

Sunstone Hotel Investors, Inc.  
Form 424B5  
January 30, 2013  
Table of Contents

**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>
Sunstone Hotel Investors, Inc. Common Stock, par value \$0.01 per share	\$ 295,251,000	\$ 40,272.24

- (1) The registration fee is calculated in accordance with Rule 457(o) under the Securities Act of 1933, as amended, or the Securities Act, based on the proposed maximum aggregate offering price, and Rule 457(r) under the Securities Act. In accordance with Rules 456(b) and 457(r) under the Securities Act, the registrant initially deferred payment of all of the registration fee for Registration Statement No. 333-171712.

**Table of Contents**

Filed pursuant to Rule 424(b)(5)  
Reg. Statement No. 333-171712

**PROSPECTUS SUPPLEMENT**

(To Prospectus dated January 14, 2011)

**22,000,000 SHARES**

**Sunstone Hotel Investors, Inc.**

**COMMON STOCK**

We are offering 22,000,000 shares of our common stock.

Our common stock currently trades on the New York Stock Exchange, or NYSE, under the symbol SHO. On January 28, 2013, the last reported sale price of our common stock on the NYSE was \$12.05 per share. Shares of our common stock are subject to ownership and transfer limitations that must be applied to maintain our status as a real estate investment trust, or REIT.

**See Risk Factors on page S-13 of this prospectus supplement to obtain information about where to read certain factors you should consider before buying shares of our common stock.**

The underwriter has agreed to purchase shares of common stock from us at a price of \$11.67 per share which will result in approximately \$256.5 million of net proceeds to us. The underwriter may offer shares of common stock in transactions of the NYSE, in the over-the-counter market or through negotiated transactions at market prices or at negotiated prices. See Underwriting.

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

We have granted the underwriter a 30-day option to purchase up to 3,300,000 shares of common stock at a price of \$11.67.

The underwriter expects to deliver the shares in New York, New York on or about February 1, 2013.

Edgar Filing: Sunstone Hotel Investors, Inc. - Form 424B5

*Sole Book-Running Manager*

**Citigroup**

**The date of this Prospectus Supplement is January 28, 2013.**

**Table of Contents**

TABLE OF CONTENTS

**Prospectus Supplement**

	<b>Page</b>
<u>ABOUT THIS PROSPECTUS SUPPLEMENT</u>	S-1
<u>USE OF NON-GAAP FINANCIAL MEASURES</u>	S-2
<u>INCORPORATION OF CERTAIN INFORMATION BY REFERENCE</u>	S-4
<u>SUMMARY</u>	S-5
<u>RISK FACTORS</u>	S-13
<u>USE OF PROCEEDS</u>	S-14
<u>SPECIAL NOTE ABOUT FORWARD-LOOKING STATEMENTS</u>	S-15
<u>SUPPLEMENTAL MATERIAL UNITED STATES FEDERAL INCOME TAX CONSIDERATIONS</u>	S-16
<u>UNDERWRITING</u>	S-19
<u>LEGAL MATTERS</u>	S-25
<u>EXPERTS</u>	S-25

**Prospectus**

	<b>Page</b>
<u>ABOUT THIS PROSPECTUS</u>	1
<u>AVAILABLE INFORMATION</u>	1
<u>INCORPORATION OF CERTAIN INFORMATION BY REFERENCE</u>	2
<u>RISK FACTORS</u>	3
<u>USE OF PROCEEDS</u>	3
<u>RATIO OF COMBINED FIXED CHARGES AND PREFERRED DIVIDENDS TO EARNINGS</u>	3
<u>DESCRIPTION OF SECURITIES WE MAY OFFER</u>	4
<u>COMMON STOCK</u>	4
<u>PREFERRED STOCK</u>	5
<u>DEPOSITARY SHARES</u>	7
<u>DESCRIPTION OF OUR CAPITAL STOCK</u>	9
<u>COMMON STOCK</u>	9
<u>PREFERRED STOCK</u>	9
<u>RESTRICTIONS ON OWNERSHIP AND TRANSFER</u>	14
<u>CERTAIN PROVISIONS OF MARYLAND LAW AND OF OUR CHARTER AND BYLAWS</u>	17
<u>U.S. FEDERAL INCOME TAX CONSIDERATIONS</u>	23
<u>PLAN OF DISTRIBUTION</u>	45
<u>LEGAL OWNERSHIP AND BOOK-ENTRY ISSUANCE</u>	46
<u>LEGAL MATTERS</u>	48
<u>EXPERTS</u>	48

**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 stock. These documents contain important information that you should consider before making your investment decision. This prospectus supplement and the accompanying prospectus contain the terms of this offering of common stock. The accompanying prospectus contains information about our securities generally, some of which does not apply to the common stock 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 of the information contained in this prospectus supplement and the accompanying prospectus before making your investment decision. You should also read and consider the additional information incorporated by reference in this prospectus supplement and the accompanying prospectus before making your investment decision. See **Incorporation of Certain Information by Reference** in this prospectus supplement.

**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. Neither we nor the underwriter have 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. Neither we nor the underwriter are making an offer to sell the common stock 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.

Unless this prospectus supplement otherwise indicates or the context otherwise requires, the terms **our**, **us** and **we** as used in this prospectus supplement refer to Sunstone Hotel Investors, Inc. and its consolidated subsidiaries. We also use the term **Operating Partnership** to specifically refer to Sunstone Hotel Partnership, LLC and its consolidated subsidiaries in cases where it is important to distinguish between us and the Operating Partnership. Unless otherwise expressly stated or the context otherwise requires, all information in this prospectus supplement assumes that the option granted to the underwriter is not exercised in whole or in part.

This prospectus supplement and the accompanying prospectus contain registered trademarks that are the exclusive property of their respective owners, which are companies other than us. None of the owners of these trademarks, their affiliates or any of their respective officers, directors, agents or employees, has or will have any responsibility or liability for any information contained in this prospectus or the accompanying prospectus supplement.

---

**Table of Contents**

**USE OF NON-GAAP FINANCIAL MEASURES**

This prospectus supplement contains non-GAAP financial measures as defined by the rules and regulations of the SEC. A non-GAAP financial measure is a numerical measure of a company's historical or future financial performance, financial position or cash flows that excludes amounts, or is subject to adjustments that have the effect of excluding amounts, that are included in the most directly comparable measure calculated and presented in accordance with GAAP in the statements of operations, balance sheets, or statements of cash flows of Sunstone Hotel Investors, Inc.; or includes amounts, or is subject to adjustments that have the effect of including amounts, that are excluded from the most directly comparable measure so calculated and presented. Reconciliations of these non-GAAP financial measures to their comparable GAAP financial measures are incorporated by reference in this prospectus supplement.

We present the following non-GAAP financial measures that we believe are useful to investors as key measures of our operating performance: Earnings Before Interest Expense, Taxes, Depreciation and Amortization, or EBITDA; Adjusted EBITDA (as defined below); Funds From Operations, or FFO; and Adjusted FFO (as defined below).

EBITDA represents net income (loss) excluding: non-controlling interests; interest expense; provision for income taxes, including income taxes applicable to sale of assets; and depreciation and amortization. In addition, we have presented Adjusted EBITDA, which excludes: amortization of deferred stock compensation; the impact of any gain or loss from asset sales; impairment charges; and any other adjustments we have identified in this release. We believe EBITDA and Adjusted EBITDA are useful to investors in evaluating our operating performance because these measures help investors evaluate and compare the results of our operations from period to period by removing the impact of our capital structure (primarily interest expense) and our asset base (primarily depreciation and amortization) from our operating results. We also use EBITDA and Adjusted EBITDA as measures in determining the value of hotel acquisitions and dispositions.

We compute FFO in accordance with standards established by the National Association of Real Estate Investment Trusts, or NAREIT, an industry trade group. The Board of Governors of NAREIT in its March 1995 White Paper (as clarified in November 1999 and April 2002) defines FFO to mean net income (loss) (computed in accordance with GAAP), excluding non-controlling interests, gains and losses from sales of property, plus real estate-related depreciation and amortization (excluding amortization of deferred financing costs) and real estate-related impairment losses, and after adjustment for unconsolidated partnerships and joint ventures. We also present Adjusted FFO, which excludes penalties, written-off deferred financing costs, non-real estate-related impairment losses and any other adjustments we have identified in this release. We believe that the presentation of FFO and Adjusted FFO provide useful information to investors regarding our operating performance because they are measures of our operations without regard to specified non-cash items such as real estate depreciation and amortization, gain or loss on sale of assets and certain other items which we believe are not indicative of the performance of our underlying hotel properties. We believe that these items are more representative of our asset base and our acquisition and disposition activities than our ongoing operations. We also use FFO as one measure in determining our results after taking into account the impact of our capital structure.

We caution investors that amounts presented in accordance with our definitions of EBITDA, Adjusted EBITDA, FFO and Adjusted FFO may not be comparable to similar measures disclosed by other companies, because not all companies calculate these non-GAAP measures in the same manner. EBITDA, Adjusted EBITDA, FFO and Adjusted FFO should not be considered as an alternative measure of our net income (loss), operating performance, cash flow or liquidity. EBITDA, Adjusted EBITDA, FFO and Adjusted FFO may include funds that may not be available for our discretionary use due to functional requirements to conserve funds for capital expenditures and property acquisitions and other commitments and uncertainties. Although we believe that EBITDA, Adjusted EBITDA, FFO and Adjusted FFO can enhance an investor's understanding of our results

**Table of Contents**

of operations, these non-GAAP financial measures, when viewed individually, are not necessarily a better indicator of any trend as compared to GAAP measures such as net income (loss) or cash flow from operations. In addition, you should be aware that adverse economic and market conditions may harm our cash flow.

S-3

**Table of Contents**

**INCORPORATION OF CERTAIN INFORMATION BY REFERENCE**

The SEC's rules allow us to incorporate by reference information into this prospectus supplement and the accompanying prospectus. This means that we can disclose important information to you by referring you to another document. Any information referred to in this way is considered part of this prospectus supplement and the attached prospectus from the date we file that document. Any reports filed by us with the SEC after the date of this prospectus supplement and before the date that the offering of the securities by means of this prospectus supplement is terminated will automatically update and, where applicable, supersede any information contained, or incorporated by reference, in this prospectus supplement or in the accompanying prospectus.

We incorporate by reference into this prospectus supplement and the accompanying prospectus:

our Annual Report on Form 10-K for the fiscal year ended December 31, 2011, filed with the SEC on February 28, 2012 (including information specifically incorporated by reference therein from our Proxy Statement for our 2012 Annual Meeting filed with the SEC on March 23, 2012);

our Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2012, June 30, 2012 and September 30, 2012, filed with the SEC on May 3, 2012, August 7, 2012 and November 6, 2012, respectively;

our Current Reports on Form 8-K filed with the SEC on February 22, 2012, March 22, 2012, May 2, 2012, May 4, 2012, June 25, 2012, September 10, 2012 and January 25, 2013 (but only with respect to Items 2.01 and 9.01);

the description of the common stock included in our registration statement on Form 8-A, filed with the SEC on October 7, 2004, together with any amendment or report filed with the SEC for the purpose of updating such description; and

all documents we file with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended, or the Exchange Act, on or after the date of this prospectus supplement and before the termination of this offering.

We are not, however, incorporating by reference any documents or portions thereof, whether specifically listed above or filed in the future, that are not deemed filed with the SEC. The documents incorporated by reference in this prospectus supplement and the accompanying prospectus and, in particular, our Annual Report on Form 10-K for the fiscal year ended December 31, 2011, filed with the SEC on February 28, 2012, contain important information about us.

You should read "Incorporation of Certain Information by Reference" in the accompanying prospectus for information about how to obtain the documents incorporated by reference.



## Table of Contents

### SUMMARY

*The information below is a summary of the more detailed information included elsewhere in, or incorporated by reference in, this prospectus supplement. You should read carefully the following summary in conjunction with the more detailed information contained in this prospectus supplement, the accompanying prospectus and the information incorporated by reference herein and therein. This summary is not complete and does not contain all of the information you should consider before purchasing shares of our common stock. You should carefully read the Risk Factors section on page S-8 of this prospectus supplement to determine whether an investment in our common stock is appropriate for you.*

#### **Sunstone Hotel Investors, Inc.**

##### ***Our Company***

We were incorporated in Maryland on June 28, 2004. We are a real estate investment trust, or REIT, under the Internal Revenue Code of 1986, as amended, or the Code. As of December 31, 2012, we had interests in 30 hotels, including four hotels that we classified as held for sale and included in discontinued operations due to their sale on January 25, 2013, leaving 26 hotels currently held for investment (the 26 hotels). The 26 hotels are comprised of 11,632 rooms, located in 12 states and in Washington, D.C.

Our primary business is to acquire, own, asset manage and renovate full-service hotels in the United States. As part of our ongoing portfolio management strategy, we may also sell certain hotels from time to time. Our hotels are operated under nationally recognized brands, such as Marriott, Hilton, Hyatt, Fairmont and Sheraton. Our portfolio primarily consists of upper upscale hotels in the United States. As of December 31, 2012, our 26 hotels included two luxury hotels, 22 upper upscale hotels and two upscale hotels. The classifications luxury, upper upscale and upscale are defined by Smith Travel Research, an independent provider of lodging industry statistical data. Smith Travel Research classifies hotel chains into the following segments: luxury; upper upscale; upscale; upper midscale; midscale; economy; and independent.

Our hotels are operated by third-party managers pursuant to long-term management agreements with our subsidiary, Sunstone Hotel TRS Lessee, Inc. As of December 31, 2012, our third-party managers included: subsidiaries of Marriott International, Inc. or Marriott Hotel Services, Inc., managers of 10 of the Company's 26 hotels; a subsidiary of Interstate Hotels & Resorts, Inc., manager of six of the Company's 26 hotels; Highgate Hotels L.P. and an affiliate, manager of three of the Company's 26 hotels; Davidson Hotels & Resorts and Hilton Worldwide, each a manager of two of the Company's 26 hotels; and Crestline Hotels & Resorts, Fairmont Hotels & Resorts (U.S.) and Hyatt Corporation, each a manager of one of the Company's 26 hotels. In addition, we own BuyEfficient, LLC, an electronic purchasing platform that allows members to procure food, operating supplies, furniture, fixtures and equipment.

##### ***Competitive Strengths***

We believe the following competitive strengths distinguish us from other hotel investors:

**Strong Access to Capital.** As a publicly traded REIT, over the long-term, we benefit from greater access to a variety of forms of capital as compared to non-public investment vehicles.

**Low Cost of Capital.** As a publicly traded REIT, over the long-term, we may benefit from a lower cost of capital as compared to non-public investment vehicles as a result of our liquidity, professional management and portfolio diversification.

**Significant Cash Position.** As of December 31, 2012, we had \$157.2 million in unrestricted cash and cash equivalents. In January 2013 we repurchased the remaining \$58.0 million balance of our Operating Partnership's 4.60% exchangeable senior notes (the Senior Notes). See Recent

## Table of Contents

Developments Retirement of 4.60% Exchangeable Senior Notes due 2027. In addition, on January 25, 2013, sold four hotels and a commercial laundry facility for aggregate net proceeds of approximately \$165.0 million. See Recent Developments Disposition of Rochester, Minnesota Properties. After these transactions, as of January 25, 2013, we had in excess of \$250.0 million in cash and we have no debt maturities through the approximately two-year period ending December 31, 2014. We intend to deploy a significant portion of our existing cash toward selective acquisitions, including acquisitions subject to Section 1031 exchanges, and capital investments in our portfolio. See Recent Developments Intended Use of Proceeds from Portfolio Sale.

**Flexible Capital Structure.** We believe our capital structure provides us with appropriate financial flexibility to execute our strategy. As of December 31, 2012, the weighted average term to maturity of our debt is approximately five years, and 70.2% of our debt is fixed rate. The weighted average interest rate on all of our debt, which includes the effect of our interest rate derivative agreements based on variable rates at December 31, 2012 is 4.9% per annum. After our repurchase of the Senior Notes and the repayment of debt included in discontinued operations in January 2013, the weighted average term to maturity of our debt continues to be approximately five years, and 68.2% of our debt is fixed rate. The weighted average interest rate on all of our debt, which includes the effect of our interest rate derivative agreements based on variable rates at December 31, 2012 continues to be 4.9% per annum. All of our debt is in the form of senior unsecured notes or single asset non-recourse loans rather than cross-collateralized multi-property pools. We believe this structure is appropriate for the operating characteristics of our business as it isolates risk and provides flexibility for various portfolio management initiatives, including the sale of individual hotels subject to the existing debt.

### **High Quality Portfolio.**

**Presence in Key Markets.** We believe that our hotels are located in desirable markets with major demand generators and significant barriers to entry for new supply. In 2012, approximately 91% of the revenues generated by the 26 hotels were earned by hotels located in key gateway markets such as Boston, New York, Washington, D.C./Baltimore, Chicago, Orlando, New Orleans, Los Angeles, Orange County and San Diego. Over time, we expect the revenues of hotels located in key gateway markets to grow more quickly than the average for U.S. hotels as a result of stronger economic drivers as well as higher levels of international travel.

**Upper Upscale and Upscale Concentration.** The upper upscale and upscale segments, which represented approximately 93% of the hotel revenue generated by the 26 hotels during 2012, tend to outperform the lodging industry, particularly in the recovery phase of the lodging cycle. As of December 31, 2012, the hotels comprising our 26 hotel portfolio averaged 447 rooms in size, and total RevPAR was \$139.22 for the year ended December 31, 2012.

**Nationally Recognized Brands.** Most of our hotels are operated under nationally recognized brands, including Marriott, Hilton, Hyatt, Fairmont and Sheraton. We believe that affiliations with strong brands improve the appeal of our hotels to a broad set of travelers and help to drive business to our hotels.

**Recently Renovated Hotels.** From January 1, 2008 through December 31, 2012, we invested \$306.6 million in capital renovations throughout the 26 hotels. We believe that these capital renovations have improved the competitiveness of our hotels and have helped to position our portfolio for future growth.

## **Table of Contents**

### **Seasoned Management Team.**

Each of our core disciplines, asset management, acquisitions and finance, are overseen by industry leaders with demonstrated track records.

**Asset Management.** Our asset management team is responsible for maximizing the long-term value of our real estate investments by achieving above average revenue and profit performance through proactive oversight of hotel operations. Our asset management team leads property-level innovation, benchmarks best practices and aggressively oversees hotel management teams and property plans. We work with our operators to develop hotel-level master plans, which include positioning and capital renovation plans. We believe that a proactive asset management program can help to grow the revenues of our hotel portfolio and maximize operational efficiency by leveraging best practices and innovations across our various hotels, and by initiating well-timed, focused capital improvements aimed at improving the appeal of our hotels.

**Acquisitions.** Our acquisitions team is responsible for enhancing our portfolio quality and scale by executing well-timed acquisitions and dispositions that maximize our risk-adjusted return on invested capital. We believe that our significant acquisition and disposition experience will allow us to continue to execute our cycle-appropriate strategy to redeploy capital from slower growth to higher growth hotels. We have maintained this focus of selective acquisitions, as we believe that our industry relationships may create opportunities for us to acquire individual hotel assets at attractive values. Meanwhile, we will also focus on capital recycling and may selectively sell hotels that we believe have lower growth prospects, have significant ongoing capital needs or are encumbered with large debt balances.

**Finance.** We have a highly experienced finance team focused on minimizing our cost of capital and maximizing our financial flexibility by proactively managing our capital structure and opportunistically sourcing appropriate capital for growth, while maintaining a best in class disclosure and investor relations program. We remain committed to thoughtfully and methodically reducing leverage while maintaining a focus on creating and protecting stockholder value.

### ***Business Strategy***

Our mission is to create meaningful value for our stockholders by becoming the premier hotel owner. Our values include transparency, trust, ethical conduct, communication and discipline. Our goal is to improve the quality and scale of our portfolio while deleveraging our balance sheet. As demand for lodging generally fluctuates with the overall economy (we refer to these changes in demand as the lodging cycle), we seek to employ a balanced, cycle-appropriate corporate strategy that encompasses proactive portfolio management, intensive asset management, disciplined external growth and measured balance sheet improvement.

**Proactive Portfolio Management.** The leaders of each of our core disciplines function as a portfolio management team. The portfolio management team's purpose is to strategically maximize the long-term value of our assets by enhancing our portfolio quality and scale, optimizing our exposure to key markets, and improving the effectiveness and efficiency of our decision making. Accordingly, the team is responsible for developing a portfolio-wide strategy related to brand and operator relationships, asset quality and scale, target markets, capital investments, and portfolio capitalizations. Our portfolio strategy may also include the disposition of certain hotels.

**Intensive Asset Management.** Through all phases of the lodging cycle, our strategy emphasizes internal growth and value enhancements through proactive asset management, which entails working closely with our third-party hotel operators to develop and implement long-term strategic plans for each hotel designed to enhance revenues, minimize operational expenses and asset risk, maximize the appeal of our hotels to

## **Table of Contents**

travelers and maximize our return on invested capital. We also focus on improving the appeal and growth potential of our existing hotels through internally-managed hotel renovations.

**Disciplined External Growth.** By gradually increasing the scale and quality of our portfolio, we may provide our stockholders with greater exposure to key growth markets, improved liquidity and broader access to value-adding transactions. Accordingly, our strategy emphasizes disciplined external growth during the recovery phase of the lodging cycle. Our external growth plan is oriented around investing in institutional-quality hotels that generate returns in excess of our cost of capital, that are additive to the quality of our portfolio, that have attractive growth potential and that may benefit from our asset management competencies. We endeavor to structure our acquisitions in ways that will not only increase the value of our shares of common stock, but also will advance our other corporate objectives, such as improving our financial flexibility and reducing our leverage. During periods of cyclical decline, our strategy may emphasize opportunistically investing in distressed assets and the repurchase of our equity or debt securities. In addition to hotel acquisitions, we may seek to grow our portfolio by making investments in defaulted and/or distressed debt positions in loan-to-own hotel transactions, utilizing our REIT structure to effect strategic combinations with select property owners, effecting portfolio purchases from institutional and other owners seeking portfolio liquidity, and by providing capital solutions to illiquid owners facing debt maturities or capital requirements.

**Measured Balance Sheet Improvement.** We believe that a low overall cost of capital and significant financial flexibility are very important to the successful execution of our strategy. Our balance sheet strategy is oriented toward maximizing financial flexibility especially during cyclical declines. Accordingly, our financial objectives include the measured improvement of our credit ratios, maintenance of appropriate levels of liquidity, and a gradual reduction in our financial leverage throughout the cyclical recovery phase. Our financial objectives are integral to our overall corporate strategy and, accordingly, we have developed our financial objectives in conjunction with our portfolio management and growth objectives. The lodging industry is economically sensitive. Therefore, our financial objectives are aimed at reducing the potentially negative impact of combining high operating leverage with high financial leverage, while preserving access to multiple capital sources and minimizing our weighted-average cost of capital. We seek to capitalize our acquisitions in a way that will advance our financial objectives. For example, as the measured reduction of our financial leverage is currently a key objective, we expect to fund our acquisitions with a greater proportion of equity capital than debt capital. During the mature phase of the lodging cycle, our financial objectives may include increasing our liquidity position as a means to enhance financial flexibility in the event of a subsequent period of cyclical decline. Our liquidity improvement objective may be accomplished through selective hotel dispositions, capital raises or by retaining excess cash generated by our operations.

Through our industry relationships, our knowledge and experience in both real estate and REIT issues, our extensive experience in acquiring and upgrading hotel properties, as well as our financial structuring capabilities, flexible capital structure, strong liquidity position and REIT structure, we believe we are well positioned to create meaningful value for our stockholders.

Our headquarters are located at 120 Vantis, Suite 350, Aliso Viejo, California 92656, and our telephone number is (949) 330-4000.

## **Recent Developments**

### ***Disposition of Rochester, Minnesota Properties***

On January 25, 2013, we completed the sale of a four-hotel 1,222-room portfolio and a commercial laundry facility (collectively, the Portfolio), in Rochester, Minnesota, to an unaffiliated third party, for a gross price of \$230.0 million. The four hotels include the 660-room Kahler Grand, the 271-room Kahler Inn & Suites, the 202-room Marriott Rochester and the 89-room Residence Inn by Marriott Rochester. We retained a \$25.0 million

**Table of Contents**

preferred equity investment in the four-hotel Portfolio that yields an 11% per annum dividend. In addition, we retained a \$14.0 million liability related to the Portfolio's pension plan, which could be triggered in certain circumstances, including termination of the pension plan. We also provided a \$3.7 million working cash advance to the buyer of the Portfolio that will be repaid to us from the Portfolio's available cash flow. Concurrent with the Portfolio sale, we defeased the outstanding \$26.7 million mortgage secured by the Kahler Grand for a total cost of approximately \$30.0 million, prepaid the \$0.4 million loan secured by the commercial laundry facility, and wrote off \$51,000 in related deferred financing fees.

***Intended Use of Proceeds from Portfolio Sale***

We expect to receive net proceeds from the Portfolio sale of approximately \$165.0 million. The Portfolio is subject to a relatively low tax basis, which could result in a significant tax gain and current-year distribution requirement if such gain is not deferred. In order to defer the gain on the Portfolio sale, we intend to recycle the proceeds into a new property pursuant to Section 1031 of the Internal Revenue Code (Section 1031). Accordingly, we are actively evaluating a pipeline of potential acquisitions consistent with our stated investment strategy. While we intend to identify and complete the purchase of a replacement property within the time periods prescribed by Section 1031, we cannot assure you that we will timely identify or close the purchase of a replacement property and obtain the benefits of a tax deferral on the gain of the Portfolio sale. Accordingly, in such event, we would have to pay tax due on the gain on the Portfolio sale if we did not distribute such gain to our stockholders.

***Preliminary Fourth Quarter and Year Ended 2012 Earnings Results***

The following preliminary earnings results for the fourth quarter and year ended 2012 are subject to adjustments that may result from the completion of our annual audit process. The results include our ownership period for all 2012 acquisitions and dispositions, and reflect the application of net operating loss carryforwards to reduce taxable income in 2012. We treat any state and federal taxes associated with the application of net operating loss carryforwards as a one-time expense and add them back to Adjusted EBITDA and Adjusted FFO.

For the fourth quarter of 2012, we expect:

<b>Metric (unaudited)</b>	<b>Preliminary Fourth Quarter 2012 Results (2)</b>
Comparable Hotel RevPAR	+3.2% - 3.4%
Net Income (\$ millions) (1)	\$10 - \$11
Adjusted EBITDA (\$ millions)	\$67 - \$68
Adjusted FFO (\$ millions)	\$40 - \$41
Adjusted FFO per diluted share	\$0.30
Diluted Weighted Average Shares Outstanding	135,600,000

- (1) Reflects net income adjusted for the impact of income tax expense associated with the application of net operating loss carryforwards.
- (2) See Risk Factors. After the completion of our 2012 audit, we may determine that our preliminary fourth quarter and year ended 2012 earnings results are different than the results set forth in this prospectus supplement.

**Table of Contents**

For the full year 2012, we expect:

<b>Metric (unaudited)</b>	<b>Preliminary 2012 Fiscal Year Results (2)</b>
Comparable Hotel RevPAR	+5.2% - 5.4%
Net Income (\$ millions) (1)	\$49 - \$50
Adjusted EBITDA (\$ millions)	\$242 - \$243
Adjusted FFO (\$ millions)	\$128 - \$129
Adjusted FFO per diluted share	\$1.00 - \$1.01
Diluted Weighted Average Shares Outstanding	127,300,000

- (1) Reflects net income adjusted for the impact of income tax expense associated with the application of net operating loss carryforwards.  
(2) See Risk Factors After the completion of our 2012 audit, we may determine that our preliminary fourth quarter and year ended 2012 earnings results are different than the results set forth in this prospectus supplement.

Set forth below is a reconciliation of Net Income to Adjusted EBITDA. The amounts below are unaudited and are in thousands.

	<b>Quarter Ended December 31, 2012</b>		<b>Year Ended December 31, 2012</b>	
	<b>Low</b>	<b>High</b>	<b>Low</b>	<b>High</b>
<b>Net income (1)</b>	\$ 10,300	\$ 11,300	\$ 48,650	\$ 49,650
Depreciation and amortization	36,500	36,500	144,000	144,000
Amortization of lease intangibles	1,150	1,150	4,300	4,300
Interest expense	17,700	17,700	78,100	78,100
Amortization of deferred financing fees	900	900	3,800	3,800
Non-controlling interests	(2,100)	(2,100)	(10,600)	(10,600)
Non-cash interest related to discount on Senior Notes	300	300	1,100	1,100
Amortization of deferred stock compensation	800	800	3,500	3,500
Income tax provision	1,150	1,150	1,150	1,150
Capital lease obligation interest cash ground rent	(400)	(400)	(800)	(800)
Gain on sale of assets			(38,000)	(38,000)
Closing costs completed acquisitions			2,000	2,000
Prior year property tax and CAM adjustments, net			600	600
Lawsuit settlement costs, net			100	100
Hotel laundry closing costs	200	200	600	600
Non-cash straightline lease expense	700	700	3,000	3,000
<b>Adjusted EBITDA</b>	<b>\$ 67,200</b>	<b>\$ 68,200</b>	<b>\$ 241,500</b>	<b>\$ 242,500</b>

- (1) Reflects net income adjusted for the impact of income tax expense associated with the application of net operating loss carryforwards.

**Table of Contents**

Set forth below is a reconciliation of Net Income to Adjusted FFO. The amounts below are unaudited and are in thousands, except per share amounts.

	Quarter Ended December 31, 2012		Year Ended December 31, 2012	
	Low	High	Low	High
<b>Net income (1)</b>	\$ 10,300	\$ 11,300	\$ 48,650	\$ 49,650
Preferred stock dividends	(7,500)	(7,500)	(30,000)	(30,000)
Real estate depreciation and amortization	36,200	36,200	142,800	142,800
Non-controlling interests	(1,650)	(1,650)	(8,100)	(8,100)
Amortization of lease intangibles	1,150	1,150	4,300	4,300
Income tax provision	1,150	1,150	1,150	1,150
Non-cash interest related to (gain) loss on derivatives	(200)	(200)	400	400
Gain on sale of assets			(38,000)	(38,000)
Closing costs completed acquisitions			2,000	2,000
Prior year property tax and CAM adjustments, net			600	600
Lawsuit settlement costs, net			100	100
Hotel laundry closing costs	200	200	600	600
Non-cash straightline lease expense	600	600	3,000	3,000
<b>Adjusted FFO</b>	\$ 40,250	\$ 41,250	\$ 127,500	\$ 128,500
<b>Adjusted FFO per diluted share</b>	\$ 0.30	\$ 0.30	\$ 1.00	\$ 1.01
<b>Diluted weighted average shares outstanding</b>	135,600	135,600	127,300	127,300

(1) Reflects net income adjusted for the impact of income tax expense associated with the application of net operating loss carryforwards.  
**Retirement of 4.60% Exchangeable Senior Notes due 2027**

Our Operating Partnership has retired the outstanding \$58.0 million aggregate principal amount of 4.60% Exchangeable Senior Notes due 2027, or the Notes. Pursuant to a Tender Offer Statement on Schedule TO originally filed with the Securities and Exchange Commission on December 17, 2012, \$42.0 million aggregate principal amount of Notes was validly tendered, accepted and repurchased on January 17, 2013. On January 22, 2013, the remaining \$16.0 million aggregate principal amount of Notes was redeemed. The Operating Partnership paid for all of the \$58.0 million in Notes with available cash.

**Repurchase or Redemption of Series A Preferred Stock**

We intend to use a significant portion of the net proceeds of this offering to repurchase or redeem all of our outstanding 8.0% Series A Cumulative Redeemable Preferred Stock, or our Series A preferred stock, for an aggregate redemption price of \$176.25 million, plus accrued dividends to and including the date of redemption.

**Table of Contents**

**The Offering**

Common stock offered by us 22,000,000 shares

Total shares of common stock outstanding immediately after this offering (1) 158,777,430 shares

Use of Proceeds The estimated net proceeds of approximately \$256.5 million from this offering (or approximately \$295.0 million if the underwriter's option is exercised in full) will be used (i) to repurchase or redeem all of our Series A preferred stock for an aggregate redemption price of \$176.25 million, plus accrued dividends to and including the date of redemption, (ii) for potential future acquisitions, and (iii) for other general corporate purposes, including working capital and capital investment in our portfolio. See Use of Proceeds.

Distribution Policy To maintain our qualification as a REIT, we intend to make distributions to our stockholders of at least 90% of our REIT taxable income (which excludes net capital gains and does not necessarily equal net income as calculated in accordance with generally accepted accounting principles). Our distributions may be comprised of cash, or a combination of cash and stock as permitted by the Internal Revenue Code of 1986, as amended.

New York Stock Exchange symbol SHO

(1) This number is based on 136,777,430 shares of our common stock outstanding at January 28, 2013, and does not include:

2,178,185 additional shares of our common stock available for future issuance under our 2004 long-term incentive plan, and 200,000 shares issuable in respect of stock options outstanding as of such date;

4,497,953 shares of common stock issuable upon conversion of our outstanding shares of series C cumulative convertible redeemable preferred stock; and

any exercise of the underwriter's option.



**Table of Contents**

**RISK FACTORS**

See the information under the heading "Risk Factors" beginning on page 8 of our Annual Report on Form 10-K for the fiscal year ended December 31, 2011, filed with the SEC on February 28, 2012, which information is incorporated by reference into this prospectus supplement, and other information included in this prospectus supplement, the accompanying prospectus and reports we file from time to time with the SEC that we incorporate by reference herein for a discussion of factors you should carefully consider before deciding to invest in shares of our common stock.

***We may be subject to taxes in the event our operating leases are held not to have been made on an arm's-length basis.***

In the event that leases between us and our taxable REIT subsidiaries are held not to have been made on an arm's-length basis, we or our taxable REIT subsidiaries could be subject to income taxes. In 2011, the Internal Revenue Service, or the IRS, notified us of their intent to audit our taxable REIT subsidiary, Sunstone Hotel TRS Lessee, Inc., and its subsidiaries. In January 2013, the IRS issued a notice of proposed adjustment that reduced the amount of rent we charged to the taxable REIT subsidiary. We own 100% of the interests in the hotel properties and the taxable REIT subsidiary at issue. We disagree with the IRS' position and, if necessary, at the present time we intend to exercise our appeal rights under the law. However, if the IRS prevails, our taxable REIT subsidiary could be liable for additional U.S. federal income taxes and state income taxes or we could be subject to a 100% excise tax on the amount by which the rent is held to be greater than the arm's-length rate.

***After the completion of our 2012 audit, we may determine that our preliminary fourth quarter and year ended 2012 earnings results are different than the results set forth in this prospectus supplement.***

The preliminary earnings results for the fourth quarter and year ended 2012 included in this prospectus supplement are subject to adjustments that may result from the completion of our annual audit process. Any such adjustments could result in changes in our preliminary earnings results set forth in this prospectus supplement that are more or less favorable to stockholders.

**Table of Contents**

**USE OF PROCEEDS**

We estimate that the net proceeds to us from this offering will be approximately \$256.5 million, after deducting underwriting discounts and commissions and estimated offering expenses (or approximately \$295.0 million if the underwriter's option is exercised in full, after deducting underwriting discounts and commissions and estimated offering expenses). The net proceeds from this offering will be used (i) to repurchase or redeem all of our Series A preferred stock for an aggregate redemption price of \$176.25 million, plus accrued dividends to and including the date of redemption, (ii) for potential future acquisitions, and (iii) for other general corporate purposes, including working capital and capital investment in our portfolio.

S-14

**Table of Contents**

**SPECIAL NOTE ABOUT FORWARD-LOOKING STATEMENTS**

This prospectus supplement contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Exchange Act that have been made pursuant to the provisions of the Private Securities Litigation Reform Act of 1995. These statements relate to future events or our future financial performance. In some cases, you can identify forward-looking statements by terminology such as anticipate, believe, continue, could, estimate, expect, intend, may, plan, predict, project, should, v terms and other comparable terminology. These statements are only predictions. Actual events or results may differ materially from those expressed or implied by these forward-looking statements. In evaluating these statements, you should specifically consider the risks outlined in detail under the heading Risk Factors in our Annual Report on Form 10-K, filed with the SEC on February 28, 2012, and under the heading Risk Factors on page S-8 of this prospectus supplement, and in the reports we file from time to time with the SEC and incorporated by reference herein, including, but not limited to, the following factors:

general economic and business conditions affecting the lodging and travel industry, internationally, nationally and locally, including a prolonged U.S. recession or global economic slowdown;

our need to operate as a REIT and comply with other applicable laws and regulations;

rising operating expenses;

relationships with and requirements of franchisors and hotel brands;

relationships with and the performance of the managers of our hotels;

the ground, air or building leases for 10 of our 26 hotels held for investment as of January 28, 2013;

our ability to complete acquisitions and dispositions;

competition for the acquisition of hotels;

performance of hotels after they are acquired;

competition from hotels not owned by us;

the need for renovations and other capital expenditures for our hotels;

the impact of renovations on hotel operations and delays in renovations or other developments;

changes in our business strategy or acquisition or disposition plans;

our level of debt, including secured, unsecured, fixed and variable rate debt;

financial and other covenants in our debt and preferred stock;

impairments to our hotels and goodwill;

our hotels and related goodwill may become impaired, or our hotels and related goodwill which have previously become impaired may become further impaired, in the future, which may adversely affect our financial condition and results of operations;

volatility in the capital markets and the effect on lodging demand or our ability to obtain capital on favorable terms or at all;

potential adverse tax consequences in the event that our operating leases with our taxable REIT subsidiaries are held not to have been made on an arm's-length basis; and

other events beyond our control.

These factors may cause our actual events to differ materially from the expectations expressed or implied by any forward-looking statement. We do not undertake to update any forward-looking statement.

**Table of Contents**

**SUPPLEMENTAL MATERIAL UNITED STATES FEDERAL INCOME TAX CONSIDERATIONS**

This discussion is a supplement to, and is intended to be read together with, the discussion under the heading "U.S. Federal Income Tax Considerations" included in the accompanying prospectus. This summary is for general information only and is not tax advice.

*The following is a supplement to, and should be read together with, the discussions under the heading "U.S. Federal Income Tax Considerations - Taxation of the Company - General" in the accompanying prospectus.*

*Proposed Treasury Regulations Regarding Certain Asset Dispositions*

As described in the ninth bullet above under "Taxation of the Company - General," if we acquire any asset from a corporation which is or has been a C corporation in a transaction in which the basis of the asset in our hands is less than the fair market value of the asset, in each case determined at the time we acquired the asset, and we subsequently recognize gain on the disposition of the asset during the ten-year period beginning on the date on which we acquired the asset, then as described in the accompanying prospectus under the heading "Taxation of the Company - General," we generally will be required to pay tax at the highest regular corporate tax rate on this gain to the extent of the excess of (a) the fair market value of the asset over (b) our adjusted basis in the asset, in each case determined as of the date on which we acquired the asset. The results described in this paragraph with respect to the recognition of gain assume that the C corporation refrains from making an election to receive different treatment under existing Treasury Regulations on its tax return for the year in which we acquire the asset from the C corporation. Recently enacted legislation has reduced the ten-year period to five years in the case of dispositions of such assets in 2012 or 2013. As a result, we generally will not be subject to the tax described above in connection with the sale of such assets in 2012 or 2013, provided that we have held the asset for at least five years prior to such disposition.

The IRS has issued Proposed Treasury Regulations which would exclude from the application of this built-in gains tax any gain from the sale of property acquired by us in an exchange under Section 1031 (a like kind exchange) or 1033 (an involuntary conversion) of the Internal Revenue Code. These Proposed Treasury Regulations will not be effective unless they are issued in their final form, and as of the date of this prospectus, it is not possible to determine whether the proposed regulations will be finalized in their current form or at all.

*The following is a supplement to, and should be read together with, the discussions under the heading "U.S. Federal Income Tax Considerations - Taxation of the Company - Income Tests - Penalty Tax" in the accompanying prospectus.*

In 2011, the IRS notified us of their intent to audit our taxable REIT subsidiary, Sunstone Hotel TRS Lessee, Inc., and its subsidiaries. In January 2013, the IRS issued a notice of proposed adjustment that reduced the amount of rent we charged to the taxable REIT subsidiary. We disagree with the IRS's position and, if necessary, we presently intend to exercise our appeal rights under the law. However, there can be no assurance that our appeals will be successful. If our appeals are not successful, our taxable REIT subsidiary could be liable for additional U.S. federal income taxes and state income taxes or we could be subject to a 100% penalty tax on the amount by which the rent paid by our taxable REIT subsidiary is held to be greater than the arm's-length rate.

*The following discussion supersedes the first three paragraphs in the discussion under the heading "U.S. Federal Income Tax Considerations - Taxation of Our Company - Annual Distribution Requirements" in the accompanying prospectus.*

To maintain our qualification as a REIT, we are required to distribute dividends, other than capital gain dividends, to our stockholders in an amount at least equal to the sum of:

90% of our REIT taxable income; and

---

**Table of Contents**

90% of our after tax net income, if any, from foreclosure property; minus

the excess of the sum of specified items of our non-cash income over 5% of our REIT taxable income as described below. For these purposes, our REIT taxable income is computed without regard to the dividends paid deduction and our net capital gain. In addition, for purposes of this test, non-cash income generally means income attributable to leveling of stepped rents, original issue discount, cancellation of indebtedness, and any like-kind exchanges that are later determined to be taxable.

Also, our REIT taxable income will be reduced by any taxes we are required to pay on any gain we recognize from the disposition of any asset we acquired from a corporation which is or has been a C corporation in a transaction in which our basis in the asset is less than the fair market value of the asset, in each case determined at the time we acquired the asset, within the ten-year period (five-year period in the case of dispositions of such assets in 2012 and 2013) following our acquisition of such asset. See Taxation of the Company General Proposed Treasury Regulations Regarding Certain Asset Dispositions.

*The following discussion is a supplement to, and replaces the final two paragraphs of, the discussion under the heading U.S. Federal Income Tax Considerations Taxation of Holders of Our Capital Stock Taxable U.S. Stockholders Generally Redemption or Repurchase by Us in the accompanying prospectus.*

If a redemption or repurchase of shares of our stock is treated as a distribution, the amount of the distribution will be measured by the amount of cash and the fair market value of any property received, and will be treated as described under Taxation of Holders of Our Capital Stock Taxable U.S. Stockholders Generally Distributions Generally. A U.S. holder's adjusted tax basis in the redeemed or repurchased shares of stock will be transferred to the U.S. holder's remaining shares of our stock, if any. If the U.S. holder owns no other shares of our stock, under certain circumstances, such basis may be transferred to a related person or it may be lost entirely. Proposed Treasury Regulations issued in 2009, if enacted in their current form, would affect the basis recovery rules described above. It is not clear whether these proposed regulations will be enacted in their current form or at all. Prospective investors should consult their tax advisors regarding the United States federal income tax consequences associated with a redemption of our stock.

If a redemption or repurchase of shares of our stock is not treated as a distribution taxable as a dividend, it will be treated as a taxable sale or exchange in the manner described above under Taxation of Holders of Our Capital Stock Taxable U.S. Stockholders Generally Dispositions of Our Capital Stock.

*The following discussion supersedes the discussion under the heading U.S. Federal Income Tax Considerations Taxation of Holders of Our Capital Stock Taxable U.S. Stockholders Generally Tax Rates in the accompanying prospectus.*

*Tax Rates*

Beginning January 1, 2013, the maximum tax rate for non-corporate taxpayers for (1) capital gains, including certain capital gain dividends, is generally 20% (although depending on the characteristics of the assets which produced these gains and on designations which we may make, certain capital gain dividends may be taxed at a 25% rate) and (2) qualified dividend income is generally 20%. However, dividends payable by REITs are not eligible for the 20% tax rate on qualified dividend income, except to the extent that certain holding requirements have been met and the REIT's dividends are attributable to dividends received from taxable corporations (such as its taxable REIT subsidiaries), to income that was subject to tax at the corporate/REIT level (for example, if it distributed taxable income that it retained and paid tax on in the prior taxable year), or to dividends properly designated by the REIT as capital gain dividends. In addition, U.S. holders that are corporations may be required to treat up to 20% of some capital gain dividends as ordinary income.

---

**Table of Contents**

In addition, certain U.S. holders that are individuals, estates or trusts must pay an additional 3.8% tax on, among other things, dividends on and capital gains from the sale or other disposition of stock. U.S. holders should consult their tax advisors regarding the effect, if any, of these rules on their ownership and disposition of our capital stock.

*The following discussion supersedes the discussion under the heading **U.S. Federal Income Tax Considerations Taxation of Holders of Our Capital Stock Taxable U.S. Stockholders Generally Foreign Accounts** in the accompanying prospectus.*

*Foreign Accounts*

Certain payments made to foreign financial institutions in respect of accounts of U.S. holders at such financial institutions may be subject to withholding at a rate of 30%. U.S. holders should consult their tax advisors regarding the effect, if any, of these rules on their ownership and disposition of our capital stock. See **Non-U.S. Stockholders Foreign Accounts**.

*The following discussion supersedes, in its entirety, the discussions under the headings **U.S. Federal Income Tax Considerations Taxation of Holders of Our Capital Stock Taxable U.S. Stockholders Generally Foreign Accounts** and **U.S. Federal Income Tax Considerations Taxation of Holders of Our Capital Stock Non-U.S. Stockholders Foreign Accounts** in the accompanying prospectus.*

Withholding taxes may apply to certain types of payments made to foreign financial institutions (as defined in the Code) and certain other non-U.S. entities (including payments to U.S. holders who hold shares of our stock through such a foreign financial institution or non-U.S. entity). Specifically, a 30% withholding tax may be imposed on dividends on, and gross proceeds from the sale or other disposition of, our capital stock paid to a foreign financial institution or to a non-financial foreign entity, unless (1) the foreign financial institution undertakes certain diligence and reporting, (2) the non-financial foreign entity either certifies it does not have any substantial United States owners or furnishes identifying information regarding each substantial United States owner, or (3) the foreign financial institution or non-financial foreign entity otherwise qualifies for an exemption from these rules. If the payee is a foreign financial institution and is subject to the diligence and reporting requirements in clause (1) above, in order to avoid the imposition of such withholding, it generally undertake to identify accounts held by certain United States persons or United States-owned foreign entities, annually report certain information about such accounts to the IRS (or, in some cases, local tax authorities), and withhold 30% on payments it makes to non-compliant foreign financial institutions and certain other account holders.

The IRS has issued final Treasury Regulations providing that the withholding provisions described above will generally apply to payments of dividends made on or after January 1, 2014 and to payments of gross proceeds from a sale or other disposition of capital stock on or after January 1, 2017. Because we may not know the extent to which a distribution is a dividend for United States federal income tax purposes at the time it is made, for purposes of these withholding rules we may treat the entire distribution as a dividend. Prospective investors should consult their tax advisors regarding these withholding provisions.

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

We and the underwriter named below have entered into an underwriting agreement with respect to the shares being offered. Subject to certain conditions, the underwriter has agreed to purchase all of the shares being offered as indicated in the following table. Citigroup Global Markets Inc. will be the underwriter.

<b>Underwriter</b>	<b>Number of Shares</b>
Citigroup Global Markets Inc.	22,000,000
Total	22,000,000

The underwriter is committed to take and pay for all of the shares being offered, if any are taken, other than the shares covered by the option described below unless and until this option is exercised.

We have granted the underwriter a 30-day option to purchase up to 3,300,000 shares of common stock at a price of \$11.67.

The underwriter proposes to offer the shares of common stock offered hereby from time to time for sale in one or more transactions on the New York Stock Exchange, or the NYSE, in the over-the-counter market, through negotiated transactions or otherwise at market prices prevailing at the time of sale, at prices related to prevailing market prices or at negotiated prices, subject to receipt and acceptance by it and subject to its right to reject any order in whole or in part. The underwriter may effect such transactions by selling the shares of common stock to or through dealers and such dealers may receive compensation in the form of discounts, concessions or commissions from the underwriter and/or purchasers of shares of common stock for whom they may act as agents or to whom they may sell as principal. The difference between the price at which the underwriter purchases shares and the price at which the underwriter resells such shares may be deemed underwriting compensation.

We estimate that our portion of the total expenses of this offering, excluding underwriting discounts and commissions, will be approximately \$250,000.

We have agreed to indemnify the underwriter against certain liabilities, including liabilities under the Securities Act of 1933, or the Securities Act, or to contribute to payments the underwriter may be required to make because of any of those liabilities.

For a period of 30 days after the date of this prospectus supplement, subject to certain exceptions, we have agreed that we will not, without the prior written consent of the underwriter, directly or indirectly, issue, offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase or otherwise transfer or dispose of any shares of our common stock or any securities convertible into or exercisable or exchangeable for our common stock or file any registration statement under the Securities Act (other than a registration statement on Form S-8) with respect to any of the foregoing, or enter into any swap or any other agreement or any transaction that transfers, in whole or in part, directly or indirectly, the economic consequence of ownership of our common stock.

For a period of 30 days after the date of this prospectus supplement, subject to certain exceptions, our officers and directors have agreed that they will not, without the prior written consent of the underwriter, directly or indirectly, issue, offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase or otherwise transfer or dispose of any shares of our common stock or any securities convertible into or exercisable or exchangeable for our common stock or file any registration statement under the Securities Act with respect to any of the foregoing, or enter into any swap or any other agreement or any transaction that transfers, in whole or in part, directly or indirectly, the economic consequence of ownership of our common stock.



## **Table of Contents**

In connection with this offering, the underwriter may purchase and sell shares of our common stock in the open market. These transactions may include short sales and stabilizing transactions. Short sales involve syndicate sales of common stock in excess of the number of shares to be purchased by the underwriter in this offering, which creates a syndicate short position. Stabilizing transactions consist of bids for or purchases of shares in the open market while this offering is in progress.

Any of these activities may have the effect of preventing or retarding a decline in the market price of the common stock. They may also cause the price of the common stock to be higher than the price that would otherwise exist in the open market in the absence of these transactions. The underwriter may conduct these transactions on the NYSE or in the over-the-counter market, or otherwise. If the underwriter commences any of these transactions, they may discontinue them at any time.

The underwriter has from time to time performed, and may in the future perform, various financial advisory and investment banking services for us for which it has received or will receive customary fees and expenses.

The underwriter and its affiliates are full service financial institutions engaged in various activities, which may include sales and trading, commercial and investment banking, advisory, investment management, investment research, principal investment, hedging, market making, brokerage and other financial and non-financial activities and services. The underwriter and its affiliates have provided, and may in the future provide, a variety of these services to the issuer and to persons and entities with relationships with the issuer, for which they received or will receive customary fees and expenses.

In the ordinary course of their various business activities, the underwriter and its affiliates, officers, directors and employees may purchase, sell or hold a broad array of investments and actively trade securities, derivatives, loans, commodities, currencies, credit default swaps and other financial instruments for their own account and for the accounts of their customers, and such investment and trading activities may involve or relate to assets, securities and/or instruments of the issuer (directly, as collateral securing other obligations or otherwise) and/or persons and entities with relationships with the issuer. The underwriter and its affiliates may also communicate independent investment recommendations, market color or trading ideas and/or publish or express independent research views in respect of such assets, securities or instruments and may at any time hold, or recommend to clients that they should acquire, long and/or short positions in such assets, securities and instruments.

## **Notice to Prospective Investors in the European Economic Area**

In relation to each member state of the European Economic Area that has implemented the Prospectus Directive (each, a relevant member state), with effect from and including the date on which the Prospectus Directive is implemented in that relevant member state (the relevant implementation date), an offer of shares described in this prospectus supplement may not be made to the public in that relevant member state prior to the publication of a prospectus in relation to the shares that has been approved by the competent authority in that relevant member state or, where appropriate, approved in another relevant member state and notified to the competent authority in that relevant member state, all in accordance with the Prospectus Directive, except that, with effect from and including the relevant implementation date, an offer of securities may be offered to the public in that relevant member state at any time:

to any legal entity that is authorized or regulated to operate in the financial markets or, if not so authorized or regulated, whose corporate purpose is solely to invest in securities;

to any legal entity that has two or more of (1) an average of at least 250 employees during the last financial year; (2) a total balance sheet of more than 43,000,000 and (3) an annual net turnover of more than 50,000,000, as shown in its last annual or consolidated accounts;

to fewer than 100 natural or legal persons (other than qualified investors as defined below) subject to obtaining the prior consent of the representatives for any such offer; or

in any other circumstances that do not require the publication of a prospectus pursuant to Article 3 of the Prospectus Directive.



## **Table of Contents**

Each purchaser of shares described in this prospectus supplement located within a relevant member state will be deemed to have represented, acknowledged and agreed that it is a qualified investor within the meaning of Article 2(1)(e) of the Prospectus Directive.

For purposes of this provision, the expression an offer to the public in any relevant member state means the communication in any form and by any means of sufficient information on the terms of the offer and the securities to be offered so as to enable an investor to decide to purchase or subscribe the securities, as the expression may be varied in that member state by any measure implementing the Prospectus Directive in that member state, and the expression Prospectus Directive means Directive 2003/71/EC and includes any relevant implementing measure in each relevant member state.

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

### **Notice to Prospective Investors in the United Kingdom**

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

### **Notice to Prospective Investors in France**

Neither this prospectus supplement nor any other offering material relating to the shares described in this prospectus supplement has been submitted to the clearance procedures of the Autorité des Marchés Financiers or of the competent authority of another member state of the European Economic Area and notified to the Autorité des Marchés Financiers. The shares have not been offered or sold and will not be offered or sold, directly or indirectly, to the public in France. Neither this prospectus supplement nor any other offering material relating to the shares has been or will be:

released, issued, distributed or caused to be released, issued or distributed to the public in France; or

used in connection with any offer for subscription or sale of the shares to the public in France.

Such offers, sales and distributions will be made in France only:

to qualified investors (investisseurs qualifiés) and/or to a restricted circle of investors (cercle restreint d'investisseurs), in each case investing for their own account, all as defined in, and in accordance with articles L.411-2, D.411-1, D.411-2, D.734-1, D.744-1, D.754-1 and D.764-1 of the French Code monétaire et financier;

to investment services providers authorized to engage in portfolio management on behalf of third parties; or

## **Table of Contents**

in a transaction that, in accordance with article L.411-2-II-1-or-2-or 3 of the French Code monétaire et financier and article 211-2 of the General Regulations (Règlement Général) of the Autorité des Marchés Financiers, does not constitute a public offer (appel public à l'épargne).

The shares may be resold directly or indirectly, only in compliance with articles L.411-1, L.411-2, L.412-1 and L.621-8 through L.621-8-3 of the French Code monétaire et financier.

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

This prospectus supplement as well as any other material relating to the shares which are the subject of the offering contemplated by this prospectus supplement (the Shares) do not constitute an issue prospectus pursuant to Articles 652a and/or 1156 of the Swiss Code of Obligations. The Shares will not be listed on the SIX Swiss Exchange and, therefore, the documents relating to the Shares, including, but not limited to, this prospectus supplement, do not claim to comply with the disclosure standards of the listing rules of the SIX Swiss Exchange and corresponding prospectus schemes annexed to the listing rules of the SIX Swiss Exchange.

The Shares are being offered in Switzerland by way of a private placement, i.e., to a small number of selected investors only, without any public offer and only to investors who do not purchase the Shares with the intention to distribute them to the public. The investors will be individually approached by the Issuer from time to time.

This prospectus supplement as well as any other material relating to the Shares is personal and confidential and do not constitute an offer to any other person. This prospectus supplement may only be used by those investors to whom it has been handed out in connection with this offering described herein and may neither directly nor indirectly be distributed or made available to other persons without express consent of the issuer. It may not be used in connection with any other offer and shall in particular not be copied and/or distributed to the public in (or from) Switzerland.

### **Notice to Prospective Investors in the Dubai International Financial Centre**

This prospectus supplement relates to an exempt offer in accordance with the Offered Securities Rules of the Dubai Financial Services Authority (DFSA). This prospectus supplement is intended for distribution only to persons of a type specified in the Offered Securities Rules of the DFSA. It must not be delivered to, or relied on by, any other person. The DFSA has no responsibility for reviewing or verifying any documents in connection with exempt offers. The DFSA has not approved this prospectus supplement nor taken steps to verify the information set forth herein and has no responsibility for the prospectus supplement. The shares to which this prospectus supplement relates (the Shares) may be illiquid and/or subject to restrictions on their resale. Prospective purchasers of the Shares offered should conduct their own due diligence on the Shares. If you do not understand the contents of this prospectus supplement you should consult an authorized financial adviser.

### **Notice to Prospective Investors in Hong Kong**

The shares may not be offered or sold in Hong Kong by means of any document other than (i) in circumstances which do not constitute an offer to the public within the meaning of the Companies Ordinance (Cap. 32, Laws of Hong Kong), or (ii) to professional investors within the meaning of the Securities and Futures Ordinance (Cap. 571, Laws of Hong Kong) and any rules made thereunder, or (iii) in other circumstances which do not result in the document being a prospectus within the meaning of the Companies Ordinance (Cap. 32, Laws of Hong Kong) and no advertisement, invitation or document relating to the shares may be issued or may be in the possession of any person for the purpose of issue (in each case whether in Hong Kong or elsewhere), which is directed at, or the contents of which are likely to be accessed or read by, the public in Hong Kong (except if permitted to do so under the laws of Hong Kong) other than with respect to shares which are or

## **Table of Contents**

are intended to be disposed of only to persons outside Hong Kong or only to professional investors within the meaning of the Securities and Futures Ordinance (Cap. 571, Laws of Hong Kong) and any rules made thereunder.

### **Notice to Prospective Investors in Japan**

The shares offered in this prospectus supplement have not been registered under the Securities and Exchange Law of Japan. The shares have not been offered or sold and will not be offered or sold, directly or indirectly, in Japan or to or for the account of any resident of Japan, except (i) pursuant to an exemption from the registration requirements of the Securities and Exchange Law and (ii) in compliance with any other applicable requirements of Japanese law.

### **Notice to Prospective Investors in Singapore**

This prospectus supplement has not been registered as a prospectus with the Monetary Authority of Singapore. Accordingly, this prospectus supplement and any other document or material in connection with the offer or sale, or invitation for subscription or purchase, of the shares may not be circulated or distributed, nor may the shares be offered or sold, or be made the subject of an invitation for subscription or purchase, whether directly or indirectly, to persons in Singapore other than (i) to an institutional investor under Section 274 of the Securities and Futures Act, Chapter 289 of Singapore, or the SFA, (ii) to a relevant person pursuant to Section 275(1), or any person pursuant to Section 275(1A), and in accordance with the conditions specified in Section 275 of the SFA or (iii) otherwise pursuant to, and in accordance with the conditions of, any other applicable provision of the SFA, in each case subject to compliance with conditions set forth in the SFA.

Where the shares are subscribed or purchased under Section 275 of the SFA by a relevant person which is:

a corporation (which is not an accredited investor (as defined in Section 4A of the SFA)) the sole business of which is to hold investments and the entire share capital of which is owned by one or more individuals, each of whom is an accredited investor; or

a trust (where the trustee is not an accredited investor) whose sole purpose is to hold investments and each beneficiary of the trust is an individual who is an accredited investor,

shares, debentures and units of shares and debentures of that corporation or the beneficiaries' rights and interest (howsoever described) in that trust shall not be transferred within six months after that corporation or that trust has acquired the shares pursuant to an offer made under Section 275 of the SFA except:

to an institutional investor (for corporations, under Section 274 of the SFA) or to a relevant person defined in Section 275(2) of the SFA, or to any person pursuant to an offer that is made on terms that such shares, debentures and units of shares and debentures of that corporation or such rights and interest in that trust are acquired at a consideration of not less than S\$200,000 (or its equivalent in a foreign currency) for each transaction, whether such amount is to be paid for in cash or by exchange of securities or other assets, and further for corporations, in accordance with the conditions specified in Section 275 of the SFA;

where no consideration is or will be given for the transfer; or

where the transfer is by operation of law.

### **Notice to Prospective Investors in Australia**

No prospectus or other disclosure document (as defined in the Corporations Act 2001 (Cth) of Australia ( "Corporations Act" )) in relation to the shares of common stock has been or will be lodged with the Australian Securities & Investments Commission ( "ASIC" ). This document has not been lodged with ASIC and is only directed to certain categories of exempt persons. Accordingly, if you receive this document in Australia:

(a) you confirm and warrant that you are either:



**Table of Contents**

- (i) a sophisticated investor under section 708(8)(a) or (b) of the Corporations Act;
  - (ii) a sophisticated investor under section 708(8)(c) or (d) of the Corporations Act and that you have provided an accountant's certificate to us which complies with the requirements of section 708(8)(c)(i) or (ii) of the Corporations Act and related regulations before the offer has been made;
  - (iii) a person associated with the company under section 708(12) of the Corporations Act; or
  - (iv) a professional investor within the meaning of section 708(11)(a) or (b) of the Corporations Act, and to the extent that you are unable to confirm or warrant that you are an exempt sophisticated investor, associated person or professional investor under the Corporations Act any offer made to you under this document is void and incapable of acceptance; and
- (b) you warrant and agree that you will not offer any of the shares of common stock for resale in Australia within 12 months of that shares of common stock being issued unless any such resale offer is exempt from the requirement to issue a disclosure document under section 708 of the Corporations Act.

**Notice to Prospective Investors in Chile**

The shares are not registered in the Securities Registry (Registro de Valores) or subject to the control of the Chilean Securities and Exchange Commission (Superintendencia de Valores y Seguros de Chile). This prospectus supplement and other offering materials relating to the offer of the shares do not constitute a public offer of, or an invitation to subscribe for or purchase, the shares in the Republic of Chile, other than to individually identified purchasers pursuant to a private offering within the meaning of Article 4 of the Chilean Securities Market Act (Ley de Mercado de Valores) (an offer that is not addressed to the public at large or to a certain sector or specific group of the public).

**Table of Contents**

**LEGAL MATTERS**

The validity of the shares of common stock offered hereby and certain other matters relating to Maryland law will be passed on by Venable LLP of Baltimore, Maryland. Latham & Watkins LLP, Los Angeles, California, is our counsel, and O Melveny & Myers LLP, San Francisco, California, is counsel to the underwriter.

**EXPERTS**

The consolidated financial statements of Sunstone Hotel Investors, Inc. appearing in Sunstone Hotel Investors, Inc.'s Annual Report (Form 10-K) for the year ended December 31, 2011 (including the schedules appearing therein) and the effectiveness of Sunstone Hotel Investors, Inc.'s internal control over financial reporting as of December 31, 2011 have been audited by Ernst & Young LLP, independent registered public accounting firm, as set forth in their reports thereon included therein, and incorporated herein by reference. Such consolidated financial statements are incorporated herein by reference in reliance upon such reports given on the authority of such firm as experts in accounting and auditing.

S-25



**Table of Contents**

**SUNSTONE HOTEL INVESTORS, INC.**

**Common Stock**

**Preferred Stock**

**Depository Shares**

Sunstone Hotel Investors, Inc., or the Company, from time to time may offer to sell common stock and preferred stock, either separately or represented by depository shares, in one or more offerings. The preferred stock may be convertible into or exercisable or exchangeable for common or preferred stock or other securities of the Company or debt or equity securities of one or more other entities. The common stock of the Company is listed on the New York Stock Exchange, or NYSE, and trades under the ticker symbol SHO.

The Company may offer and sell any combination of these securities, in one or more offerings, to or through one or more underwriters, dealers and agents, or directly to purchasers, on a continuous or delayed basis.

This prospectus describes some of the general terms that may apply to certain of these securities. The specific terms of any securities to be offered will be described in a supplement to this prospectus.

**Neither the Securities and Exchange Commission nor any other regulatory body has approved or disapproved of these securities or passed upon the accuracy or adequacy of this prospectus. Any representation to the contrary is a criminal offense.**

Prospectus dated January 14, 2011.

**Table of Contents**

**TABLE OF CONTENTS**

	<b>Page</b>
<u>ABOUT THIS PROSPECTUS</u>	1
<u>AVAILABLE INFORMATION</u>	1
<u>INCORPORATION OF CERTAIN INFORMATION BY REFERENCE</u>	2
<u>RISK FACTORS</u>	3
<u>USE OF PROCEEDS</u>	3
<u>RATIO OF COMBINED FIXED CHARGES AND PREFERRED DIVIDENDS TO EARNINGS</u>	3
<u>DESCRIPTION OF SECURITIES WE MAY OFFER</u>	4
<u>COMMON STOCK</u>	4
<u>PREFERRED STOCK</u>	5
<u>DEPOSITARY SHARES</u>	7
<u>DESCRIPTION OF OUR CAPITAL STOCK</u>	9
<u>COMMON STOCK</u>	9
<u>PREFERRED STOCK</u>	9
<u>RESTRICTIONS ON OWNERSHIP AND TRANSFER</u>	14
<u>CERTAIN PROVISIONS OF MARYLAND LAW AND OF OUR CHARTER AND BYLAWS</u>	17
<u>U.S. FEDERAL INCOME TAX CONSIDERATIONS</u>	23
<u>PLAN OF DISTRIBUTION</u>	45
<u>LEGAL OWNERSHIP AND BOOK-ENTRY ISSUANCE</u>	46
<u>LEGAL MATTERS</u>	48
<u>EXPERTS</u>	48

**Table of Contents**

**ABOUT THIS PROSPECTUS**

This prospectus is part of a shelf registration statement that we filed with the United States Securities and Exchange Commission, or the SEC. By using a shelf registration statement, we may sell any combination of the securities described in this prospectus from time to time and in one or more offerings. This prospectus only provides you with a general description of the securities that we may offer. Each time we sell securities, we will provide a supplement to this prospectus that contains specific information about the terms of the securities. The supplement may also add, update or change information contained in this prospectus. Before purchasing any securities, you should carefully read both this prospectus and any supplement, together with the additional information described under the headings Available Information and Incorporation of Certain Information by Reference.

This prospectus does not contain all of the information in the registration statement. The full registration statement may be obtained from the SEC or us, as indicated below under the section entitled Available Information. Forms of the articles supplementary and other documents establishing the terms of the offered securities are filed as exhibits to the registration statement. Statements in this prospectus about these documents are summaries and each statement is qualified in all respects by reference to the document to which it refers. You should refer to the actual documents for a more complete description of the relevant matters.

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

Unless this prospectus otherwise indicates or the context otherwise requires, when we refer to we, our and us in this prospectus, we mean Sunstone Hotel Investors, Inc. and its consolidated subsidiaries. When we refer to you or yours, we mean the holders of the applicable series of securities.

**AVAILABLE INFORMATION**

We are required to file annual, quarterly and current reports, proxy statements and other information with the SEC. You may read and copy any documents filed by us at the SEC's public reference room at 100 F Street, N.E., Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information on the public reference room. Our filings with the SEC are also available to the public through the SEC's Internet site at <http://www.sec.gov> and through the New York Stock Exchange, 20 Broad Street, New York, New York 10005, on which our common stock is listed.

We have filed with the SEC a registration statement on Form S-3 relating to the securities covered by this prospectus. This prospectus is a part of the registration statement and does not contain all the information in the registration statement. Whenever a reference is made in this prospectus to a contract or other document of the Company, the reference is only a summary and you should refer to the exhibits that are a part of the registration statement for a copy of the contract or other document. You may review a copy of the registration statement at the SEC's public reference room in Washington, D.C., as well as through the SEC's Internet site.

**Table of Contents**

**INCORPORATION OF CERTAIN INFORMATION BY REFERENCE**

The SEC's rules allow us to incorporate by reference information into this prospectus. This means that we can disclose important information to you by referring you to another document. Any information referred to in this way is considered part of this prospectus from the date we file that document. Any reports filed by us with the SEC after the date of this prospectus and before the date that the offering of the securities by means of this prospectus is terminated will automatically update and, where applicable, supersede any information contained in this prospectus or incorporated by reference in this prospectus.

We incorporate by reference into this prospectus the following documents or information filed with the SEC (other than, in each case, documents or information deemed to have been furnished and not filed in accordance with SEC rules):

- (1) Annual Report on Form 10-K for the fiscal year ended December 31, 2009, filed with the SEC on February 23, 2010 (including information specifically incorporated by reference therein from our Proxy Statement for our 2010 Annual Meeting filed with the SEC on March 23, 2010);
- (2) Quarterly Reports on Form 10-Q for the quarterly periods ended March 31, 2010, June 30, 2010 and September 30, 2010, filed with the SEC on May 10, 2010, August 6, 2010 and November 4, 2010, respectively;
- (3) Current Reports on Form 8-K filed with the SEC on February 23, 2010 (but only with respect to the Form 8-K containing Item 5.02 disclosure), February 26, 2010, May 7, 2010, November 5, 2010, November 15, 2010, December 20, 2010 and January 14, 2011 (other than with respect to Item 2.02);
- (4) The description of the common stock included in our registration statement on Form 8-A, filed with the SEC on October 7, 2004, together with any amendment or report filed with the SEC for the purpose of updating such description;
- (5) The description of our Series A Cumulative Redeemable Preferred Stock, par value \$0.01 per share, contained in the Registration Statement on Form 8-A filed with the SEC on March 11, 2005; and
- (6) All documents filed by the Company under Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended, or the Exchange Act, on or after the date of this prospectus and before the termination of this offering.

We will provide without charge to each person, including any beneficial owner, to whom this prospectus is delivered, upon his or her written or oral request, a copy of any or all documents referred to above which have been or may be incorporated by reference into this prospectus excluding exhibits to those documents unless they are specifically incorporated by reference into those documents. You may request a copy of these filings at no cost, by writing or calling us at the following address or telephone number:

Sunstone Hotel Investors, Inc.

Attn: Secretary

120 Vantis, Suite 350

Aliso Viejo, California 92656

Telephone: (949) 330-4000



**Table of Contents****RISK FACTORS**

Investment in any securities offered pursuant to this prospectus involves risks. You should carefully consider the risk factors incorporated by reference to our most recent Annual Report on Form 10-K, our Quarterly Reports for the three months ended March 31, 2010, June 30, 2010 and September 30, 2010, any subsequent Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q or Current Reports on Form 8-K we file after the date of this prospectus, and all other information contained or incorporated by reference into this prospectus, as updated by our subsequent filings under the Exchange Act, and the risk factors and other information contained in the applicable prospectus supplement before acquiring any of such securities. The occurrence of any of these risks might cause you to lose all or part of your investment in the offered securities.

**USE OF PROCEEDS**

We intend to use the net proceeds from the sales of the securities as set forth in the applicable prospectus supplement.

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

The following table shows the ratio of combined fixed charges and preferred dividends to earnings for us and our consolidated subsidiaries for the periods indicated. You should read these ratios of combined fixed charges and preferred dividends to earnings in connection with our consolidated financial statements, including the notes to those statements, incorporated by reference into this prospectus.

	Nine Months			Year Ended December 31,			
	Ended		2009	2008	2007	2006	2005
	September 30, 2010	2009					
Ratio of combined fixed charges and preferred dividends to earnings . . .	.4x	.8x	.7x	1.1x	1.1x	.9x	.9x

We have computed the ratio of combined fixed charges and preferred dividends to earnings by dividing income (loss) from continuing operations before equity in (earnings) losses of unconsolidated joint ventures, interest expense and the interest portion of rental expense by fixed charges and preferred dividends. Fixed charges consist of interest expense and the interest portion of rental expense, whether expensed or capitalized and whether from continuing or discontinued operations. Interest expense includes interest expense incurred on our outstanding debt, accretion of our operating partnership's 4.60% exchangeable senior notes, amortization of deferred financing fees, any write-offs of deferred financing fees, and any loan penalties and fees incurred on our debt.

**Table of Contents**

**DESCRIPTION OF SECURITIES WE MAY OFFER**

Rights of our stockholders are governed by the Maryland General Corporation Law, or MGCL, our charter and our bylaws. The following is a summary of the provisions of securities we may offer, from time to time, and describes certain provisions of our charter and bylaws. For information on how to obtain copies of our charter and bylaws, see Available Information.

**COMMON STOCK**

Our charter provides that we are authorized to issue 500,000,000 shares of common stock, \$0.01 par value per share. Our board of directors, with the approval of a majority of the entire board and without any action by our stockholders, may amend our charter to increase or decrease the aggregate number of shares of stock or the number of shares of stock of any class or series that we have authority to issue.

The following summary description of our common stock is based on the provisions of our charter, bylaws and the applicable provisions of the MGCL. This information may not be complete in all respects and is qualified in its entirety by reference to the provisions of our charter, bylaws and the MGCL.

As of January 14, 2011, there were 117,619,438 shares of our common stock issued and outstanding. Our common stock is listed on the NYSE under the symbol SHO.

**Distributions.** Subject to provisions of law and the preferential rights of any other class or series of stock and the restrictions on transfer of stock as provided in our charter, the holders of our common stock are entitled to receive distributions when, as and if authorized by our board of directors and declared by us out of assets legally available therefor. We will pay those distributions either in cash or otherwise in the amounts and on the date or dates designated by our board of directors.

**Liquidation Preference.** Upon the occurrence of any liquidation, dissolution or winding up of our affairs, whether voluntary or involuntary, and subject to the liquidation preferences of any outstanding class or series of stock, the holders of our common stock are entitled to receive their proportionate share of all assets available for distribution.

**Voting Rights.** Subject to the restrictions on transfer of stock in our charter and the separate voting rights of any other class or series of stock, holders of our common stock are entitled to one vote for each share of our common stock held on every matter submitted to a vote of stockholders. Except as otherwise required by the terms of any outstanding class or series of stock, the holders of our common stock have sole voting power. Holders of our common stock do not have cumulative voting rights in the election of directors, which means that the holders entitled to cast a majority of the votes entitled to be cast in the election of directors may elect all of the directors and the holders of the remaining shares of our common stock are not able to elect any directors.

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

**Transfer Agent.** The transfer agent and registrar for our common stock is American Stock Transfer & Trust Company, LLC.

**Restrictions on Ownership and Transfer.** To qualify as a real estate investment trust, or REIT, our charter contains certain restrictions as to ownership and transfer of our stock. For a summary of these restrictions, see Description of Our Capital Stock Restrictions on Ownership and Transfer below.

**Table of Contents**

**PREFERRED STOCK**

This section describes the general terms and provisions of the preferred stock we may offer. This information may not be complete in all respects and is qualified entirely by reference to our charter, bylaws and the applicable provisions of the MGCL. The specific terms of any series of preferred stock will be described in a prospectus supplement. Those terms may differ from the terms discussed below. Any series of preferred stock we issue will be governed by our charter, including the articles supplementary relating to that series, and our bylaws. We will file the articles supplementary with the SEC and incorporate them by reference as an exhibit to our registration statement at or before the time we issue any preferred stock of that series.

**Authorized Preferred Stock.** Our charter provides that we are authorized to issue 100,000,000 shares of preferred stock, \$0.01 par value per share. Our charter also authorizes our board of directors to classify any unissued shares of preferred stock and to reclassify any previously classified but unissued shares of any series. Prior to issuance of shares of each series, our board of directors is required by the MGCL and our charter to set the terms, preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications and terms or conditions of redemption for each such series. Thus, our board of directors could authorize the issuance of shares of preferred stock with terms and conditions which could have the effect of delaying, deferring or preventing a transaction or a change of control of our company that might involve a premium price for holders of our common stock or otherwise be in their best interest.

Upon issuance of a particular series of preferred stock, our board of directors is authorized to specify:

the number of shares to be included in the series;

the annual dividend rate for the series and any restrictions or conditions on the payment of dividends or other distributions;

the redemption price, if any, and the qualifications and terms and conditions of redemption;

any sinking fund provisions for the purchase or redemption of the series;

if the series is convertible, the terms and conditions of conversion;

the amounts payable to holders upon our liquidation, dissolution or winding up; and

any other rights, preferences, voting powers, restrictions and limitations relating to the series.

The board of directors' ability to authorize, without stockholder approval, the issuance of preferred stock with conversion and other rights may adversely affect the rights of holders of our common stock or other series of preferred stock that may be outstanding.

For a description of our issued and outstanding preferred stock, see [Description of Our Capital Stock Preferred Stock](#).

**Specific Terms of a Series of Preferred Stock.** The preferred stock we may offer will be issued in one or more series. Shares of preferred stock, when issued against full payment of its purchase price, will be fully paid and non-assessable. Their par value or liquidation preference, however, will not be indicative of the price at which they will actually trade after their issuance. If necessary, the applicable prospectus supplement will provide a description of U.S. Federal income tax consequences relating to the purchase and ownership of the series of preferred stock offered by that prospectus supplement.

The preferred stock will have the dividend, liquidation, redemption, voting, conversion and other rights discussed below, unless otherwise described in a prospectus supplement relating to a particular series. The applicable prospectus supplement will discuss the following features of the series of preferred stock to which it relates:



the designation and par value per share;

**Table of Contents**

the number of shares offered;

the amount of liquidation preference per share;

the initial public offering price at which the preferred stock will be issued;

the dividend rate, the method of its calculation, the dates on which dividends would be paid and the dates, if any, from which dividends would cumulate;

any redemption or sinking fund provisions;

any conversion or exchange rights; and

any additional voting, dividend, liquidation, redemption, sinking fund and other rights, preferences, privileges, limitations and restrictions.

**Rank.** Unless otherwise stated in the applicable prospectus supplement and our charter, the preferred stock will have priority over our common stock with respect to dividends and distribution of assets, but will rank junior to all our outstanding indebtedness for borrowed money. Any series of preferred stock could rank senior, equal or junior to our other capital stock, as may be described in a prospectus supplement, as long as our charter so permits.

**Dividends.** Holders of each series of preferred stock shall be entitled to receive cash dividends to the extent described in the applicable prospectus supplement when, as and if authorized by our board of directors as declared by us, from funds legally available for the payment of dividends. The rates and dates of payment of dividends of each series of preferred stock will be stated in the applicable prospectus supplement. Dividends will be payable to the holders of record of preferred stock as they appear on our books on the record dates fixed by our board of directors. Dividends on any series of preferred stock may be cumulative or non-cumulative, as discussed in the applicable prospectus supplement.

**Convertibility.** Shares of a series of preferred stock may be exchangeable or convertible into shares of our common stock, another series of preferred stock or other securities or property. The conversion or exchange may be mandatory or optional. The applicable prospectus supplement will specify whether the preferred stock being offered has any conversion or exchange features, and will describe all the related terms and conditions.

**Redemption.** The terms, if any, on which shares of preferred stock of a series may be redeemed will be discussed in the applicable prospectus supplement.

**Liquidation.** Upon any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Company, holders of each series of preferred stock will be entitled to receive distributions upon liquidation in the amount described in the related prospectus supplement plus an amount equal to any accrued and unpaid dividends for the then-current dividend period (including any accumulation in respect of unpaid dividends for prior dividend periods, if dividends on that series of preferred stock are cumulative). These distributions will be made before any distribution is made on any securities ranking junior to the preferred stock with respect to liquidation, including our common stock. If the liquidation amounts payable relating to the preferred stock of any series and any other securities ranking on parity regarding liquidation rights are not paid in full, the holders of the preferred stock of that series will share ratably in proportion to the full liquidation preferences of each security. Holders of our preferred stock will not be entitled to any other amounts from us after they have received their full liquidation preference.

**Voting Rights.** The holders of shares of preferred stock will have no voting rights, except:

Edgar Filing: Sunstone Hotel Investors, Inc. - Form 424B5

as otherwise stated in the applicable prospectus supplement; or

as otherwise stated in the articles supplementary relating to the series of preferred stock.

## **Table of Contents**

**No Other Rights.** The shares of a series of preferred stock will not have any preferences, voting powers or relative, participating, optional or other special rights except:

as discussed above or in the applicable prospectus supplement;

as provided in our charter (including any articles supplementary); and

as otherwise required by law.

**Transfer Agent.** The transfer agent for each series of preferred stock will be named and described in the prospectus supplement for that series.

**Restrictions on Ownership and Transfer.** To qualify as a REIT, our charter contains certain restrictions as to ownership and transfer of our stock. For a summary of these restrictions, see Description of Our Capital Stock Restrictions on Ownership and Transfer below.

## **DEPOSITARY SHARES**

This section outlines some of the provisions of the deposit agreement to govern any depositary shares, the depositary shares themselves and the depositary receipts. This information may not be complete in all respects and is qualified entirely by reference to the relevant deposit agreement and depositary receipts with respect to the depositary shares relating to any particular series of preferred stock. The specific terms of any series of depositary shares will be described in the applicable prospectus supplement. If so described in the applicable prospectus supplement, the terms of that series of depositary shares may differ from the general description of terms presented below.

**Fractional Shares of Preferred Stock.** We may elect to offer fractional interests in shares of our preferred stock instead of whole shares of preferred stock. If we elect to do so, we will allow a depositary to issue to the public depositary shares, each of which will represent a fractional interest of a share of preferred stock as described in the applicable prospectus supplement.

**Deposit Agreement.** The shares of the preferred stock underlying any depositary shares will be deposited under a separate deposit agreement between us and a bank or trust company acting as depositary with respect to those shares of preferred stock. The depositary will have its principal office in the United States and have a combined capital and surplus of at least \$50,000,000. The prospectus supplement relating to a series of depositary shares will specify the name and address of the depositary. Under the deposit agreement, each owner of a depositary share will be entitled, in proportion to its fractional interest in a share of the preferred stock underlying that depositary share, to all the rights and preferences of that preferred stock, including dividend, voting, redemption, conversion, exchange and liquidation rights.

Depositary shares will be evidenced by one or more depositary receipts issued under the deposit agreement.

**Dividends and Other Distributions.** The depositary will distribute all cash dividends or other cash distributions in respect of the preferred stock underlying the depositary shares to each record depositary holder based on the number of the depositary shares owned by that holder on the relevant record date. The depositary will distribute only that amount which can be distributed without attributing to any depositary holders a fraction of one cent, and any balance not so distributed will be added to and treated as part of the next sum received by the depositary for distribution to record depositary holders.

If there is a distribution other than in cash, the depositary will distribute property to the entitled record depositary holders, unless the depositary determines that it is not feasible to make that distribution. In that case the depositary may, with our approval, adopt the method it deems equitable and practicable for making that distribution, including any sale of property and the distribution of the net proceeds from this sale to the concerned holders.

## **Table of Contents**

Each deposit agreement will also contain provisions relating to the manner in which any subscription or similar rights we offer to holders of the relevant series of preferred stock will be made available to depositary holders.

***Withdrawal of Stock.*** Upon surrender of depositary receipts at the depositary's office, the holder of the relevant depositary shares will be entitled to the number of whole shares of the related series of preferred stock and any money or other property those depositary shares represent. Depositary holders will be entitled to receive whole shares of the related series of preferred stock on the basis described in the applicable prospectus supplement, but holders of those whole preferred stock shares will not afterwards be entitled to receive depositary shares in exchange for their shares. If the depositary receipts the holder delivers evidence a depositary share number exceeding the whole share number of the related series of preferred stock to be withdrawn, the depositary will deliver to that holder a new depositary receipt evidencing the excess number of depositary shares.

***Redemption and Liquidation.*** The terms on which the depositary shares relating to the preferred stock of any series may be redeemed, and any amounts distributable upon our liquidation, dissolution or winding up, will be described in the applicable prospectus supplement.

***Voting.*** Upon receiving notice of any meeting at which preferred stockholders of any series are entitled to vote, the depositary will mail the information contained in that notice to the record depositary holders relating to those series of preferred stock. Each depositary holder on the record date will be entitled to instruct the depositary on how to vote the shares of preferred stock underlying that holder's depositary shares. The depositary will vote the shares of preferred stock underlying those depositary shares according to those instructions, and we will take reasonably necessary actions to enable the depositary to do so. If the depositary does not receive specific instructions from the depositary holders relating to that preferred stock, it will abstain from voting those shares of preferred stock, unless otherwise discussed in the applicable prospectus supplement.

***Amendment and Termination of Deposit Agreement.*** We and the depositary will be permitted to amend the depositary receipt form evidencing the depositary shares and the related deposit agreement. However, except as set forth in the applicable prospectus supplement, any amendment that significantly affects the rights of the depositary holders will not be effective unless a majority of the outstanding depositary holders approve that amendment. We or the depositary may terminate a deposit agreement only if:

we redeemed or reacquired all outstanding depositary shares relating to the deposit agreement;

all preferred stock of the relevant series has been withdrawn; or

there has been a final distribution in respect of the preferred stock of any series in connection with our liquidation, dissolution or winding up and such distribution has been made to the related depositary holders.

***Charges of Depositary.*** We will pay all charges of each depositary in connection with the initial deposit and any redemption of the preferred stock. Depositary holders will be required to pay any other transfer and other taxes and governmental charges and any other charges expressly provided in the deposit agreement to be for their accounts.

***Miscellaneous.*** Each depositary will forward to the relevant depositary holders all our reports and communications that we are required to furnish to preferred stockholders of any series.

Neither the depositary nor the Company will be liable if it is prevented or delayed by law or any circumstance beyond its control in performing its obligations under any deposit agreement. The obligations of the Company and each depositary under any deposit agreement will be limited to performance in good faith of their duties under that agreement, and they will not be obligated to prosecute or defend any legal proceeding in respect of any depositary shares or preferred stock unless they are provided with satisfactory indemnity.

## **Table of Contents**

**Title.** The Company, each depositary and any of their agents may treat the registered owner of any depositary share as the absolute owner of that share, whether or not any payment in respect of that depositary share is overdue and despite any notice to the contrary, for any purpose. See Legal Ownership and Book-Entry Issuance.

**Resignation and Removal of Depositary.** A depositary may resign at any time by issuing us a notice of resignation, and we may remove any depositary at any time by issuing it a notice of removal. Resignation or removal will take effect upon the appointment of a successor depositary and its acceptance of appointment. That successor depositary must:

be a bank or trust company having its principal office in the United States; and

have a combined capital and surplus of at least \$50,000,000.

### **DESCRIPTION OF OUR CAPITAL STOCK**

#### **COMMON STOCK**

For a description of our common stock, see Description of Securities We May Offer Common Stock.

#### **PREFERRED STOCK**

##### **8.0% Series A Cumulative Redeemable Preferred Stock**

As of January 14, 2011, there were 7,050,000 shares of our 8.0% Series A Cumulative Redeemable Preferred Stock, \$0.01 par value per share, which we refer to as series A preferred, issued and outstanding and 13,000,000 shares authorized.

**Rank.** The series A preferred ranks, with respect to dividend rights and rights upon voluntary or involuntary liquidation, dissolution or winding-up of our affairs, senior to all classes or series of our common stock and on parity with our Series C Cumulative Convertible Redeemable Preferred Stock, \$0.01 par value per share, which we refer to as series C preferred.

**Dividends.** Subject to the preferential rights of any security senior to the series A preferred as to dividends, the holders of series A preferred are entitled to receive, when, as and if authorized by our board of directors and declared by us out of funds legally available for the payment of dividends, cumulative cash dividends at the rate of 8.0% per annum of the \$25.00 liquidation preference per share of the series A preferred (equivalent to an annual rate of \$2.00 per share of the series A preferred). Accrued but unpaid dividends on the series A preferred will accumulate as of the dividend payment date on which they first became payable. Dividends on the series A preferred will accrue whether or not:

we have earnings;

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

those dividends are authorized or declared.

Except as described in the next paragraph, unless full cumulative dividends on the series A preferred for all past dividend periods and the then current dividend period shall have been or contemporaneously are declared and paid in cash or declared and a sum sufficient for the payment thereof in cash is set apart for payment, we will not:

## Edgar Filing: Sunstone Hotel Investors, Inc. - Form 424B5

declare or pay or set apart for payment of dividends, and we will not declare or make any distribution of cash or other property, directly or indirectly, on or with respect to any shares of our common stock or series C preferred, or any other class or series of stock ranking as to dividends on parity with or junior to the series A preferred for any period; or

## **Table of Contents**

redeem, purchase or otherwise acquire for any consideration, or make any other distribution of cash or other property, directly or indirectly, on or with respect to, or pay or make available any monies for a sinking fund for the redemption of, any common stock or series C preferred, or any other class or series of stock ranking, with respect to dividends and upon liquidation, on parity with or junior to our series A preferred.

The foregoing sentence, however, will not prohibit:

dividends payable solely in capital stock ranking junior to the series A preferred;

the conversion into or exchange for other shares of any class or series of capital stock ranking junior to the series A preferred; and

our purchase of shares of series A preferred, preferred stock ranking on parity with the series A preferred as to payment of dividends or capital stock or equity securities ranking junior to the series A preferred pursuant to our charter to the extent necessary to preserve our status as a REIT.

**Liquidation Preference.** Upon any voluntary or involuntary liquidation, dissolution or winding-up of our affairs, and before any distribution or payment shall be made to holders of our common stock or any other class or series of our stock ranking, as to rights upon any voluntary or involuntary liquidation, dissolution or winding-up of our affairs, junior to the series A preferred, the holders of shares of series A preferred are entitled to be paid out of our assets legally available for distribution to our stockholders, after payment or provision for our debts and other liabilities, a liquidation preference of \$25.00 per share of series A preferred, plus an amount equal to any accrued and unpaid dividends (whether or not earned or declared) up to and including the date of payment. After payment of the full amount of the liquidating distributions to which they are entitled, the holders of series A preferred will have no right or claim to any of our remaining assets. Our consolidation or merger with or into any other corporation, trust or other entity, or the voluntary sale, lease, transfer or conveyance of all or substantially all of our property or business, will not be deemed to constitute a liquidation, dissolution or winding-up of our affairs.

**Optional Redemption.** We may, at our option, upon not less than 30 nor more than 60 days' written notice, redeem the series A preferred, in whole or in part, at any time or from time to time, for cash at a redemption price of \$25.00 per share, plus all accrued and unpaid dividends (whether or not declared) up to and including the date fixed for redemption, without interest, to the extent we have funds legally available for that purpose. Unless full cumulative dividends on all outstanding shares of series A preferred shall have been or contemporaneously are authorized, declared and paid in cash or declared and a sufficient sum set aside for payment of all past dividend periods and the then-current dividend period, no shares of series A preferred shall be redeemed unless all outstanding shares of series A preferred are simultaneously redeemed. All shares of the series A preferred that we redeem or repurchase will be retired and restored to the status of authorized but unissued shares of preferred stock, without designation as to series or class.

**No Maturity, Sinking Fund or Mandatory Redemption.** The series A preferred has no maturity date and we are not required to redeem the series A preferred at any time. Accordingly, the series A preferred will remain outstanding indefinitely, unless we decide, at our option, to exercise our redemption right. The series A preferred is not subject to any sinking fund.

**Limited Voting Rights.** Holders of the series A preferred generally do not have any voting rights, except as set forth below.

If dividends on the series A preferred are in arrears for six or more quarterly periods, whether or not consecutive, holders of the series A preferred (voting together as a single class with all other classes or series of parity preferred stock upon which like voting rights have been conferred and are exercisable) will be entitled to vote at a special meeting or at our next annual meeting and each subsequent annual meeting of stockholders, for



---

**Table of Contents**

the election of two additional directors to serve on our board of directors (which we refer to as a preferred stock director), until all unpaid dividends and the dividend for the then current period with respect to the series A preferred and any other class or series of parity preferred stock have been paid or declared and a sum sufficient for the payment thereof set aside for payment. In such a case, the number of directors serving on the board of directors will be increased by two members. The preferred stock directors will be elected by a plurality of the votes cast in the election to serve until our next annual meeting and until their successors are duly elected and qualified or until such directors' right to hold the office terminates, whichever occurs earlier.

If and when all accumulated dividends and the dividend for the current dividend period on the series A preferred and for all classes and series of preferred stock ranking on parity with series A preferred and upon which similar voting rights have been conferred and are exercisable shall have been paid in full or a sum sufficient for such payment is irrevocably deposited in trust for payment, the holders of the series A preferred shall be immediately divested of the voting rights set forth above (subject to revesting in the event of each and every preferred dividend default) and, if all dividends in arrears and the dividends for the current dividend period have been paid in full or set aside for payment in full on all other classes or series of parity preferred stock, the term and office of such preferred stock directors so elected will terminate and the entire board of directors will be reduced accordingly.

In addition, so long as any shares of series A preferred remain outstanding, we will not, without the consent or the affirmative vote of the holders of at least two-thirds of the outstanding shares of series A preferred and each other class or series of preferred stock ranking on parity with the series A preferred with respect to the payment of dividends or the distribution of assets upon our liquidation, dissolution or winding-up upon which similar voting rights have been conferred, voting as a single class, given in person or by proxy, either in writing or at a meeting:

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

amend, alter or repeal the provisions of our charter or the terms of the series A preferred, whether by merger, consolidation, transfer or conveyance of all or substantially all of its assets or otherwise, so as to materially and adversely affect any right, preference, privilege or voting power of the series A preferred;

except that with respect to the occurrence of any of the events described in the second bullet point immediately above, so long as the series A preferred remains outstanding with the terms of the series A preferred materially unchanged or the holders of shares of series A preferred receive stock of the successor with substantially identical rights, taking into account that, upon the occurrence of an event described in the second bullet point above, we may not be the surviving entity, the occurrence of such event will not be deemed to materially and adversely affect the rights, preferences, privileges or voting power of holders of series A preferred, and in such case such holders shall not have any voting rights with respect to the events described in the second bullet point immediately above.

Furthermore, if the holders of the series A preferred receive the greater of the full trading price of the series A preferred on the date of an event described in the second bullet point immediately above or the \$25.00 liquidation preference per share of Series A preferred stock pursuant to the occurrence of any of the events described in the second bullet point immediately above, then such holders shall not have any voting rights with respect to the events described in the second bullet point immediately above.

## Table of Contents

### **Series C Cumulative Convertible Redeemable Preferred Stock**

As of January 14, 2011, there were 4,102,564 shares of our series C preferred authorized, issued and outstanding.

**Rank.** The series C preferred ranks, with respect to dividend rights and rights upon voluntary or involuntary liquidation, dissolution or winding-up of our affairs, senior to all classes or series of our common stock and any class or series of stock junior to the series C preferred. The series C preferred rank on parity with our series A preferred.

**Dividends.** Subject to the preferential rights of any security senior to the series C preferred as to dividends, the holders of series C preferred are entitled to receive, when and as authorized by our board of directors and declared by us out of funds legally available for the payment of dividends, cash dividends at the rate of \$0.393 per share of series C preferred per quarter. Holders of series C preferred are also entitled to a participating dividend per share equal to the amount by which the dividends on our common stock exceed \$0.339 per share of common stock into which each share of series C preferred is then convertible (currently, each share of series C preferred is convertible into one share of our common stock) per quarter. Holders of series C preferred are also entitled to a special dividend equal to any special or extraordinary cash dividend or distribution payable to holders of our common stock, per share of common stock into which each share of series C preferred is then convertible (currently, each share of series C preferred is convertible into one share of our common stock). For any period during which dividends on the series C preferred have been in arrears for four or more quarters or for which a financial ratio violation exists for any such period as set out in the articles supplementary establishing the series C preferred, holders of our series C preferred will be entitled to a default dividend per share equal to 0.5% per quarter of the liquidation preference, per share of series C preferred.

Accrued but unpaid dividends on the series C preferred accumulate as of the dividend payment date on which they first became payable. Dividends on the series C preferred accrue whether or not:

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

those dividends are authorized or declared; or

any agreement prohibits the payment of those dividends.

As long as any series C preferred is outstanding, we are prohibited from declaring, paying or setting apart for payment dividends on any class or series of securities that ranks on parity with the series C preferred unless full cumulative dividends on the series C preferred have been or are contemporaneously declared and paid or declared and a sum sufficient for payment set apart. If we have insufficient funds to do so, then any dividends declared must be allocated ratably in proportion to the respective amounts of accumulated and unpaid dividends on the series C preferred and such other securities.

As long as any series C preferred is outstanding, we are prohibited from declaring, paying or setting apart for payment dividends on any class or series of securities that ranks junior to the series C preferred or from redeeming any securities junior to the series C preferred unless (i) the full cumulative dividends on all outstanding series C preferred have been contemporaneously declared and paid and (ii) we are not in violation of our financial covenants.

**Liquidation Preference.** Upon any voluntary or involuntary liquidation, dissolution or winding-up of our affairs, before any distribution or payment shall be made or set apart for the holders of our common stock or any other junior securities, the holders of shares of series C preferred are entitled to be paid out of our assets legally available for distribution to our stockholders a liquidation preference of \$24.375 per share of series C preferred, plus an amount equal to any accumulated, accrued and unpaid dividends (whether or not earned or declared) to and including the date of payment. After payment of the full amount of the liquidating distributions to which they are entitled, the holders of series C preferred will have no right or claim to any of our remaining assets. Our consolidation or merger with or into any other corporation, trust or other entity, the voluntary sale, lease or

## **Table of Contents**

conveyance of all or substantially all of our property or business, or a statutory share exchange will not be deemed to constitute a liquidation, dissolution or winding-up of our affairs.

***Optional Redemption by Us.*** We may, at our option, upon not less than 30 nor more than 90 days' written notice, redeem the series C preferred, in whole or in part, at any time or from time to time, for cash at a redemption price of \$24.375 per share, plus all accumulated, accrued and unpaid dividends (whether or not earned or declared) up to and including the date fixed for redemption, without interest, out of our funds that are legally available for that purpose. Unless full cumulative dividends on all outstanding shares of series C preferred shall have been or contemporaneously are authorized, declared and paid or authorized, declared and a sum sufficient for the payment thereof set aside for payment of all past dividends periods and the then-current dividend period, no shares of series C preferred shall be redeemed unless all outstanding shares of series C preferred are simultaneously redeemed.

***Redemption at the Option of the Holder.*** If at any time (i) we experience a specified change of control, (ii) we cease to qualify as a REIT or take certain steps towards electing not to be treated as a REIT, or (iii) our common stock ceases to be listed on the NYSE or The NASDAQ Global Market, holders of our series C preferred will have the right, to the extent we have funds legally available therefor, to require us to redeem any or all of the series C preferred at a purchase price of \$24.375 per share, plus all accumulated, accrued and unpaid dividends (whether or not earned or declared).

All shares of the series C preferred that we redeem or repurchase (whether at our option or at the option of the holder) will be retired and restored to the status of authorized but unissued shares of preferred stock, without designation as to series or class.

***Conversion.*** Holders of the series C preferred have the right at any time to convert all or a portion of their series C preferred into shares of our common stock on a one-for-one basis. The conversion ratio will be adjusted to reflect certain events, including, among other things, stock splits, short-term rights offerings, the distribution of any securities to holders of common stock and the distributions of rights or warrants to all holders of common stock. Upon any conversion of our series C preferred, we will pay in cash to the holder of such series C preferred any accumulated, accrued and unpaid dividends (whether or not earned or declared) with respect to any full dividend payment periods and a prorated dividend (whether or not earned or declared) for the period in which the conversion occurred.

***No Maturity or Sinking Fund.*** The series C preferred has no maturity date. Accordingly, the series C preferred will remain outstanding indefinitely, unless redeemed or converted as described above. The series C preferred is not subject to any sinking fund.

***Voting Rights.*** Holders of the series C preferred generally are entitled to vote on an as-converted basis, voting as a single class together with the holders of our common stock, on all matters to be voted upon by our stockholders.

If we violate the financial covenants set out in the articles supplementary establishing the series C preferred for four consecutive quarters, then the holders of our series C preferred, voting separately as a class, are entitled to elect one member of our board of directors at a special meeting or at our next annual meeting and each subsequent annual meeting of stockholders until the financial covenant violation has been cured for one quarter.

If dividends on the series C preferred are in arrears for two or more quarterly periods, holders of the series C preferred, voting separately as a class, are entitled to elect two members of our board of directors at a special meeting or at our next annual meeting and each subsequent annual meeting of stockholders until all unpaid dividends and the dividend for the then current period with respect to the series C preferred have been paid or declared and a sum sufficient for the payment thereof set aside for payment. Holders of the series C preferred are permitted to elect a maximum of two directors pursuant to the rights described in this paragraph and the preceding paragraph.

## **Table of Contents**

If and when all accumulated dividends and the dividend for the current dividend period on the series C preferred have been paid in full for one quarter or we have cured the financial covenant violation for one quarter, the holders of the series C preferred will be divested of the voting rights set forth above and the term and office of such preferred stock directors so elected will terminate and the entire board of directors will be reduced accordingly.

In addition, so long as any shares of series C preferred remain outstanding, we will not, without the consent or the affirmative vote of the holders of at least 67% of the outstanding shares of series C preferred (or, in the case of the third bullet below, at least a majority of the outstanding shares of series C preferred), voting as a single class, given in person or by proxy, either in writing or at a meeting:

issue (i) any stock or other equity security ranking senior to such series C preferred with respect to payment of dividends, or the distribution of assets upon the liquidation, dissolution or winding-up of our affairs, or (ii) any stock or other equity security which is redeemable at the option of the holder on terms more favorable than those of the series C preferred;

amend, alter or repeal any provisions of our charter or the terms of the series C preferred in any way that materially adversely affects the voting powers, rights, preferences or other terms or privileges of the series C preferred; or

merge or consolidate with another entity in which we are not the surviving entity and each holder of series C preferred does not receive shares of the surviving corporation with substantially similar rights, preferences, powers and other terms in the surviving corporation as the series C preferred have with respect to us (except for changes that do not materially and adversely affect the holders of the series C preferred).

### **RESTRICTIONS ON OWNERSHIP AND TRANSFER**

To qualify as a REIT under Sections 856 through 859 of the Internal Revenue Code of 1986, as amended, or the Code, we must meet certain requirements concerning the ownership of our outstanding shares of equity stock. Specifically, not more than 50% in value of our outstanding shares of capital stock may be owned, directly or indirectly, by five or fewer individuals (as defined in the Code to include certain entities such as private foundations) at any time during the last half of a taxable year. Additionally, shares of our stock must be beneficially owned by 100 or more persons during at least 335 days of a taxable year of 12 months or during a proportionate part of a shorter taxable year.

Our charter contains restrictions on the ownership and transfer of our stock that are intended to assist us in complying with these requirements and continuing to qualify as a REIT. The relevant sections of our charter provide that, subject to the exceptions described below, no person or entity may actually or beneficially own, or be deemed to own by virtue of the applicable constructive ownership provisions of the Code, more than 9.8% (in value or in number of shares, whichever is more restrictive) of the outstanding shares of our common stock, or 9.8% in value of the aggregate of the outstanding shares of all classes and series of our stock. We refer to each of these restrictions as an ownership limit and collectively as the ownership limits. A person or entity that would have acquired actual, beneficial or constructive ownership of our stock but for the application of the ownership limits or any of the other restrictions on ownership and transfer of our stock discussed below is referred to as a prohibited owner.

The constructive ownership rules under the Code are complex and may cause stock owned actually or constructively by a group of related individuals and/or entities to be owned constructively by one individual or entity. As a result, the acquisition of less than 9.8% of our capital stock (or the acquisition of an interest in an entity that owns, actually or constructively, our capital stock) by an individual or entity, could, nevertheless cause that individual or entity, or another individual or entity, to own constructively in excess of 9.8% of our outstanding capital stock and thereby violate the applicable ownership limit.

## Table of Contents

Our board of directors, in its sole and absolute discretion, prospectively or retroactively, may exempt a person from either or both of the ownership limits if our board of directors determines that:

such waiver will not result in us being closely held within the meaning of Section 856(h) of the Code (without regard to whether the ownership interest is held during the last half of a taxable year), or otherwise failing to qualify as a REIT; and

subject to certain exceptions, the person does not and will not own, actually or constructively, an interest in a tenant of ours (or a tenant of any entity owned in whole or in part by us) that would cause us to own, actually or constructively, more than a 9.9% interest (as set forth in Section 856(d)(2)(B) of the Code) in such tenant.

As a condition of the exception, our board of directors may require an opinion of counsel or IRS ruling, in either case in form and substance satisfactory to our board of directors, in its sole and absolute discretion, in order to determine or ensure our status as a REIT and such representations and undertakings as are reasonably necessary to make the determinations above. Our board of directors may impose such conditions or restrictions as it deems appropriate in connection with such an exception.

In connection with a waiver of an ownership limit or at any other time, our board of directors may, in its sole and absolute discretion, increase or decrease one or both of the ownership limits for one or more persons, except that a decreased ownership limit will not be effective for any person whose actual, beneficial or constructive ownership of our stock exceeds the decreased ownership limit at the time of the decrease until the person's actual, beneficial or constructive ownership of our stock equals or falls below the decreased ownership limit, although any further acquisition of our stock will violate the decreased ownership limit. Our board of directors may not increase or decrease any ownership limit if, among other limitations, the new ownership limit would allow five or fewer persons to actually or beneficially own more than 49.9% in value of our outstanding stock or could otherwise cause us to fail to qualify as a REIT.

Our charter further prohibits:

any person from actually, beneficially or constructively owning shares of our stock that could result in us being closely held under Section 856(h) of the Code (without regard to whether the ownership interest is held during the last half of a taxable year) or otherwise cause us to fail to qualify as a REIT (including, but not limited to, actual, beneficial or constructive ownership of shares of our stock that could result in us owning (actually or constructively) an interest in a tenant that is described in Section 856(d)(2)(B) of the Code if the income we derive from such tenant, taking into account our other income that would not qualify under the gross income requirements of Section 856(c) of the Code, would cause us to fail to satisfy any the gross income requirements imposed on REITs or that would result in us owning more than a 35% interest in any person which manages properties we own); and

any person from transferring shares of our stock if such transfer would result in shares of our stock being beneficially owned by fewer than 100 persons (determined without reference to any rules of attribution).

Any person who acquires or attempts or intends to acquire actual, beneficial or constructive ownership of shares of our stock that will or may violate the ownership limits or any of the other restrictions on ownership and transfer of our stock described above must give written notice immediately to us or, in the case of a proposed or attempted transaction, provide us at least 15 days prior written notice, and provide us with such other information as we may request in order to determine the effect of such transfer on our status as a REIT.

The ownership limits and other restrictions on ownership and transfer of our stock described above will not apply if our board of directors determines that it is no longer in our best interests to attempt to qualify, or to continue to qualify, as a REIT or that compliance is no longer required in order for us to qualify as a REIT.

## **Table of Contents**

Pursuant to our charter, if any purported transfer of our stock or any other event would otherwise result in any person violating the ownership limits or such other limit established by our board of directors, or could result in us being closely held within the meaning of Section 856(h) of the Code (without regard to whether the ownership interest is held during the last half of a taxable year) or otherwise failing to qualify as a REIT, then that number of shares causing the violation (rounded up to the nearest whole share) will be automatically transferred to, and held by, a trust for the exclusive benefit of one or more charitable organizations selected by us. The prohibited owner will have no rights in shares of our stock held by the trustee. The automatic transfer will be effective as of the close of business on the business day prior to the date of the violative transfer or other event that results in the transfer to the trust. Any dividend or other distribution paid to the prohibited owner, prior to our discovery that the shares had been automatically transferred to a trust as described above, must be repaid to the trustee upon demand. If the transfer to the trust as described above is not automatically effective, for any reason, to prevent violation of the applicable restriction on ownership and transfer of our stock, then that transfer of the number of shares that otherwise would cause any person to violate the above restrictions will be void. If any transfer of our stock would result in shares of our stock being beneficially owned by fewer than 100 persons (determined without reference to any rules of attribution), then any such purported transfer will be void and of no force or effect and the intended transferee will acquire no rights in the shares.

Shares of our stock transferred to the trustee are deemed offered for sale to us, or our designee, at a price per share equal to the lesser of (1) the price per share in the transaction that resulted in the transfer of the shares to the trust (or, in the event of a gift or devise, the last reported sale price on the NYSE on the day of the transfer or other event that resulted in the transfer of such shares to the trust) and (2) the last reported sale price on the NYSE on the date we accept, or our designee accepts, such offer. We may reduce the amount payable to the prohibited owner by the amount of dividends and distributions paid to the prohibited owner and owed by the prohibited owner to the trustee and pay the amount of such reduction to the trustee for the benefit of the charitable beneficiary. We have the right to accept such offer until the trustee has sold the shares of our stock held in the trust. Upon a sale to us, the interest of the charitable beneficiary in the shares sold terminates and the trustee must distribute the net proceeds of the sale to the prohibited owner and any dividends or other distributions held by the trustee with respect to such stock will be paid to the charitable beneficiary.

If we do not buy the shares, the trustee must, within 20 days of receiving notice from us of the transfer of shares to the trust, sell the shares to a person or persons designated by the trustee who could own the shares without violating the ownership limits or other restrictions on ownership and transfer of our stock. Upon such sale, the trustee must distribute to the prohibited owner an amount equal to the lesser of (1) the price paid by the prohibited owner for the shares (or, if the prohibited owner did not give value in connection with the transfer or other event that resulted in the transfer to the trust (e.g., a gift, devise or other such transaction), the last reported sale price on the NYSE on the day of the transfer or other event that resulted in the transfer of such shares to the trust) and (2) the sales proceeds (net of commissions and other expenses of sale) received by the trustee for the shares. The trustee may reduce the amount payable to the prohibited owner by the amount of dividends and other distributions paid to the prohibited owner and owed by the prohibited owner to the trustee. Any net sales proceeds in excess of the amount payable to the prohibited owner will be immediately paid to the charitable beneficiary, together with any dividends or other distributions thereon. In addition, if prior to discovery by us that shares of our stock have been transferred to the trustee, such shares of stock are sold by a prohibited owner, then such shares shall be deemed to have been sold on behalf of the trust and, to the extent that the prohibited owner received an amount for or in respect of such shares that exceeds the amount that such prohibited owner was entitled to receive, such excess amount shall be paid to the trustee upon demand.

The trustee will be designated by us and will be unaffiliated with us and with any prohibited owner. Prior to the sale of any shares by the trust, the trustee will receive, in trust for the charitable beneficiary, all dividends and other distributions paid by us with respect to such shares, and may exercise all voting rights with respect to such shares for the exclusive benefit of the charitable beneficiary.

## **Table of Contents**

Subject to Maryland law, effective as of the date that the shares have been transferred to the trust, the trustee may, at the trustee's sole discretion:

rescind as void any vote cast by a prohibited owner prior to our discovery that the shares have been transferred to the trust; and

recast the vote in accordance with the desires of the trustee acting for the benefit of the beneficiary of the trust. However, if we have already taken irreversible corporate action, then the trustee may not rescind and recast the vote.

If our board of directors or a committee thereof determines in good faith that a proposed transfer or other event has taken place that violates the restrictions on ownership and transfer of our stock set forth in our charter, our board of directors or such committee may take such action as it deems advisable in its sole discretion to refuse to give effect to or to prevent such transfer, including, but not limited to, causing us to redeem shares of stock, refusing to give effect to the transfer on our books or instituting proceedings to enjoin the transfer.

Every owner of 5% or more (or such lower percentage as required by the Code or the Treasury Regulations promulgated thereunder) of the outstanding shares of our stock, within 30 days after the end of each taxable year, must give written notice to us stating the name and address of such owner, the number of shares of each class and series of our stock that the owner beneficially owns and a description of the manner in which the shares are held. Each such owner also must provide us with any additional information that we request in order to determine the effect, if any, of the person's actual or beneficial ownership on our status as a REIT and to ensure compliance with the ownership limits. In addition, any person that is an actual owner, beneficial owner or constructive owner of shares of our stock and any person (including the stockholder of record) who is holding shares of our stock for an actual owner, beneficial owner or constructive owner must, on request by us, disclose to us such information as we may request in good faith in order to determine our status as a REIT and comply with requirements of any taxing authority or governmental authority or to determine such compliance.

Any certificates representing shares of our stock will bear a legend referring to the restrictions on ownership and transfer of our stock described above. If we issue depository shares at a future time, those depository shares will be subject to the same ownership limitations and transfer restrictions with respect to the underlying preferred stock, and will also count toward the overall ownership limitations to the extent of the underlying preferred stock.

These restrictions on ownership and transfer could delay, defer or prevent a transaction or a change of control of our company that might involve a premium price for our common stock that our stockholders believe to be in their best interest.

### **CERTAIN PROVISIONS OF MARYLAND LAW AND OF OUR CHARTER AND BYLAWS**

The following is a summary of the provisions of Maryland law applicable to us and of our charter and bylaws. For more detail, we refer you to Maryland law, including the MGCL, our charter and our bylaws.

#### **Amendment of Charter and Bylaws**

Under Maryland law, a Maryland corporation generally cannot amend its charter, unless declared advisable by its board of directors and approved by the affirmative vote of stockholders entitled to cast at least two-thirds of the votes entitled to be cast on the matter. However, a Maryland corporation may provide in its charter for approval of amendments by a lesser percentage of the shares entitled to vote on the matter, but not less than a majority of all of the votes entitled to be cast on the matter. Our charter provides for approval of amendments to

## **Table of Contents**

our charter by a majority of the votes entitled to be cast on the matter. Our board of directors has the exclusive power to adopt, alter or repeal any provisions of our bylaws and make new bylaws, except with respect to amendments to the provisions of our bylaws regarding our opt out of the Maryland business combination and control share acquisition statutes.

### **Power to Reclassify Shares of Our Stock**

Our charter authorizes our board of directors to classify and reclassify any unissued shares of our common stock and preferred stock into other classes or series of stock. Prior to issuance of shares of each class or series, our board of directors is required by Maryland law and by our charter to set, subject to our charter restrictions on transfer of our stock, the terms, preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications and terms or conditions of redemption for each class or series. Thus, our board of directors could authorize the issuance of shares of common stock or preferred stock with terms and conditions which could have the effect of delaying, deferring or preventing a transaction or a change in control that might involve a premium price for holders of our common stock or otherwise be in their best interest.

### **Power to Authorize and Issue Additional Shares of Common Stock and Preferred Stock**

Our board of directors, with the approval of a majority of the entire board of directors and without stockholder approval, has the authority to amend our charter to increase or decrease the aggregate number of shares of stock or the number of shares of stock of any class or series that we have the authority to issue. Our board of directors can cause us to issue additional shares without stockholder approval, unless stockholder approval is required by applicable law or the rules of any stock exchange or automated quotation system on which our securities may be listed or traded. Although we have no present intention of doing so, we could issue a class or series of stock that could delay, defer or prevent a transaction or a change in control of the Company that might involve a premium price for holders of common stock or otherwise be in their best interest.

### **Meetings of Stockholders**

Under our bylaws, annual meetings of stockholders are to be held each year at a date and time during the month of May as determined by our board of directors. Special meetings of stockholders may be called only by our board of directors, our Chairman, our Chief Executive Officer or our President and must be called by our Secretary upon the written request of the stockholders entitled to cast not less than a majority of all the votes entitled to be cast at a meeting. The date, time and place of any special meetings will be set by our board of directors or our Chairman, Chief Executive Officer or President as provided in our bylaws, whoever has called the meeting. Our bylaws provide that with respect to special meetings of our stockholders, only the business specified in our notice of meeting may be brought before the meeting.

### **Advance Notice Provisions for Stockholder Nominations and Stockholder Proposals**

Our bylaws provide that, with respect to an annual meeting of stockholders, nominations of individuals for election to our board of directors and the proposal of other business to be considered by stockholders may be made only (1) pursuant to our notice of the meeting, (2) by or at the direction of our board of directors or (3) by a stockholder who is a stockholder of record both at the time of giving of notice by the stockholder as required by the bylaws and at the time of the meeting and who is entitled to vote at the meeting and who has complied with the advance notice procedures of our bylaws. With respect to special meetings of stockholders, only the business specified in our notice of the meeting may be brought before the meeting. Nominations of individuals for election to our board of directors at a special meeting may be made only (x) pursuant to our notice of the meeting, (y) by or at the direction of our board of directors or (z) provided that the board of directors has determined that directors will be elected at the meeting, by a stockholder who is a stockholder of record both at the time of giving notice by the stockholder as required by the bylaws and at the time of the meeting, who is entitled to vote at the meeting and who has complied with the advance notice provisions of our bylaws.



## **Table of Contents**

The purpose of requiring stockholders to give advance notice of nominations and other proposals is to afford our board of directors the opportunity to consider the qualifications of the proposed nominees or the advisability of the other proposals and, to the extent considered necessary by our board of directors, to inform stockholders and make recommendations regarding the nominations or other proposals. The advance notice procedures also permit a more orderly procedure for conducting our stockholder meetings. Although our bylaws do not give our board of directors the power to disapprove timely stockholder nominations and proposals, they may have the effect of precluding a contest for the election of directors or proposals for other action if the proper procedures are not followed, and of discouraging or deterring a third party from conducting a solicitation of proxies to elect its own slate of directors to our board of directors or to approve its own proposal.

### **Board of Directors**

Our board of directors currently consists of seven directors. Under our bylaws, the number of directors may be established by our board of directors from time to time but may not be fewer than the minimum number required by the MGCL (which currently is one) or more than fifteen. Under our charter and bylaws, we have elected to be subject to certain provisions of Maryland law which vest in our board of directors the exclusive right to determine the number of directors and the exclusive right, by the affirmative vote of a majority of the remaining directors, to fill vacancies on the board of directors even if the remaining directors do not constitute a quorum.

Our directors each serve until the next annual meeting and until their successors are elected and qualify and thus are subject to election annually. Holders of shares of our common stock do not have the right to cumulative voting in the election of directors. Consequently, at each annual meeting of stockholders, the holders entitled to cast a majority of the votes entitled to be cast in the election of directors will be able to elect all of the directors.

Any vacancy will be filled, including any vacancy created by an increase in the number of directors, at any regular meeting or at any special meeting called for the purpose, by a majority of the remaining directors in office, even if the remaining directors do not constitute a quorum. Any director appointed to fill a vacancy shall hold office until the next annual meeting and until his or her successor is duly elected and qualifies.

### **Removal of Directors**

Our charter provides that a director may be removed, with or without cause, upon the affirmative vote of a majority of the votes entitled to be cast in the election of directors. Absent removal of all of our directors, this provision, when coupled with the provision in our bylaws authorizing our board of directors to fill vacant directorships, precludes stockholders from removing incumbent directors, except upon an affirmative majority vote, and filling the vacancies created by such removal with their own nominees.

### **Extraordinary Transactions**

Under Maryland law, a Maryland corporation generally cannot dissolve, merge, sell all or substantially all of its assets, engage in a share exchange or engage in similar transactions outside the ordinary course of business unless declared advisable by its board of directors and approved by the affirmative vote of stockholders entitled to cast at least two-thirds of the votes entitled to be cast on the matter. However, a Maryland corporation may provide in its charter for approval of these matters by a lesser percentage of the shares entitled to vote on the matter, but not less than a majority of all of the votes entitled to be cast on the matter. Our charter provides for approval of these matters by a majority of the votes entitled to be cast on the matter. Maryland law permits a corporation to transfer all or substantially all of its assets without the approval of the stockholders of the corporation to one or more persons if all of the