***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 our common shares and net gains from the disposition of our common shares. Taxable U.S. shareholders 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 our common shares.

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

On March 18, 2010, the President signed the Hiring Incentives to Restore Employment Act into law. Effective for payments made after December 31, 2012, this law imposes a 30% U.S. federal withholding tax on distributions and the gross proceeds of sale in respect of our common 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

**Table of Contents**

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. Under certain circumstances, a non-U.S. shareholder might be eligible for refunds or credits of such taxes. Prospective investors should consult with their own tax advisors regarding the possible implications of this recently enacted legislation on the ownership and disposition of our common shares.

***Extension of Reduced Tax Rates***

On December 17, 2010, the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, or 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**

**PLAN OF DISTRIBUTION (CONFLICTS OF INTEREST)**

We have entered into an equity distribution agreement, dated as of February 24, 2011, with the Agent under which we may offer and sell common shares having an aggregate offering price of up to \$300,000,000 from time to time. Sales of our common shares, if any, under this prospectus supplement and the accompanying prospectus may be made in negotiated transactions or transactions that are deemed to be at the market offerings, including sales made directly on the NYSE or sales made to or through a market maker other than on an exchange. As our sales agent, the Agent will not engage in any transactions that stabilize the price of our common shares.

Upon its acceptance of written instructions from us, the Agent will use its commercially reasonable efforts, consistent with its sales and trading practices, to solicit offers to purchase our common shares under the terms and subject to the conditions set forth in the equity distribution agreement. We will instruct the Agent as to the amount of common shares to be sold by it. We may instruct the Agent not to sell common shares if the sales cannot be effected at or above the price designated by us in any instruction. We or the Agent may suspend the offering of common shares upon proper notice and subject to other conditions.

The Agent will provide written confirmation to us no later than the opening of the New York Stock Exchange, or the NYSE, on the trading day following the trading day in which common shares were sold under the equity distribution agreement. Each confirmation will include the number of common shares sold on the preceding day, the net proceeds to us and the compensation payable by us to the Agent in connection with the sales.

We will pay the Agent commissions for its services in acting as sales agent and/or principal in the sale of common shares. The Agent will be entitled to compensation that will not exceed, but may be lower than, 2.0% of the gross sales price of all common shares sold through it under the equity distribution agreement. We estimate that the total expenses for the offering, excluding compensation payable to the Agent under the terms of the equity distribution agreement, will be approximately \$150,000. In connection with the sale of common shares on our behalf, the Agent may be deemed to be an underwriter within the meaning of the Act, and the compensation paid to the Agent may be deemed to be underwriting commissions and discounts.

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

We will report at least quarterly the number of common shares sold through the Agent under the equity distribution agreement, the net proceeds to us and the compensation paid by us to the Agent in connection with the sales of common shares.

The Agent has determined that our common shares are actively-traded securities excepted from the requirements of Rule 101 of Regulation M under the Exchange Act by Rule 101(c)(1) under that Act. If the Agent has, or we have, reason to believe that the exemptive provisions set forth in Rule 101(c)(1) of Regulation M under the Exchange Act are not satisfied, that party will promptly notify the other and sales of common shares under the equity distribution agreement will be suspended until that or other exemptive provisions have been satisfied in the judgment of the Agent and us.

The offering of common shares pursuant to the equity distribution agreement will terminate upon the earlier of (1) the sale of common shares having an aggregate offering price of \$300,000,000 pursuant to this offering and (2) the termination of the equity distribution agreement. The equity distribution agreement may be terminated by the Agent or us at any time upon three days notice, and by the Agent at any time in certain circumstances, including our failure to maintain a listing of our common shares on the NYSE or the occurrence of a material adverse change in our company.

## **Table of Contents**

### **Conflict of Interest**

As described in Use of Proceeds, some of the net proceeds of this offering may be used to repay amounts outstanding under our revolving credit facility. An affiliate of the Agent is a lender under our revolving credit facility. Because an affiliate of the Agent is a lender under our credit facility, the Agent or its affiliate may receive more than 5% of the proceeds of this offering.

### **Other Relationships**

The Agent and its affiliates have engaged in, and may in the future engage in, investment banking, commercial banking and other commercial dealings in the ordinary course of business with us or our affiliates. They have received, or may in the future receive, customary fees and commissions for these transactions.

In addition, in the ordinary course of its business activities, the Agent and its affiliates may make or hold a broad array of investments and actively trade debt and equity securities (or related derivative securities) and financial instruments (including bank loans) for their own account and for the accounts of their customers. Such investments and securities activities may involve securities and/or instruments of ours or our affiliates. The Agent and its 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

### **Listing on the New York Stock Exchange**

Our common shares are listed on the NYSE under the symbol FRT.

### **Indemnity**

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

### **EXPERTS**

The consolidated financial statements incorporated by reference in this prospectus supplement and elsewhere in the registration statement have been so incorporated by reference in reliance upon the reports of Grant Thornton LLP, an independent registered public accounting firm, upon the authority of said firm as experts in accounting and auditing in giving said reports.

### **LEGAL MATTERS**

The legality of the common shares offered by this prospectus supplement will be passed upon for us by Pillsbury Winthrop Shaw Pittman LLP, Washington, DC. In addition, the descriptions of material federal income tax considerations contained in this prospectus supplement under Supplemental Material Federal Income Tax Considerations and the accompanying prospectus under Material Federal Income Tax Considerations are, to the extent that they constitute matters of law, summaries of legal matters or legal conclusions, based upon the opinion of Pillsbury Winthrop Shaw Pittman LLP, Washington, DC. Sidley Austin LLP, New York, New York, will act as counsel to the Agent.

**Table of Contents**

**PROSPECTUS**

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

We 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;

our common shares of beneficial interest (and rights to acquire common shares that are attached to, or trade with, our common shares);

our preferred shares of beneficial interest;

our preferred shares of beneficial interest represented by depositary receipts; and

warrants to purchase our common and preferred shares.

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

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 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 determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.**

The date of this prospectus is June 16, 2009.

**Table of Contents**

**TABLE OF CONTENTS**

	<b>Page</b>
<u>About this Prospectus</u>	1
<u>Risk Factors</u>	2
<u>Forward-Looking Information</u>	2
<u>The Company</u>	3
<u>Use of Proceeds</u>	4
<u>Ratios of Earnings to Combined Fixed Charges and Preferred Share Dividends</u>	4
<u>Description of Debt Securities</u>	5
<u>Description of Shares of Beneficial Interest</u>	19
<u>Material Federal Income Tax Considerations</u>	36
<u>Plan of Distribution</u>	53
<u>Legal Matters</u>	55
<u>Experts</u>	55
<u>Where You Can Find More Information</u>	55



**Table of Contents**

**ABOUT THIS PROSPECTUS**

This prospectus is part of a registration statement that we filed with the Securities and Exchange Commission, or the SEC, using a shelf registration process. Under this shelf process, we may sell any combination of the securities described in this prospectus either separately or in units, in one or more offerings. Our prospectus provides you with a general description of these securities. Each time we sell securities, we will provide a prospectus supplement that will contain specific information about all of the terms of that offering. Our prospectus supplement may also add, update or change information contained in this prospectus. Before purchasing any securities, you should read both this prospectus and the applicable prospectus supplement and any applicable free writing prospectus, together with additional information described under the heading **Where You Can Find More Information**.

References to **we**, **us**, **our** or **ours** refer to Federal Realty Investment Trust and its directly or indirectly owned subsidiaries, unless the context otherwise requires. The term **you** refers to a prospective investor.

**Table of Contents**

**RISK FACTORS**

Investing in our securities involves a high degree of risk. Before making an investment decision, please consider the risks 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, in addition to any risks and additional information included in this prospectus, in an applicable prospectus supplement and in any subsequent filing with the SEC that is incorporated herein by reference. 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, results of operation or the market price of our securities. 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 INFORMATION**

This prospectus contains and incorporates forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, or the Securities Act, Section 21E of the Securities Exchange Act of 1934, as amended, or the Exchange Act, and the Private Securities Litigation Reform Act of 1995. Also, documents that we incorporate by reference into this prospectus, including documents that we subsequently file with the SEC, will contain forward-looking statements. When we refer to forward-looking statements or information, sometimes we use words such as may, will, could, should, plans, intends, expects, believes, estimates, anticipates and continues in this prospectus and in any prospectus supplement describe risks that may affect these statements but are not all-inclusive, particularly with respect to possible future events. Many things can happen that can cause actual results to be different from those we describe. Given these uncertainties, readers are cautioned not to place undue reliance on these forward-looking statements. We also make no promise to update any of the forward-looking statements, or to publicly release the results if we revise any of them.

**Table of Contents**

**THE COMPANY**

We are an equity real estate investment trust specializing in the ownership, management and redevelopment of high-quality retail and mixed-use properties located primarily in densely populated and affluent communities in strategically selected metropolitan markets in the Northeast and Mid-Atlantic regions of the United States, as well as in California. As of March 31, 2009, we owned or had a majority interest in community and neighborhood shopping centers and mixed-use projects which are operated as 84 predominantly retail real estate properties comprising approximately 18.1 million square feet.

We operate in a manner intended to enable us to qualify as a REIT pursuant to provisions of the Internal Revenue Code of 1986, as amended, or the Code.

We were founded in 1962 as a real estate investment trust under the laws of the District of Columbia and re-formed as a real estate investment trust in the state of Maryland in 1999. Our principal executive offices are located at 1626 East Jefferson Street, Rockville, Maryland 20852. Our telephone number is (301) 998-8100. Our website address is [www.federalrealty.com](http://www.federalrealty.com). The information contained on our website is not a part of this prospectus and is not incorporated herein by reference.

**Table of Contents****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;

redevelopment of existing properties;

redemption of preferred shares; and

working capital and general corporate purposes.

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

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

	For the Three Months		For the Years Ended December 31,				
	Ended March 31, 2009	2008	2008	2007	2006	2005	2004
Ratio of earnings to fixed charges	1.4	2.1	2.1	1.7	1.9	1.9	1.7
Ratio of earnings to combined fixed charges and preferred stock dividends	1.3	2.0	2.1	1.7	1.6	1.7	1.5

The ratio of earnings to fixed charges is computed by dividing earnings by fixed charges. In computing the ratio of earnings to fixed charges: (a) earnings consist of income from continuing operations before noncontrolling interests plus distributed income of equity investees and fixed charges (excluding capitalized interest) less noncontrolling interests of subsidiaries with no fixed charges; and (b) fixed charges consist of interest expense including amortization of debt discounts and issuance costs (including capitalized interest) and the estimated portion of rents payable by us representing interest.

The ratio of earnings to combined fixed charges and preferred stock dividends is computed by dividing earnings by the total of fixed charges and preferred stock dividends. In computing the ratio of earnings to combined fixed charges and preferred stock dividends: (a) earnings consist of income from continuing operations before noncontrolling interests plus distributed income of equity investees and fixed charges (excluding capitalized interest) less noncontrolling interests of subsidiaries with no fixed charges; (b) fixed charges consist of interest expense including amortization of debt discounts and issuance costs (including capitalized interest) and the estimated portion of rents payable by us representing interest; and (c) preferred stock dividends consist of preferred stock dividends and preferred stock redemption costs.

## **Table of Contents**

### **DESCRIPTION OF DEBT SECURITIES**

We will prepare and distribute a prospectus supplement that describes the specific terms of the debt securities. In this section of the prospectus, we describe the general terms we expect all debt securities to have. We also identify some of the specific terms that will be described in a prospectus supplement. Although we expect that any debt securities we offer with this prospectus will have the general terms we describe in this section, our debt securities may have terms that are different from or inconsistent with the general terms we describe here. Therefore, you should read the prospectus supplement carefully.

#### **General Terms of Debt Securities**

Unless we say otherwise in a prospectus supplement, debt securities we offer through this prospectus:

will be our general, direct and unsecured obligations; and

may be either senior debt securities or subordinated debt securities.

Senior debt securities will rank equally with all of our other unsecured and unsubordinated obligations. Subordinated debt securities will be subordinate and junior in right of payment to all of our present and future senior debt in the manner we describe in a prospectus supplement.

We may incur additional debt, subject to limitations in the agreements governing our credit and other debt facilities and other notes we may have issued.

Unless we say otherwise in a prospectus supplement:

debt securities we offer through this prospectus will not limit the amount of other debt that we may incur;

you will not have any protection if we engage in a highly leveraged transaction, a restructuring, a transaction involving a change in control, or a merger or similar transaction that may adversely affect holders of the debt securities; and

we will not list the debt securities on any securities exchange.

#### **The Indentures**

Any debt securities we offer through this prospectus will be issued under one or more indentures, including the senior indenture between us and U.S. Bank National Association, successor to Wachovia Bank National Association, formerly First Union National Bank, as trustee. We have filed with the SEC the senior indenture that is an exhibit to the registration statement that includes this prospectus. The senior indenture describes the general terms of senior debt securities we may issue. The general terms of any subordinated debt securities that we may issue will be included in a subordinated indenture, which will also include additional terms describing the subordination provisions of these securities. The senior indenture is subject to the Trust Indenture Act of 1939, as amended.

Unless we say otherwise in a prospectus supplement, each indenture does not or will not include all the terms of debt securities we may issue through this prospectus. If we issue debt securities through this prospectus, our Board of Trustees, or any committee thereof, will establish the additional terms for each series of debt securities. The additional terms will be either established pursuant to, and set forth in, a supplemental indenture, or established pursuant to a resolution of our Board of Trustees, or any committee thereof, and set forth in an officer's certificate. Each indenture describes or will describe the additional terms that may be established and we summarize the additional terms that may be established under Additional Terms of Debt Securities, below.



## **Table of Contents**

We have summarized the provisions of the senior indenture and any subordinated indenture that we may enter into below. The summary is not complete. You should read the senior indenture and any other indenture that we may enter into for provisions that may be important to you. The extent, if any, to which the provisions of the base senior indenture or any other base indenture that we may enter into apply to particular debt securities will be described in the prospectus supplement relating to those securities. You should read the prospectus supplement for more information regarding any particular issuance of debt securities.

### **Additional Terms of Debt Securities**

As described above, the terms of a particular series of debt securities we offer through this prospectus will be established by our Board of Trustees, or any committee thereof, when we issue the series. We will describe the terms of the series in a prospectus supplement. Unless we say otherwise in a prospectus supplement, each indenture provides or will provide that the terms that may be established include the following:

***Title.*** The title of the debt securities offered.

***Amount.*** Any limit upon the total principal amount of the series of debt securities offered.

***Maturity.*** The date or dates on which the principal of and premium, if any, on the offered debt securities will mature or the method of determining such date or dates.

***Interest Rate.*** The rate or rates (which may be fixed or variable) at which the offered debt securities will bear interest, if any, or the method of calculating such rate or rates.

***Interest Accrual.*** The date or dates from which interest will accrue or the method by which such date or dates will be determined.

***Interest Payment Dates.*** The date or dates on which interest will be payable and the record date or dates to determine the persons who will receive payment, and the basis upon which interest shall be calculated if other than that of a 360-day year of twelve 30-day months.

***Place of Payment.*** The place or places where principal of, premium, if any, and interest, on the offered debt securities will be payable or at which the offered debt securities may be surrendered for registration of transfer or exchange.

***Optional Redemption.*** The period or periods within which, the price or prices at which, the currency or currencies (if other than in U.S. dollars), including currency unit or units, in which, and the other terms and conditions upon which, the offered debt securities may be redeemed, in whole or in part, at our option, if we have that option.

***Mandatory Redemption.*** The obligation, if any, we have to redeem or repurchase the offered debt securities pursuant to any sinking fund or similar provisions or upon the happening of a specified event or at the option of a holder; and the period or periods within which, the price or prices at which, the currency or currencies (if other than in U.S. dollars), including currency unit or units, in which, and the other terms and conditions upon which, such offered debt securities shall be redeemed or purchased, in whole or in part.

***Denominations.*** The denominations in which the offered debt securities are authorized to be issued.

**Currency.** The currency or currency unit in which the offered debt securities may be denominated and/or the currency or currencies, including currency unit or units, in which principal of, premium, if any, and interest, if any, on the offered debt securities will be payable and whether we or the holders of



**Table of Contents**

the offered debt securities may elect to receive payments in respect of the offered debt securities in a currency or currency unit other than that in which the offered debt securities are stated to be payable.

***Indexed Principal.*** If the amount of principal of, or premium, if any, or interest on, the offered debt securities may be determined with reference to an index or pursuant to a formula or other method, the manner in which such amounts will be determined.

***Payment on Acceleration.*** If other than the principal amount, the amount which will be payable upon declaration of the acceleration of the maturity or the method by which such portion shall be determined.

***Special Rights.*** Provisions, if any, granting special rights to the holders of the offered debt securities if certain specified events occur.

***Modifications to Indentures.*** Any addition to, or modification or deletion of, any event of default or any of the covenants specified in the indenture with respect to the offered debt securities.

***Tax Gross-Up.*** The circumstances, if any, under which we will pay additional amounts on the offered debt securities held by non-U.S. persons for taxes, assessments or similar charges.

***Registered or Bearer Form.*** Whether the offered debt securities will be issued in registered or bearer form or both.

***Dates of Certificates.*** The date as of which any offered debt securities in bearer form and any temporary global security representing outstanding securities are dated, if other than the original issuance date of the offered debt securities.

***Forms.*** The forms of the securities and interest coupons, if any, of the series.

***Registrar and Paying Agent.*** If other than the trustee under the applicable indenture, the identity of the registrar and any paying agent for the offered debt securities.

***Defeasance.*** Any means of defeasance or covenant defeasance that may be specified for the offered debt securities.

***Global Securities.*** Whether the offered debt securities are to be issued in whole or in part in the form of one or more temporary or permanent global securities and, if so, the identity of the depositary or its nominee, if any, for the global security or securities and the circumstances under which beneficial owners of interests in the global security may exchange those interests for certificated debt securities to be registered in the names of or to be held by the beneficial owners or their nominees.

***Documentation.*** If the offered debt securities may be issued or delivered, or any installment of principal or interest may be paid, only upon receipt of certain certificates or other documents or satisfaction of other conditions in addition to those specified in the applicable indenture, the form of those certificates, documents or conditions.

## Edgar Filing: FEDERAL REALTY INVESTMENT TRUST - Form 424B5

**Payees.** If other than as provided in the applicable indenture, the person to whom any interest on any registered security of the series will be payable and the manner in which, or the person to whom, any interest on any bearer securities of the series will be payable.

**Definitions.** Any definitions for the offered debt securities of that series that are different from or in addition to the definitions included in the applicable indenture, including, without limitation, the definition of *unrestricted subsidiary* to be used for such series.

## **Table of Contents**

**Subordination.** In the case of any subordinated indenture that we may enter into, the relative degree to which the offered debt securities shall be senior to or junior to other debt securities, whether currently outstanding or to be offered in the future, and to other debt, in right of payment.

**Guarantees.** Whether the offered debt securities are guaranteed and, if so, the identity of the guarantors and the terms of the offered guarantees (including whether and the extent to which the guarantees are subordinated to other debt of the guarantors).

**Conversion.** The terms, if any, upon which the offered debt securities may be converted or exchanged into or for our common shares, preferred shares or other securities or property, including, without limitation, the initial conversion price or rate, the conversion period, any adjustment of the applicable conversion price and any requirements relative to the reservation of such shares for purposes of conversion.

**Restrictions.** Any restrictions on the registration, transfer or exchange of the offered debt securities.

**Other Terms.** Any other terms not inconsistent with the terms of the applicable indenture pertaining to the offered debt securities or which may be required or advisable under U.S. laws or regulations or advisable, as we determine, in connection with marketing of securities of the series.

## **Form of Securities and Related Matters**

**Registered or Bearer Form.** Debt securities may be offered in either registered or bearer form.

If the debt securities are in registered form, we may treat the person named in the register as the owner of the debt securities for all purposes, including payment, exchange and transfer.

If we issue debt securities in bearer form, we will issue those debt securities only to non-U.S. persons and may treat the bearer of the securities as the owner for all purposes, including payment, exchange and transfer. If we issue debt securities in bearer form, we will describe special offering restrictions and material U.S. federal income tax considerations relating to the offered debt securities in a prospectus supplement.

**Denominations.** Unless we say otherwise in a prospectus supplement, we will issue debt securities in denominations of:

U.S. \$1,000 (or multiples of \$1,000) if we issue the debt securities in registered form; and

U.S. \$5,000 (or multiples of \$5,000) if we issue debt securities in bearer form.

**Payment Currencies and Indexed Securities.** We may offer debt securities for which:

the purchase price is payable in a currency other than U.S. dollars;

the securities are denominated in a currency other than U.S. dollars; or

## Edgar Filing: FEDERAL REALTY INVESTMENT TRUST - Form 424B5

the principal or interest of, or any other amount due on, the offered debt securities in a currency other than U.S. dollars. The other currency may be a currency unit composed of various currencies. Payments on debt securities may also be based on an index.

## **Table of Contents**

**Payment, Transfer and Exchange.** Unless we say otherwise in a prospectus supplement, the office for paying principal, interest and other amounts on the debt securities is U.S. Bank National Association, 214 North Tryon Street, 27<sup>th</sup> Floor, Charlotte, North Carolina 28202. We will notify you of any change in the office's location. At our option, however, we may make any interest payments on debt securities issued in registered form by:

mailing checks to you at the address as it appears in the applicable register for the series of debt securities; or

wire transfer of immediately available funds to an account you maintain located in the United States.

Unless we say otherwise in a prospectus supplement, we will pay interest to the person whose name is in the register at the close of business on the regular record date for such interest.

Unless we say otherwise in a prospectus supplement, payment of interest on bearer securities may be made by transfer to an account you maintain with a bank located outside the United States.

Unless we say otherwise in a prospectus supplement, you may transfer or exchange debt securities issued in registered form at an office or agency that we designate. You may transfer or exchange debt securities without service charge, although we may require you to pay any related tax or other governmental charge.

## **Global Securities**

We may issue debt securities of a series in the form of one or more fully registered global securities. Each registered global security will:

be registered in the name of a depositary or a nominee for the depositary;

be deposited with the depositary or nominee or a custodian therefor; and

bear a legend regarding the restrictions on exchanges and registration of transfer and any such other appropriate matters.

Global securities may be issued in either registered or bearer form and in either temporary or permanent form. The specific terms and procedures, including the specific terms of the depositary arrangement, with respect to any portion of a series of debt securities will be described in a prospectus supplement.

## **Certain Covenants**

Unless we say otherwise in a prospectus supplement, each indenture contains or will contain the following covenants. Any additional material covenants applicable to any series of debt securities will be set forth in a prospectus supplement.

**Existence.** Except as permitted under Consolidation, Merger or Sale of Assets, we will do or cause to be done all things necessary to preserve and keep in full force and effect our corporate existence, rights (charter and statutory) and franchises; provided, however, we are not required to preserve any right or franchise if we determine that the preservation of the right or franchise is no longer desirable in the conduct of our business.

**Maintenance of Properties.** We will cause all of our material properties used or useful in the conduct of our business to be maintained and kept in good condition, repair and working order and supplied with all necessary equipment and will cause to be made all necessary repairs, renewals, replacements, betterments and improvements of our material properties to be made, all as in our judgment may be necessary so that the business carried on at, or in connection with, our material properties may be properly and advantageously conducted at all times.



**Table of Contents**

***Payment of Taxes and Other Claims.*** We will pay or discharge or cause to be paid or discharged, before they shall become delinquent:

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

all lawful claims for labor, materials and supplies which, if unpaid, might by law become a lien upon our property; provided, however, that we shall not be required to pay or discharge 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.

***Provision of Financial Information.*** Whether or not we are subject to Section 13 or 15(d) of the Exchange Act, we will, within 15 days of 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 register, 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 SEC pursuant to Section 13 or 15(d) of the Exchange Act if we were subject to Section 13 or 15(d);

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

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

**Consolidation, Merger or Sale of Assets**

We may consolidate with, or sell, lease or convey all or substantially all of our assets, or merge with or into any other corporation, association, partnership, company or business trust, each of which we refer to herein as an entity, provided that we satisfy all of the following conditions:

either

we must be the continuing entity, or

the surviving entity must be an entity duly organized and validly existing under U.S. laws, any state or the District of Columbia, and the surviving entity must assume, by a supplemental indenture in a form reasonably satisfactory to the trustee, all obligations under the applicable debt securities and the related indenture;

immediately after giving effect to such transactions, no default or event of default under the debt securities shall have occurred and be continuing; and

we or the surviving entity has delivered, or caused to be delivered, to the trustee, in form and substance reasonably satisfactory to the trustee, an officers' certificate and an opinion of counsel, each to the effect that each consolidation, merger, transfer, sale, assignment, lease or other transaction and the supplemental indenture relating to such transaction comply with the provisions of the applicable

indenture and that all conditions precedent provided for in the indenture relating to the transaction have been met.



## **Table of Contents**

### **Subordination**

**Generally.** Unless we say otherwise in a prospectus supplement, the payment of principal, premium, if any, and interest on subordinated debt securities will be subordinated, or junior, to the prior payment in full of all or any of our present and future senior debt. This means that we must pay all present and future senior debt before we pay amounts due to holders of subordinated debt securities if we liquidate, dissolve, reorganize or go through a similar process. After making these payments, we may not have sufficient assets remaining to pay the amounts due to holders of subordinated debt securities or equity securities.

Unless we say otherwise in a prospectus supplement, senior debt will be defined as the principal of and interest on, or substantially similar payments to be made by us in respect of, the following, whether outstanding at the date of execution of any subordinated indenture or thereafter incurred, created or assumed:

indebtedness for money borrowed or represented by purchase-money obligations;

indebtedness evidenced by notes, debentures, or bonds, or other securities issued under the provisions of an indenture, fiscal agency agreement or other instrument;

our obligations as lessee under leases of property whether made as part of any sale and leaseback transaction to which we are a party or otherwise;

indebtedness of partnerships and joint ventures which is included in our consolidated financial statements;

indebtedness, obligations and liabilities of others in respect of which we are liable, contingently or otherwise, for payment or advances of money or property, or as guarantor, endorser or otherwise, or which we have agreed to purchase or otherwise acquire; and

any binding commitment to fund any real estate investment or to fund any investment in any entity making a real estate investment, in each case other than

any such indebtedness, obligation or liability of a type described or referred to in the bullets above as to which, in the instrument creating or evidencing the same or pursuant to which the same is outstanding, it is provided that such indebtedness, obligation or liability is not superior in right of payment to the subordinated debt securities or ranks *pari passu* with the subordinated debt securities;

any such indebtedness, obligation or liability which is subordinated to our indebtedness to substantially the same extent as or to a greater extent than the subordinated debt securities are subordinated to our indebtedness; and

the subordinated debt securities.

Unless we say otherwise in a prospectus supplement, there will be no restrictions in any subordinated indenture upon the creation of additional senior debt.

**Payment Blockage for Payment Defaults.** Unless we say otherwise in a prospectus supplement, if we have defaulted in the payment of any senior debt, we may not:

pay any principal, premium, if any, or interest on subordinated debt securities; or

purchase, redeem, defease, or otherwise acquire any subordinated debt securities.

## **Table of Contents**

This prohibition will not affect any payment we have already made to defease debt securities, as described under Defeasance or Covenant Defeasance of Indentures, below.

We must resume payment on our subordinated debt securities, and make any payments we have missed, when one of the following has occurred:

the senior debt has been discharged or paid in full;

the holders of senior debt have waived payment; or

the payment default has otherwise been cured or ceased to exist.

***Payment Blockage for Non-Payment Defaults.*** Unless we say otherwise in a prospectus supplement, we will also be prohibited from paying any amounts or distributing any assets if:

we have defaulted on senior debt in a way that does not involve a failure to pay amounts but accelerates payment; and

we and the trustee for the subordinated debt securities have received written notice of this default.

Unless we say otherwise in a prospectus supplement, we will be required to suspend payments and distributions on our subordinated debt securities starting when we receive notice of the applicable default. We may resume payments on our subordinated debt securities, and make any payments we have missed, upon the earliest of:

the date that is 179 days after receipt of notice (unless we have previously been required to pay all amounts owing on the applicable senior debt);

the date the default and all other similar defaults as to which notice has been given shall have been cured, waived or shall have ceased to exist;

the date the applicable senior debt (and all other senior debt as to which notice has been given) shall have been discharged or paid in full; and

the date on which we or the trustee receives written notice from the representative of holders of senior debt or the holders of at least a majority of the senior debt terminating the blockage period.

Any number of notices of non-payment defaults may be given, but during any 365-day consecutive period only one blockage period may commence, and the period may not exceed 179 days. No non-payment default with respect to senior debt that existed or was continuing on the date a blockage period for our subordinated debt securities commenced may be made the basis of another blockage period for those securities whether or not within a period of 365 consecutive days, unless at least 90 consecutive days have elapsed since the default was cured or waived.

## **Default Provisions**

***Events of Default.*** Unless we say otherwise in a prospectus supplement, each of the following is an event of default as to any of our senior or subordinated debt securities:

Edgar Filing: FEDERAL REALTY INVESTMENT TRUST - Form 424B5

1. A default in the payment of any interest or any additional amounts on any debt security of that series or of any coupon appertaining thereto when it becomes due and payable, if the default continues for a period of 30 days.

**Table of Contents**

2. A default in the payment of the principal of (or premium, if any, on) any debt security of that series at its maturity (upon acceleration, optional or mandatory redemption, required purchase or otherwise).
3. A default in the deposit of any sinking fund payment as required by the terms of any debt security of that series.
4. A default in the performance, or a breach, of any covenant or agreement by us under the applicable indenture (other than a default in the performance, or a breach of a covenant or agreement which is specifically dealt with in clause (1) through (8) hereof) if such default or breach continues for a period of 60 days after written notice has been given, by registered or certified mail:
  - (a) to us by the trustee; or
  - (b) to us and the trustee by the holders of at least 25% in aggregate principal amount of the outstanding debt securities of the series.
5. The occurrence of one or more defaults under any bond, debenture, note or other evidence of indebtedness for money borrowed by us (including obligations under leases required to be capitalized on the balance sheet of the lessee under generally accepted accounting principles but not including any indebtedness or obligations for which recourse is limited to property purchased) in an aggregate principal amount in excess of \$5,000,000 or under any mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidenced any indebtedness for money borrowed by us (including such leases but not including such indebtedness or obligations for which recourse is limited to property purchased) in an aggregate principal amount in excess of \$5,000,000, whether such indebtedness now exists or shall hereafter be created, if the default has resulted in such indebtedness becoming or being declared due and payable prior to the date on which it would otherwise have become due and payable or in the acceleration of such obligations, without such acceleration having been rescinded or annulled.
6. The entry by a court of competent jurisdiction under any applicable bankruptcy law that:
  - (a) is for relief against us or any of our significant subsidiaries in an involuntary case,
  - (b) appoints a receiver in respect of us or any of our significant subsidiaries or for all or substantially all of the property of any of us; or
  - (c) orders our liquidation or the liquidation of any of our significant subsidiaries,and the order or decree remains unstayed and in effect for 90 days.
7. We or any of our significant subsidiaries do any of the following:
  - (a) commence a voluntary case or proceeding under any applicable bankruptcy law;
  - (b) consent to the entry of a decree or order for relief in respect of us or any of our significant subsidiaries in an involuntary case or proceeding under any applicable bankruptcy law;
  - (c) consent to the appointment of a receiver in respect of us or any of our significant subsidiaries for all or substantially all of our or its property; or
  - (d) makes a general assignment for the benefit of our creditors or the creditors of any of our significant subsidiaries.

**Table of Contents**

8. Any other event of default provided with respect to the debt securities of that series.

**Waiver of Default.** Unless we say otherwise in a prospectus supplement, holders of not less than a majority of the debt securities of a series may waive any past default except for:

a payment default; or

a default on any provision that requires the consent of all holders to modify.

**Acceleration of Payment.** Unless we say otherwise in a prospectus supplement, each indenture provides or will provide that if an event of default occurs and continues, the trustee or the holders of not less than 25% in aggregate principal amount of the debt securities of the applicable series outstanding may declare all unpaid principal of, premium, if any, and accrued interest on, all the debt securities of the applicable series to be due and payable immediately by a notice given in writing to us (and to the trustee if given by the holders of the debt securities of the applicable series). The trustee may, then, at its discretion, proceed to protect and enforce the rights of the holders of the applicable debt securities by appropriate judicial proceeding.

**Waiver of Acceleration.** Unless we say otherwise in a prospectus supplement, each indenture provides or will provide that, after a declaration of acceleration, but before a judgment or decree for payment of the money due has been obtained by the trustee, the holders of a majority in aggregate principal amount of the debt securities, by written notice to us and the trustee, may rescind and annul such declaration if:

we have paid, or deposited with the trustee a sum sufficient to pay:

all overdue interest and any additional amounts payable on all outstanding debt securities of the applicable series and any related coupons,

the principal of and premium, if any, on any debt securities of the applicable series which have become due other than by such declaration of acceleration, plus interest thereon at the rate borne by the debt securities,

to the extent that payment of such interest is lawful, interest upon overdue interest at the rate borne by the debt securities, and

all sums paid or advanced by the trustee under the indenture and the reasonable compensation, expenses, disbursements and advances of the trustee, its agents and counsel; and

all events of default, other than the non-payment of principal of the debt securities which have become due solely by such declaration of acceleration, have been cured or waived.

**Notices of Default.** Unless we say otherwise in a prospectus supplement, we are required to deliver to the trustee, on or before a date not more than 120 days after the end of each fiscal year, a certificate of compliance with the indenture, and, in the event of any noncompliance, specifying such noncompliance, including whether or not any default has occurred. The trustee is required to give notice to the holders of debt securities within 90 days of a default under the applicable indenture unless such default shall have been cured or waived; provided, however, that the trustee may withhold notice to the holders of any series of debt securities of any default with respect to such series (except a default in the payment of the principal of, and premium, if any, or interest on or any additional amounts with respect to any debt security of such series or in the payment of any sinking fund installment in respect of any debt security of such series) if the trustee considers such withholding to be in the interest of the holders.



## **Table of Contents**

***Limitation on Suits.*** Unless we say otherwise in a prospectus supplement, each indenture provides or will provide that no holders of debt securities of any series may institute any proceedings, judicial or otherwise, with respect to the indenture or for any remedy thereunder unless the trustee has failed to act for a period of 60 days 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 aggregate principal amount of the debt securities of the applicable series outstanding together with an offer of indemnity from such holders that is reasonably satisfactory to the trustee and the trustee has received no direction inconsistent with such written request during such 60-day period from the holders of a majority in aggregate principal amount of the debt securities of the applicable series outstanding. 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 such debt securities at the respective due dates of the securities.

***Obligations of Trustee.*** Unless we say otherwise in a prospectus supplement, the trustee is under no obligation to exercise any of the rights or powers vested in it by the indenture at the request or direction of any of the holders of the debt securities unless they shall have offered to the trustee security or indemnity satisfactory to the trustee against the costs, expenses and liabilities that might be incurred thereby.

The Trust Indenture Act limits the trustee, should it become a creditor of ours or of any guarantor, from obtaining payment of claims in certain cases or realizing certain property received by it in respect of those claims, as security or otherwise. The trustee is permitted to engage in certain other transactions as long as, if it acquires any conflicting interest and an event of default occurs, it either cures the conflict or resigns as trustee.

For information regarding the acceleration of a portion of the principal amount of any original issue discount securities on the occurrence of an event of default, please read the prospectus supplement relating to the issuance of those securities.

### **Defeasance or Covenant Defeasance of Indenture**

Unless we say otherwise in a prospectus supplement, we will be able to discharge our obligations under debt securities at any time by taking the actions described below. The discharge of all obligations using this process is known as defeasance. If we defease debt securities, all obligations under the series of debt securities that is defeased will be deemed to have been discharged, except for:

the rights of holders of outstanding debt securities to receive, solely from funds deposited for this purpose, payments in respect of the principal of, premium, if any, and interest on those debt securities when the payments are due;

the obligations with respect to the debt securities concerning issuing temporary debt securities, registration of debt securities, mutilated, destroyed, lost or stolen debt securities, and the maintenance of an office or agency for payment and money for security payments held in trust;

the rights, powers, trusts, duties and immunities of the trustee; and

the defeasance provisions of the indenture.

We will also be able to free ourselves from certain covenants that are described in an indenture by taking the actions described below. The discharge of obligations using this process is known as covenant defeasance. If we defease covenants under debt securities, then certain events (not including non-payment, enforceability of any guarantee, bankruptcy and insolvency events) described under Events of Default will no longer constitute an event of default with respect to the debt securities.



**Table of Contents**

Unless we say otherwise in a prospectus supplement, in order to exercise either defeasance or covenant defeasance as to the outstanding debt securities of a series:

we must irrevocably deposit with the trustee, in trust, for the benefit of the holders of the debt securities of the applicable series, an amount in (i) currency, currencies or currency units in which those debt securities are then specified as payable at maturity, (ii) government obligations (as defined in the applicable indenture) or (iii) any combination thereof, as will be sufficient, without consideration of reinvestment of principal and interest, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the trustee, to pay and discharge the principal of, premium, if any, and interest on the debt securities of the applicable series on the stated maturity of such principal or installment of principal or interest and any mandatory sinking fund payments;

in the case of defeasance, we will deliver to the trustee an opinion of counsel confirming that either:

we have received from, or there has been published by, the Internal Revenue Service a ruling, or

since the date of execution of the indenture, there has been a change in the applicable federal income tax law,

the effect of either being that the holders of the outstanding debt securities of the applicable series will not recognize income, gain or loss for federal income tax purposes as a result of such defeasance and will be subject to 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 had not occurred;

in the case of covenant defeasance, we will deliver to the trustee an opinion of counsel to the effect that the holders of the debt securities of the applicable series will not recognize income, gain or loss for federal income tax purposes as a result of such covenant defeasance and will be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such covenant defeasance had not occurred;

no default, event of default or event which with notice or lapse of time or both would become an event of default shall have occurred and be continuing on the date of such deposit or insofar as clause 6 or 7 of **Default Provisions** **Events of Default** is concerned, at any time during the period ending on the 91st day after the date of deposit;

the defeasance or covenant defeasance shall not result in a breach or violation of, or constitute a default under, the indenture or any other material agreement or instrument to which we are a party or by which we are bound;

we will deliver to the trustee an officers' certificate and an opinion of counsel, each stating that all conditions precedent provided for that relate to either the defeasance or the covenant defeasance, as the case may be, have been met; and

we will deliver to the trustee an opinion of counsel to the effect that either (i) as a result of the deposit pursuant to the first bullet in this paragraph and the election to defease, registration is not required under the Investment Company Act of 1940, as amended, with respect to the trust funds representing the deposit, or (ii) all necessary registrations under the Investment Company Act have been effected.

**Modifications and Amendments**

## Edgar Filing: FEDERAL REALTY INVESTMENT TRUST - Form 424B5

Unless we say otherwise in a prospectus supplement, we and the trustee may modify and amend either indenture with the consent of the holders of a majority in aggregate principal amount of the outstanding debt

**Table of Contents**

securities of all series affected by the modification or amendment; provided, however, that no modification or amendment may, without the consent of the holder of each outstanding debt security of all series affected by the modification or amendment:

change the stated maturity of the principal of, or any installment of interest on, any debt security;

reduce the principal amount thereof or the rate of interest thereon or any premium payable upon the redemption thereof, or change any obligation of ours to pay additional amounts under the indenture, except as contemplated in the indenture, or reduce the amount of the principal of an original issue discount security that would be due and payable upon a declaration of acceleration of the maturity thereof or the amount thereof provable in bankruptcy;

adversely affect any right of repayment at the option of the holder of any series of outstanding debt security;

change the place of repayment where, or the currency, currency unit or composite currency in which, the principal or premium, if any, of any debt security or the interest thereon is payable;

impair the right to institute suit for the enforcement of any such payment after the stated maturity of the debt security (or in the case of redemption, on or after the redemption date);

reduce the percentage in principal amount of outstanding debt securities of any series for which the consent of the holders is required for any such supplemental indenture, or for any waiver of compliance with certain provisions of the indenture or certain defaults, or reduce the requirements for quorum or voting as provided in the indenture; or

modify any of the provisions that relate to supplemental indentures and that require the consent of holders, that relate to the waiver of past defaults, that relate to the waiver of certain covenants, except to increase the percentage in principal amount of outstanding debt securities required to take such actions or to provide that certain other provisions of the indenture cannot be modified or waived without the consent of the holder of each debt security affected thereby.

Unless we say otherwise in a prospectus supplement, we and the trustee may modify and amend either indenture without the consent of the holders if the modification or amendment does only the following:

evidences the succession of another person to us and the assumption by any such successor of any covenants under the indenture and in the debt securities of any series;

adds to our covenants for the benefit of the holders of all or any series of debt securities or surrenders any of our rights or powers;

adds any additional event of default for the benefit of the holders of all or any series of debt securities;

secures the debt securities of any series;

## Edgar Filing: FEDERAL REALTY INVESTMENT TRUST - Form 424B5

adds or changes any provisions to the extent necessary to provide that bearer securities may be registrable as to principal, to change or eliminate any restrictions on the payment of principal of or any premium or interest on bearer securities, to permit bearer securities to be issued in exchange for registered securities or bearer of securities of other authorized denominations, or to permit or facilitate the issuance of securities in uncertificated form, provided that any such action shall not adversely affect the interests of the holders of any series of outstanding debt securities in any material respect;

changes or eliminates any provision affecting only debt securities not yet issued;

## **Table of Contents**

establishes the form or terms of debt securities of any series not yet issued;

evidences and provides for successor trustees or adds or changes any provisions of the indenture to the extent necessary to permit or facilitate the appointment of a separate trustee or trustees for specific series of debt securities;

cures any ambiguity, corrects or supplements any provisions which may be defective or inconsistent with any other provision, or makes any other provisions with respect to matters or questions arising under the indenture which shall not be inconsistent with the provisions of the indenture; provided, however, that no such modification or amendment may adversely affect the interest of holders of debt securities of any series then outstanding in any material respect; or

supplements any provision of the indenture to such extent as shall be necessary to permit the facilitation of defeasance and discharge of any series of debt securities; provided, however, that any such action may not adversely affect the interest of holders of debt securities of any series then outstanding in any material respect.

The holders of a majority in aggregate principal amount of the debt securities of a series outstanding may waive compliance with certain restrictive covenants and provisions of either indenture with respect to that series.

### **Original Issue Discount**

We may issue debt securities under either indenture for less than their stated principal amount. Such securities may be treated as original issue discount securities, and they may be subject to special tax consequences. In addition, some debt securities that are offered and sold at their stated principal amount may, under certain circumstances, be treated as issued at an original issue discount for federal income tax purposes. We will describe the federal income tax consequences and other special consequences applicable to securities treated as original issue discount securities in the prospectus supplement relating to such securities. Original issue discount security generally means any debt security that:

does not provide for the payment of interest prior to maturity; or

is issued at a price lower than its face value and provides that upon redemption or acceleration of its stated maturity an amount less than its principal amount shall become due and payable.

### **Notices**

Unless we say otherwise in a prospectus supplement, we will send notices to holders of debt securities by mail to the holder's address as it appears in the register.

### **Governing Law**

Unless we say otherwise in a prospectus supplement, each indenture and the debt securities will be governed by the laws of the State of New York.

**Table of Contents**

**DESCRIPTION OF SHARES OF BENEFICIAL INTEREST**

We are a Maryland REIT. Your rights as a shareholder are governed by the Code of Maryland, including Title 8 of the Corporations and Associations Article, or Maryland REIT Law, our declaration of trust, our bylaws and our shareholder rights plan. The following summary of the material terms, rights and preferences of the shares of beneficial interest is not complete and is subject to and qualified in its entirety by reference to the laws of the State of Maryland, including Maryland REIT law, our declaration of trust, bylaws and shareholder rights plan and the articles supplementary with respect to our Series 1 preferred shares.

**Authorized Shares**

Our declaration of trust allows us to issue up to 100,000,000 common shares of beneficial interest, par value \$.01 per share, and 15,000,000 preferred shares of beneficial interest, par value \$.01 per share. As of June 11, 2009, we had issued and outstanding 59,156,354 common shares, and 399,896 preferred shares, which are designated as 5.417% Series 1 Cumulative Convertible Preferred Shares, which we refer to as the Series 1 preferred shares.

***Authority of the Board of Trustees Relating to Authorization and Classification of Shares.*** Our declaration of trust allows our Board of Trustees to take the following actions without approval by you or any shareholder:

classify or reclassify any authorized but unissued common shares or preferred shares into one or more classes or series of shares of beneficial interest;

amend the declaration of trust to change the total number of shares of beneficial interest authorized; and

amend the declaration of trust to change the authorized number of shares of any class or series of shares of beneficial interest.

If there are any laws or stock exchange rules which require us to obtain shareholder approval in order for us to take these actions, however, we will contact you and other shareholders to solicit that approval.

We believe that the power of the Board of Trustees to issue additional shares of beneficial interest will provide us with greater flexibility in structuring possible future financings and acquisitions and in meeting other future needs. Although the Board of Trustees does not currently intend to do so, it has the ability to issue a class or series of beneficial shares that could have the effect of delaying or preventing a change of our control that might involve a premium price for holders of our common shares or otherwise be favorable to them.

**Common Shares**

All common shares offered through this prospectus will be duly authorized, fully paid and nonassessable. As a shareholder, you will be entitled to receive distributions, or dividends, on the shares you own if the Board of Trustees authorizes a dividend to the holders of our common shares out of our legally available assets. Your right to receive those dividends may be affected, however, by the preferential rights of the Series 1 preferred shares or any other class or series of shares of beneficial interest and the provisions of our declaration of trust regarding restrictions on the transfer of shares of beneficial interest. For example, you may not receive dividends if no funds are available for distribution after we pay dividends to holders of preferred shares. In the event of our liquidation, dissolution or winding up, holders of our common shares will be entitled to share pro rata in all of our assets remaining after payment or provision for all of our debts and other liabilities and preferential amounts owing in respect of our Series 1 preferred shares and any other shares of beneficial interest having a priority over our common shares in the event of our liquidation, dissolution or winding up. As noted above under

## Table of Contents

Authorized Shares, our outstanding Series 1 preferred shares rank prior to our common shares with respect to the payment of dividends and as to the distribution of assets in the event of our liquidation, dissolution or winding up.

**Voting Rights.** Each outstanding common share owned by a shareholder entitles that holder to one vote on all matters submitted to a vote of common shareholders, including the election of trustees. The right to vote is subject to the provisions of our declaration of trust regarding the restriction of the transfer of shares of beneficial interest, which we describe under Restrictions on Ownership and Transfer, below. There is no cumulative voting in the election of trustees, which means that, under Maryland law and our bylaws, the holders of a plurality of all of the votes cast at a meeting of shareholders duly called and at which a quorum is present can elect a trustee. The holders of the remaining shares will not be able to elect any trustees.

As a holder of a common share, you will not have any right to:

convert your shares into any other security;

have any funds set aside for future payments;

require us to repurchase your shares; or

purchase any of our securities, if other securities are offered for sale, other than as a member of the general public.

Subject to the terms of our declaration of trust regarding the restrictions on transfer of shares of beneficial interest, each common share has the same dividend, distribution, liquidation and other rights as each other common share.

According to the terms of our declaration of trust and bylaws, and Maryland law, all matters submitted to the shareholders for approval, except for those matters listed below, are approved if a majority of all the votes cast at a meeting of shareholders duly called and at which a quorum is present are voted in favor of approval. The following matters require approval other than by a majority of all votes cast:

the election of trustees (which requires a plurality of all the votes cast at a meeting of our shareholders at which a quorum is present), provided, however, that if any trustee does not receive a majority of all the votes cast where the number of nominees is the same as the number of trustees to be elected, such trustee shall tender his or her resignation within five business days after certification of the vote and such resignation shall be acted upon by our Board of Trustees within sixty days of such certification;

the removal of trustees (which requires the affirmative vote of the holders of two-thirds of the number of shares outstanding and entitled to vote on such a matter if the removal is approved or recommended by a vote of at least two-thirds of the Board of Trustees or the affirmative vote of the holders of not less than 80% of the number of shares then outstanding and entitled to vote on such matter if the removal is not approved or recommended by a vote of at least two-thirds of the Board of Trustees);

the amendment of our declaration of trust by shareholders (which requires the affirmative vote of two-thirds of all votes entitled to be cast on the matter only if the amendment was not approved by a unanimous vote of the Board of Trustees, but requires the affirmative vote of only a majority of votes entitled to be cast on the matter if the amendment was approved by a unanimous vote of the Board of Trustees);

our termination, winding up of affairs and liquidation (which requires, after approval by a majority of the entire Board of Trustees, the affirmative vote of two-thirds of all the votes entitled to be cast on the matter); and





## **Table of Contents**

our merger or consolidation with another entity or sale of all or substantially all of our property (which requires the approval of the Board of Trustees and an affirmative vote of two-thirds of all the votes entitled to be cast on the matter).

Our declaration of trust permits the Board of Trustees to revoke our election to be taxed as a REIT under the Code or to determine that compliance with any restriction or limitations on ownership and transfers of shares set forth in the declaration of trust is no longer required in order for us to qualify as a REIT. Our declaration of trust also permits the Board of Trustees to amend the declaration of trust from time to time, without approval by you or the other shareholders, to:

qualify as a real estate investment trust under Maryland REIT law or the Code; or

to increase or decrease the authorized aggregate number of shares and number of authorized shares of any class or series.

In addition, any provision of our bylaws may be adopted, altered or repealed either by our Board of Trustees, subject to certain limitations contained in our bylaws, without any action by the shareholders or by the shareholders at any meeting of shareholders called for that purpose, by the affirmative vote of holders of not less than a majority of the shares then outstanding and entitled to vote.

***Preemptive Rights.*** Under the declaration of trust, no holder of shares of beneficial interest has any preemptive rights to subscribe to any issuance of additional shares. The board of trustees, in classifying or reclassifying any unissued shares of beneficial interest, however, has the right to grant holders of shares preemptive rights to purchase or subscribe for additional shares of beneficial interest or other securities.

***Stock Exchange Listing.*** The common shares are traded on the New York Stock Exchange under the trading symbol FRT.

***Transfer Agent and Registrar.*** The transfer agent and registrar for the common shares is American Stock Transfer & Trust Company, New York, New York.

### **Series 1 Preferred Shares**

In March 2007, we issued 399,896 Series 1 preferred shares and we filed articles supplementary to our declaration of trust setting forth the terms of the Series 1 preferred shares. Below is a brief description of the terms of the Series 1 preferred shares, which is subject to and qualified in its entirety by reference to the articles supplementary.

***Rank.*** The Series 1 preferred shares rank prior to the common shares with respect to the payment of dividends and the distribution of assets upon our liquidation, dissolution or winding up. Our declaration of trust provides that, unless full cumulative dividends on all outstanding Series 1 preferred shares and any other class or series of our shares of beneficial interest ranking, as to the payment of dividends and the distribution of assets upon liquidation, dissolution or winding up, on a parity with the Series 1 preferred shares, or Parity Shares, shall have been declared and paid or declared and set apart for payment for all past dividend periods, then no dividends, other than dividends paid solely in common shares, or options, warrants or rights to subscribe for or purchase common shares, or any other shares of beneficial interest which rank junior to the Series 1 preferred shares with respect to the payment of dividends and the distribution of assets upon our liquidation, dissolution or winding up, or Junior Shares, shall be declared or paid or set apart for payment on the common shares nor shall any Junior Shares be redeemed, purchased or otherwise acquired (other than a redemption, purchase or other acquisition of common shares made for purposes of any employee incentive or benefit plan of ours) for any consideration by us, directly or indirectly (except by conversion into or exchange for shares of Junior Shares).

## **Table of Contents**

**Dividends.** Each Series 1 preferred share is entitled to receive, when, as and if authorized by our Board of Trustees out of funds legally available for that purpose, cumulative preferential dividends payable in cash at a rate of 5.417% of the liquidation price of \$25, which is equivalent to \$1.35425 per annum.

**Liquidation Preference.** In the event of our liquidation, dissolution or winding up, the holders of Series 1 preferred shares shall be entitled to receive \$25 per share, plus all accrued and unpaid dividends, before any distribution shall be made with respect to the common shares.

**Voting Rights.** The Series 1 preferred shares shall have no voting rights.

**Conversion Rights.** Subject to other applicable provisions within the articles supplementary for the Series 1 preferred shares, from the date of issuance, the Series 1 preferred shares shall be convertible, at the option of each holder, into a number of fully paid and nonassessable common shares determined by dividing (A) the product obtained by multiplying (i) the number of Series 1 preferred shares being converted by (ii) liquidation price; by (B) the option conversion price as in effect immediately prior to the close of business on the option conversion date.

**Transfer Agent and Registrar.** The transfer agent and registrar for the Series 1 preferred shares is American Stock Transfer & Trust Company, New York, New York.

## **Preferred Shares**

In addition to the Series 1 preferred shares, the terms of which are described above, we may issue one or more series of preferred shares. The following is a general description of the preferred shares that we may offer from time to time. The particular terms of the preferred shares being offered and the extent to which such general provisions may apply will be set forth in the applicable prospectus supplement.

**General.** Preferred shares may be offered and sold from time to time, in one or more series, as authorized by the Board of Trustees. The Board of Trustees is authorized by Maryland law and our declaration of trust to set for each series the terms, preferences, conversion or other rights, voting powers, restrictions, limitations as to distributions, qualifications and terms or conditions of redemption. The Board of Trustees has the power to set preferences, powers and rights, voting or other terms of preferred shares that are senior to, or better than, the rights of holders of common shares or other classes or series of preferred shares. The offer and sale of preferred shares could have the effect of delaying or preventing a change of our control that might involve a premium price for holders of our common shares or otherwise be favorable to them.

**Terms.** You should refer to the prospectus supplement relating to the offering of any preferred shares for specific terms, including the following terms:

the title of those preferred shares;