CAPITAL AUTOMOTIVE REIT
Form S-3
June 04, 2004

AS FILED WITH THE SECURITIES AND EXCHANGE COMMISSION ON JUNE 4, 2004

Registration No. 333-_____
Post-Effective Amendment No. 1 to Registration No. 333-106445
Post-Effective Amendment No. 1 to Registration No. 333-73181

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM S-3
REGISTRATION STATEMENT
UNDER THE SECURITIES ACT OF 1933

CAPITAL AUTOMOTIVE REIT
(Exact name of registrant as specified in its charter)

Maryland	**6798**	**54-1870224**
(State or other jurisdiction of incorporation or organization)	(Primary Standard Industrial Classification Code Number)	(I.R.S. Employer Identification Number)

8270 Greensboro Drive, Suite 950
McLean, Virginia 22102
(703) 288-3075
(Address, including zip code, and telephone number, including area code, of registrant s principal executive offices)

Thomas D. Eckert
President and Chief Executive Officer
Capital Automotive REIT
8270 Greensboro Drive, Suite 950
McLean, Virginia 22102
(703) 288-3075
(Name, address, including zip code, and telephone number, including area code, of agent for service)

With a copy to:
Sylvia M. Mahaffey
Jeffrey B. Grill
Shaw Pittman LLP
2300 N Street, N.W.
Washington, D.C. 20037
(202) 663-8000

Approximate date the registrant proposes to begin selling securities to the public: From time to time after the effective date of this registration statement.

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box. o

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered in connection with dividend or interest reinvestment plans, check the following box. x

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. o

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. o

If delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box. o

CALCULATION OF REGISTRATION FEE

Title of Securities to be Registered(1)	Amount to be Registered(2)	Proposed Maximum Offering Price Per Share(3)	Proposed Maximum Aggregate Offering Price(3)(4)	Amount of Registration Fee(4)(5)
Common Shares of Beneficial Interest, par value $.01 per share				
Preferred Shares of Beneficial Interest, par value $.01 per share				
Depositary Shares				
Warrants				
Debt Securities				
TOTAL	$534,262,500		$534,262,500	$ 67,691

(1) Subject to Note (2), this registration statement registers an indeterminate number of common shares, preferred shares, depositary shares and warrants to be offered at indeterminate prices and an indeterminate number of common shares or preferred shares that may be issuable at indeterminate prices upon the exercise of any warrants, or as the case may be, upon the conversion, redemption or exchange of any convertible, redeemable or exchangeable securities registered hereunder.

(2) In no event will the aggregate maximum offering price of all securities registered under this registration statement exceed $600,000,000. The securities registered hereunder may be issued in one or more classes or series and may be offered and sold separately or in units with other Securities registered hereunder.

(3) The proposed maximum offering price per security has been omitted pursuant to General Instruction II.D of Form S-3. The registrant will establish the proposed maximum offering price per security if and when it offers securities registered under this registration statement.

(4) The registration fee does not include an additional $65,737,500 of securities previously registered by the registrant under its registration statements on Form S-3 (File Nos. 333-106445 and 333-73181) which are included in a combined prospectus herein pursuant to Rule 429 under the Securities Act of 1933. A registration fee of $17,980 was previously paid by the registrant in connection with the $65,737,500 of securities previously registered on such registration statements.

(5) Calculated pursuant to Rule 457(o) under the Securities Act of 1933, as amended.

The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant files a further amendment that specifically states that this registration statement is to become effective in accordance with Section 8(a) of the Securities Act or until the registration statement becomes effective on the date the SEC, acting under Section 8(a), determines.

Pursuant to Rule 429 under the Securities Act of 1933, this registration statement contains a combined prospectus that also relates to the registration statements on Form S-3, Registration Nos. 333-106445 and 333-73181, previously filed by the registrant with the Securities and Exchange Commission.

The information in this prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.

Subject To Completion, Dated June __, 2004

PROSPECTUS

$600,000,000

[LOGO]

CAPITAL AUTOMOTIVE REIT

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

We may from time to time offer, in one or more series, separately or together, the following:

our common shares of beneficial interest;

our preferred shares of beneficial interest;

our preferred shares of beneficial interest represented by depositary receipts;

warrants to purchase our common and preferred shares; and

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

The aggregate initial public offering price of the securities that we may offer through this prospectus will be up to $600,000,000.

We will offer our securities in amounts, at prices and on terms to be determined at the time we offer such securities. When we sell a particular series of securities, we prepare a prospectus supplement describing the offering and the terms of that series of securities.

Please read this prospectus and the applicable supplement carefully before you invest.

Investing in our securities involves risks. See Risk Factors beginning on page 3 and, if applicable, in the Risk Factors section of the applicable prospectus supplement.

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

The date of this prospectus is _____, 2004.

ABOUT THIS PROSPECTUS

This prospectus is part of a registration statement that we filed with the Securities and Exchange Commission, or the SEC, using a shelf registration process. Under this shelf process, we may sell any combination of the securities described in this prospectus in one or more offerings up to a total dollar amount of $600,000,000. Our prospectus provides you with a general description of these securities. Each time we sell securities, we will provide a prospectus supplement that will contain specific information about all of the terms of that offering. Our prospectus supplement may also add, update or change information contained in this prospectus. You should read both this prospectus and the applicable prospectus supplement together with additional information described under the heading Where You Can Find More Information.

References to we, us or our refer to Capital Automotive REIT or, if the context requires, Capital Automotive L.P., which we refer to as the Partnership, and our business and operations conducted through the Partnership and/or directly or indirectly owned subsidiaries. The term you refers to a prospective investor. We are the sole general partner of the Partnership and, as of March 31, 2004, owned approximately 81.8% of the common units of limited partnership interest in the Partnership, which we refer to as Units, as well as 100% of the Series A preferred units of limited partnership interest in the Partnership. Limited partners (other than us) may, at their option, redeem their Units for cash, or we may assume the redemption obligations of the Partnership and acquire the Units in exchange for our common shares on a one-for-one basis.

In this prospectus, we use the term dealerships to refer to franchised automobile dealerships and motor vehicle service, repair or parts businesses, used vehicle businesses or other related businesses, which are the types of businesses that are operated on our properties. We also use the terms dealer group, tenant, or operators of dealerships to refer to the persons and companies that lease our properties.

Before investing in our securities, you should be aware that there are various risks. Investors should carefully consider, among other factors, the factors discussed in this prospectus and in any prospectus supplement. This prospectus contains, and any accompanying prospectus supplement will contain, forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. Also, documents that we subsequently file with the SEC and that are incorporated into this prospectus by reference will contain forward-looking statements. When we refer to forward-looking statements or information, sometimes we use words such as may, will, could, should, plans, intends, expects, believes, anticipates and continues. In particular, the risk factors in this prospectus describe forward-looking information. The risk factors are not all-inclusive, particularly with respect to possible future events. Many things can happen that can cause actual results to be different from those we describe. Given these uncertainties, readers are cautioned not to place undue reliance on these forward-looking statements. We also make no promise to update any of the forward-looking statements.

RISK FACTORS

We may suffer if dealer groups and tenants generate insufficient cash flows from their operations to permit them to pay their rent and fulfill their other obligations under their leases.

We depend on tenants who lease our properties to pay rent, maintain our properties and meet their other lease obligations. If a tenant fails to pay its rent or to perform any other obligation under the lease, the tenant could be in default under the lease. In that event, we could wait to see if the tenant resumes paying rent or otherwise starts to comply with the lease or we may be able to declare the lease in default and seek to enforce our remedies under the lease. If the lease has been guaranteed, we could also require performance under the lease or attempt to collect unpaid rent or other money that is owed by the tenant from the guarantor. We may be unsuccessful collecting the money that is owed by the defaulting tenant or by a guarantor. We also may seek to evict a defaulting tenant. Often, eviction is a time-consuming legal process. Assuming we were successful in evicting a tenant or obtaining another legal remedy, we could incur substantial expenses and legal fees. These and other events could divert the attention of management from our day-to-day business. If the tenant is evicted or otherwise vacates the property, we would have to sell or re-lease the property, which could also be a time-consuming and expensive process. We may not be able to re-lease a property on the same or better terms than the prior lease, or at all. We also may not be able to sell a property on terms or at a price that we believe are satisfactory, or at all. Also, a tenant and/or guarantor can take actions to attempt to avoid paying rent or other money or to prevent a remedy (such as eviction). A tenant and/or guarantor can attempt to seek protection under the federal bankruptcy laws, which could result in a delay or reduction in the payments to us or could result in termination of the lease at the request of the tenant.

We could face other risks from our relationship with the tenants. For example, some of our tenants are affiliates of limited partners of the Partnership or trustees of the Company, either of which could make us less inclined to take an action or could influence the timing of any action if there is a default. Also, we depend on our tenants to maintain good relationships with motor vehicle manufacturers and to comply with their franchise agreements. If a tenant does not comply, the manufacturer could take actions that could affect the ability of a tenant to pay rent or comply with other lease terms. We also depend on the tenant to keep the property adequately insured. If the tenant does not have enough insurance and there is a loss, we could incur all or some of the cost to repair or replace the property. In addition, if the tenant fails to pay real estate taxes when due, we may be required to pay these taxes. This list of ways in which we depend on our tenants is not all-inclusive. Other actions by one of our tenants could have an adverse effect on us. The actions discussed, as well as other events involving the tenant/lessor relationship, could adversely affect our financial condition and results of operations.

We rely on a small number of tenants for a significant portion of our revenue, and rental payment defaults by these significant tenants could adversely affect our results of operations.

A substantial portion of our revenues at any time may be generated from a small number of tenants. For the quarter ended March 31, 2004, Sonic Automotive, Inc. and its affiliates accounted for approximately 22% of our total rental revenue. For the quarter ended March 31, 2004, UnitedAuto Group, Inc. and its affiliates accounted for approximately 14% of our total rental revenue. No other tenant accounted for 10% or more of our total rental revenue for the quarter ended March 31, 2004. For the quarter ended March 31, 2004, our top 10 tenants, including

their affiliates, accounted for approximately 69% of our total rental revenue.

As a result of the concentration of revenue generated from these few tenants, if any one of them were to cease paying rent or other monetary obligations, we may have significantly reduced rental revenues or higher expenses until the defaults were cured or the properties could be leased to a new tenant or tenants.

The amount of debt we have and the restrictions imposed by that debt could adversely affect our business and financial condition.

As of March 31, 2004, we had invested more than $1.9 billion in properties. We have borrowed, and will continue to borrow, funds to buy properties. As of March 31, 2004, we had total mortgage debt outstanding of approximately $1.07 billion (consisting of approximately $811.3 million of fixed rate and approximately $259.9 million of variable rate debt), which was secured by 268 of our properties. In addition, we had approximately $4.4 million of unsecured debt and approximately $18.0 million outstanding on our revolving credit facilities.

Our organizational documents do not limit the level or amount of debt that we may incur. We have adopted a policy limiting debt to approximately 65% of our assets (calculated as total assets plus accumulated depreciation). This policy may be changed by our Board of Trustees at any time without shareholder approval. As of March 31, 2004, our debt to assets ratio was approximately 55% and our debt to total market capitalization was approximately 40%. Under the current leverage policy, we would be permitted to and intend to obtain additional financing for our short- and long-term capital needs.

The amount of our debt outstanding from time to time could have important consequences to our shareholders. For example, it could:

- require us to dedicate a substantial portion of our cash flow from operations to payments on our debt, thereby reducing funds available for operations, property acquisitions and other appropriate business opportunities that may arise in the future;
- limit our ability to obtain any additional financing we may need in the future for working capital, debt refinancing, capital expenditures, acquisitions, development or other general corporate purposes;
- make it difficult to satisfy our debt service requirements;
- limit our ability to make distributions on our outstanding common and preferred shares;
- require us to dedicate increased amounts of our cash flow from operations to payments on our variable rate, unhedged debt if interest rates rise;
- limit our flexibility in planning for, or reacting to, changes in our business and the factors that affect the profitability of our business; and
- limit our flexibility in conducting our business, which may place us at a disadvantage compared to competitors with less debt or debt with less restrictive terms.

Our ability to make scheduled payments of the principal of, to pay interest on, or to refinance our debt will depend primarily on our future performance, which to a certain extent is subject to the creditworthiness of our tenants, and economic, financial, competitive and other factors beyond our control. There can be no assurance that our business will continue to generate sufficient cash flow from operations in the future to service our debt or meet our other cash needs. If we are unable to generate this cash flow from our business, we may be required to refinance all or a portion

of our existing debt, sell assets or obtain additional financing to meet our debt obligations and other cash needs. We cannot assure you that any such refinancing, sale of assets or additional financing would be possible on terms that we would find acceptable. In addition, we may incur prepayment penalties and other costs in connection with the refinancing of our fixed rate debt.

We are obligated to comply with financial and other covenants in our debt that could restrict our operating activities, and the failure to comply could result in defaults that accelerate the payment under our debt.

Our secured debt generally contains customary covenants, including, among others, provisions:

relating to the maintenance of the property securing the debt;

limiting the ability of restricted subsidiaries to make payments to us;

restricting our ability to consolidate, merge or sell our assets;

restricting our ability to sell, assign or further encumber the properties securing the debt;

restricting our ability to incur additional debt; and

restricting our ability to amend, modify or assign existing leases.

Our unsecured debt, both current and future, may contain various restrictive covenants. The covenants in our current unsecured debt include, among others, provisions restricting our ability to:

incur or guarantee additional debt;

enter into transactions with certain affiliates;

create certain liens; and

consolidate, merge or sell our assets.

Our ability to meet some of the covenants in our debt, including covenants related to the condition and use of the property or payment of insurance and real estate taxes, may be dependent on the performance by our tenants under their leases.

In addition, certain covenants in both our secured and unsecured debt are financial covenants. These financial covenants require us to meet certain financial ratios, including debt service coverage ratios, leverage and match-funding ratios, and to meet consolidated net worth or tangible net worth requirements.

As of March 31, 2004, we were in compliance with all such covenants. If we were to breach any of our debt covenants and did not cure the breach within any applicable cure period, our lenders or trustees could require us to repay the debt immediately, and, if the debt is secured, could immediately begin proceedings to take possession of the property securing the loan. Some of our debt arrangements are cross-defaulted, which means that the lenders under those debt arrangements can put us in default and require immediate repayment of their debt if we breach and fail to cure a covenant under certain of our other debt obligations. As a result, any default under our debt covenants could have an adverse effect on our financial condition and our results of operations.

Our ability to grow will be limited if we cannot obtain additional capital or refinance our maturing debt.

Our growth strategy includes continuing to acquire properties that are operated by franchised automobile dealerships and motor vehicle service, repair or parts businesses, used vehicle businesses or other related businesses. We believe that it will be difficult to fund our expected growth with cash from operating activities because, in addition to other requirements, we are required to distribute to our shareholders at least 90% of our taxable income each year to continue to qualify as a real estate investment trust, or REIT, for federal income tax purposes. As a result, we must

rely primarily upon the availability of debt or equity capital, which may or may not be available on favorable terms or at all. The debt could include unsecured or mortgage loans from lenders or the sale of debt securities in a private placement or public offering. Equity capital could include our common or preferred shares or

units of limited partnership interest of the Partnership. We cannot guarantee that additional financing, refinancing or other capital will be available in the amounts we desire or on favorable terms. There are fewer sources of mortgage financing for our type of property than for many other types of commercial real estate. Our access to debt or equity capital depends on a number of factors, including the market s perception of our growth potential and our current and potential future earnings. Depending on the outcome of these factors, we could experience delay or difficulty in implementing our growth strategy on satisfactory terms, or could be unable to implement this strategy.

We may not be able to acquire additional properties on terms we believe are attractive, or at all.

There may not be opportunities for further acquisitions of properties or opportunities to finance the acquisition of properties on terms that meet our investment criteria. We may not be able to take advantage of the opportunities with which we are presented. This may affect our expected growth.

We may suffer if the dealer groups that lease the properties owned by us are unable to compete in the automotive retail industry effectively or operate profitably.

Our strategy focuses on leasing real estate to dealer groups that have a long history of operating multi-site, multi-franchised dealerships, generally targeting the largest dealer groups in terms of revenues in the largest metropolitan areas in the U.S. in terms of population.

Many factors affect the automotive retail industry and sales and servicing profitability, including general economic conditions and overall consumer confidence, the level of discretionary personal income, interest rates, automotive innovation and credit availability. Most of the dealer groups that lease our properties compete with other well-run dealerships. State franchise laws currently regulate competition and fair business practices between dealerships and prohibit manufacturers from selling directly to consumers. Competition may become stiffer if the state franchise laws are modified. In addition, the automotive retail industry is undergoing consolidation. Dealer groups that sell motor vehicles of a single or a limited number of brands are increasingly being acquired by dealer groups that represent many manufacturers and brands, resulting in larger and more diverse competitors. Dealer groups also face competition from motor vehicle service, repair or parts businesses that are not part of or affiliated with franchised automobile dealerships.

In addition, the dealer groups that lease our properties may face increased pricing pressure on new vehicle sales as a result of the increased availability to the public of vehicle pricing and quality information. Consumers are placing an increased reliance on this information to help them decide which vehicle to purchase. The use of the Internet and other sources of vehicle pricing and quality information by consumers may have a negative effect on new vehicle sales margins.

An economic downturn within the automotive retail industry could have a more significant effect on our financial results than if we had diversified our investments into properties used by other types of businesses. In addition, the failure of the dealer groups that lease our properties to compete effectively could adversely affect our financial condition and results of operations.

We may be harmed if manufacturers change production, supply, vehicle financing, incentives, warranty programs, marketing or other practices.

A tenant s ability to pay rent and perform its other obligations under a lease will be dependent to a significant extent on its relationship with the motor vehicle manufacturer. The tenants or their related dealer groups generally operate dealerships that sell the products of more than one manufacturer. The sales mix of makes and models of motor vehicles tends to change periodically due to consumer preferences; therefore, current sales of the makes or models of

one manufacturer may not reflect the level of future sales of that manufacturer s products. A reduction in supply, particularly of certain models, could lower automobile sales, which in turn could negatively impact service and parts sales. Other factors which can affect sales include the manufacturer s financial condition, marketing and incentive programs and expenditures; ability and desire to finance the sale of vehicles or provide warranties to consumers on vehicles sold; vehicle design; production capabilities and management of the manufacturer; strikes and other labor actions by unions; negative publicity; product recalls; or litigation. The tenant

may be unable to pay rent or meet other lease obligations if a dealership s motor vehicle supply is reduced. Manufacturers exercise a certain degree of control over dealerships, and the franchise agreements between the dealer groups and the manufacturers provide for termination or non-renewal for a variety of causes. We have no rights under the franchise agreements. If a manufacturer terminates or declines to renew one or more franchise agreements or negotiates terms for renewal that are better for the manufacturer, the tenant may be unable to pay rent to us and perform its other obligations under the lease.

There are inherent risks related to our financing of new construction and improvements.

Under certain circumstances, we agree to provide construction or improvement financing to certain of our tenants for new or existing dealership facilities on land we own. Pursuant to our lease and other documentation, our tenant is generally responsible for timely completion of the approved project as budgeted and is generally contractually obligated to protect us from all of the risks noted below. However, if our tenant fails to perform all of its obligations, it would be in default. In the event of such default, we may be responsible for risks that are inherent in new construction or facility improvements, including:

- cost overruns;
- delays because of a number of factors, including unforeseen circumstances, strikes, labor disputes or supply disruptions, zoning, permitting and approval issues, and bad weather and other acts of God;
- design and construction defects;
- contractor and subcontractor disputes and mechanics liens; and
- lack of income-generating capacity until completion.

Any of these situations could have an adverse effect on our financial condition and results of operations and on the amount of funds available for distribution to our shareholders.

Our insurance does not cover losses that result from mold, terrorist acts or earthquakes.

We do not currently maintain and typically do not require our tenants to maintain insurance for items such as mold, terrorism or earthquakes. Although our tenants would typically be required to indemnify us against loss or damage from any cause and to maintain the improvements, if our tenants are unable to perform such obligations, and there is no insurance coverage, we may suffer a loss.

Our operations and financial condition could be adversely affected by a number of factors affecting the value of real estate.

Our investments are and will continue to be subject to the risks generally incident to the ownership of real property, including:

- adverse changes in certain economic conditions;
- changes in the investment climate for real estate;
- changes in real estate tax rates and other operating expenses;
- adverse changes in governmental rules and fiscal policies, including zoning and land use;

the relative illiquidity of real estate;

compliance with environmental and other ordinances, regulations and laws;

acts of God, which may result in uninsured losses; and

other factors that are beyond our control (such as acts of war or terrorism).

Several material factors are discussed below.

Real estate tax levels could increase. Tax assessments on our properties may rise as a result of our acquisition of such properties or due to general market conditions. While the lease obligates the tenant to pay taxes, a tenant may be unable to pay taxes, or the increased costs could make the property less valuable in the future.

Operating expenses could increase. The properties will be exposed to risks common to operating a commercial real estate property, any or all of which may affect us. For example, property-related costs include utility costs, operating expenses, insurance costs, repairs and maintenance, and administrative expenses. While the lease typically obligates the tenant to pay all such expenses, a tenant may be unable to do so. If we are unable to lease properties on a basis that obligates the tenants to pay such amounts, or if a tenant fails to or is unable to pay these costs, then we could be required to pay them.

We do not exercise complete control over the management or maintenance of the properties we lease. Our leases generally require that our tenants maintain the properties in good order, repair and appearance, and in compliance with all applicable laws. During the terms of the leases, we do not have the authority to require any tenants to operate the properties in a particular manner or to govern any particular aspect of their operation, except for general requirements in the leases.

If holders of Units exercise redemption rights or holders of our convertible notes exercise conversion rights, the number of common shares outstanding will increase, which may depress the price shareholders would receive if they sold their common shares.

The Partnership has issued, and in the future may issue, Units, generally as full or partial payment for the acquisition of properties. Units are redeemable by the holder generally after at least a one-year holding period. The Partnership is obligated to redeem the Units for cash, but we may elect to assume the obligation of the Partnership, in which case we may pay cash or issue common shares. Units that are redeemed for shares will be exchanged on a one-for-one basis. As of March 31, 2004, approximately 7,761,000 Units were outstanding and held by parties other than us, all of which were redeemable on such date.

On May 12, 2004, we issued $110.0 million aggregate principal amount of 6% Convertible Notes due May 15, 2024. The notes are convertible, at the option of the holder, into our common shares at an initial conversion price of $35.5679 per share, subject to adjustment, under the following circumstances: (i) if the price of our common shares or the price of the notes reaches specified thresholds, (ii) if we call the notes for redemption, or (iii) upon the occurrence of specified business transactions. The initial conversion price is equivalent to a conversion rate of 28.1152 shares per $1,000 principal amount of notes. Based upon the initial conversion rate, if the notes were convertible on the date of issue and all holders of the notes elected to exercise their conversion rights, we would have been required to issue 3,092,676 common shares to the holders of the notes.

The redemption of Units for common shares and the conversion of the convertible notes into common shares will increase the number of common shares outstanding and available for sale, which may decrease the market price of our common shares. In addition, the existence of a significant number of Units and the notes may decrease the market price of our common shares.

Environmental laws and regulations could reduce the value of our properties or our tenants profitability.

All real property and the operations conducted on real property are subject to federal, state and local laws and regulations relating to hazardous materials, environmental protection and human health and safety. Under various federal, state and local laws, ordinances and regulations, we, our tenants or operators may be required to

investigate and clean up certain hazardous or toxic substances released on or in properties we own or operate, and also may be required to pay other costs relating to hazardous or toxic substances. This liability may be imposed without regard to whether we or our tenants or operators knew about the release of these types of substances or were responsible for their release. The presence of contamination or the failure to remediate properly contamination at any of our properties may adversely affect our ability to sell or lease those properties or to borrow using those properties as collateral. The costs or liabilities could exceed the value of the affected real estate. The uses of any of our properties prior to our acquisition of the property and the building materials and products used at the property are among the property-specific factors that will affect how the environmental laws are applied to our properties. By the nature of their businesses, our tenants utilize petroleum, cleaning agents and other potentially hazardous materials. If we are subject to any material environmental liabilities, the liabilities could adversely affect our results of operations and our ability to meet our obligations. We cannot predict what other environmental legislation or regulations will be enacted in the future, how existing or future laws or regulations will be administered or interpreted or what environmental conditions may be found to exist on the properties in the future. Compliance with existing and new laws and regulations may require us or the tenants to spend funds to remedy environmental problems. Our tenants, like many of their competitors, have incurred, and will continue to incur, capital and operating expenditures and other costs associated with complying with these laws and regulations, which will adversely affect their potential profitability.

Generally, our tenants must comply with environmental laws and meet remediation requirements. Our leases typically impose obligations on our tenants to indemnify us from any compliance costs we may experience as a result of the environmental conditions on the property. If a lease does not require compliance by the tenant, however, or if a tenant fails to or cannot comply, we could be forced to pay these costs. In addition, in some cases we are responsible for adverse environmental conditions not caused by our tenant. If not addressed, environmental conditions could impair our ability to sell or re-lease the affected properties in the future or result in lower sales prices or rent payments.

The Americans with Disabilities Act of 1990 could require us to take remedial steps with respect to newly acquired properties.

The properties, as commercial facilities, are required to comply with Title III of the Americans with Disabilities Act of 1990. Investigation of a property may reveal non-compliance with this Act. The requirements of the Act, or of other federal, state or local laws, also may change in the future. Future compliance with the Act may require expensive changes to the properties. Although the tenant will typically have responsibility for complying with the Act, we may have to pay the costs if a tenant does not or cannot comply.

The revenues generated by our tenants could be negatively affected by various federal, state and local laws and regulations to which they are subject.

We and our tenants are subject to a wide range of federal, state and local laws and regulations, such as local licensing requirements, land use ordinances, consumer protection laws, and fire, life-safety and similar requirements which regulate the use of the properties. The leases typically require that each tenant comply with all laws and regulations. Failure to comply could result in fines by governmental authorities, awards of damages to private litigants, or restrictions on the ability to conduct business on such properties. Non-compliance of this sort could impair the ability of a tenant to pay rent, could require us to pay penalties or fines relating to any non-compliance, and could adversely affect our ability to re-sell or re-lease a property.

Certain members of our Board of Trustees have interests that could conflict with the interests of other shareholders.

Certain conflicts of interest exist between us and Messrs. Pohanka, Rosenthal and Sheehy, each of whom :

- is one of our Trustees;
- is affiliated with entities that have sold property to us;

owns or is affiliated with owners of units in the Partnership; and

is affiliated with existing tenants that lease property from us.

Messrs. Pohanka, Rosenthal and Sheehy may have the ability to influence our business and operations in connection with the following:

the terms of the leases for future properties that may be acquired from any one of them or related entities;

the exercise or waiver of our rights under a lease with one of them or related entities, including rights of first offer and repurchase rights;

the decision to sell a property;

the terms of any lock-out restrictions, which limit our ability to sell particular properties; and

the enforcement or waiver of the terms of any leases or other agreements with any one of them or related entities.

If other companies seek to pursue the strategy of acquiring properties operated by dealerships, our acquisition costs may increase, the number of available acquisition opportunities and rental rates may decrease and the terms of our leases may become less attractive.

We believe that we currently are the only publicly traded real estate company exclusively pursuing the strategy of purchasing real estate (land, buildings and other improvements), which we simultaneously lease to dealerships under long-term, triple-net leases. However, other public and private entities do target properties operated by dealerships for sale-leaseback transactions. Some of these companies may have greater financial resources and/or general real estate experience than we have. We believe that competition for properties will primarily be on the basis of established relationships in the marketplace, acquisition price, availability and flexibility of debt financing and rental and other lease terms. Competition could increase acquisition prices and decrease acquisition opportunities and rental rates, and the terms of our leases may become less attractive. This in turn could adversely impact our financial results.

Litigation judgments or settlements could have a material adverse effect on our operations and financial condition.

We are, and from time to time we may be, a party to litigation, which may have a material adverse effect on our operations and financial condition. Currently, we are engaged in litigation with Michael Burkitt, a former employee who currently serves as the President, Chief Executive Officer, and a member of the board of directors of Milestone Realty Trust, a Maryland corporation, which we refer to as Milestone. We are also engaged in litigation with Milestone and three of its sponsors and investors. A description of these proceedings can be found in our periodic filings with the SEC. If any lawsuits were to be determined adversely to us or a settlement involving a payment of a material sum of money were to occur, there could be a material adverse effect on our financial condition.

Failure to qualify as a REIT would cause us to be taxed as a corporation, which would substantially reduce funds available for payment of distributions.

We believe that we are organized and qualified as a REIT, and currently intend to operate in a manner that will allow us to continue to qualify as a REIT for federal income tax purposes under the Internal Revenue Code of 1986, as amended, which we refer to as the Code. However, the IRS could determine that we are not qualified as a REIT under the Code. In addition, we may not remain qualified as a REIT in the future.

Qualification as a REIT involves the application of highly technical and complex Code provisions. The

complexity of these provisions and of the applicable income tax regulations that have been issued under the Code by the United States Department of Treasury is greater in the case of a REIT that holds its assets in partnership form. Certain facts and circumstances not entirely within our control may affect our ability to qualify as a REIT. For example, to qualify as a REIT, at least 95% of our gross income in any year must be derived from qualifying rents and other income. Satisfying this requirement could be difficult, for example, if defaults by tenants were to reduce the amount of income from qualifying rents. Also, we must make annual distributions to shareholders of at least 90% of our net REIT taxable income (excluding capital gains). In addition, new legislation, new regulations, new administrative interpretations or new court decisions may significantly change the tax laws with respect to qualification as a REIT or the federal income tax consequences of such qualification.

If we fail to qualify as a REIT:

- we would not be allowed a deduction for distributions to shareholders in computing taxable income;
- we would be subject to federal income tax at regular corporate rates;
- we could be subject to the federal alternative minimum tax;
- unless we are entitled to relief under specific statutory provisions, we could not elect to be taxed as a REIT for four taxable years following the year during which we were disqualified;
- we could be required to pay significant income taxes, which would substantially reduce the funds available for investment and for distribution to our shareholders for each year in which we failed to qualify; and
- we would no longer be required by law to make any distributions to our shareholders.

We believe that the Partnership is treated as a partnership, and not as a corporation, for federal income tax purposes. If the IRS were to challenge successfully the status of the Partnership as a partnership for federal income tax purposes:

- the Partnership would be taxed as a corporation;
- we would cease to qualify as a REIT for federal income tax purposes; and
- the amount of cash available for distribution to our shareholders would be substantially reduced.

We may be required to incur additional debt to qualify as a REIT.

Generally, a REIT must make annual distributions to shareholders of at least 90% of its REIT taxable income (excluding capital gains). We are subject to income tax on amounts of undistributed REIT taxable income and net capital gain. In addition, we would be subject to a 4% excise tax if we fail to distribute sufficient income to meet a minimum distribution test based on our ordinary income, capital gain and aggregate undistributed income from prior years.

We intend to make distributions to shareholders to comply with the Code s distribution provisions and to avoid federal income and excise tax. Because our income is derived primarily from our share of income from the Partnership, our cash flow will consist primarily of distributions from the Partnership. We may need to borrow funds to meet our distribution requirements because:

- our income or the Partnership s income may not be matched by our or their related expenses at the time the income is considered received for purposes of determining taxable income; and

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non-deductible capital expenditures, creation of reserves, or debt service requirements may reduce available cash but not taxable income.

In these circumstances, we might have to borrow funds on unfavorable terms and even if our management believes the market conditions make borrowing financially unattractive.

The structure of our leases may jeopardize our ability to qualify as a REIT.

If the IRS were to challenge successfully the characterization of one or more of our leases of properties as leases for federal income tax purposes, the Partnership would not be treated as the owner of the related property or properties for federal income tax purposes. As a result, the Partnership would lose tax depreciation and cost recovery deductions with respect to one or more of our properties, which in turn could cause us to fail to qualify as a REIT. Although we will use our best efforts to structure any leasing transaction for properties acquired in the future so the lease will be characterized as a lease and the Partnership will be treated as the owner of the property for federal income tax purposes, we will not seek an advance ruling from the IRS and do not intend to seek an opinion of counsel that the Partnership will be treated as the owner of any leased properties for federal income tax purposes. Thus, the IRS could determine that existing or future leases will not be treated as leases for federal income tax purposes, which could adversely affect our financial condition and results of operations.

To maintain our status as a REIT, we limit the amount of shares any one shareholder can own.

The Code imposes certain limitations on the ownership of the stock of a REIT. For example, not more than 50% in value of our outstanding shares of capital stock may be owned, actually or constructively, by five or fewer individuals (as defined in the Code). To protect our REIT status, our declaration of trust prohibits any one shareholder from owning (actually or constructively) more than 9.9% of the outstanding common shares or of any class or series of outstanding preferred shares. The constructive ownership rules are complex. Shares of our capital stock owned, actually or constructively, by a group of related individuals and/or entities may be treated as constructively owned by one of those individuals or entities. As a result, the acquisition of less than 9.9% of the outstanding common shares and/or a class of series of preferred shares (or the acquisition of an interest in an entity that owns common or preferred shares), by an individual or entity could cause that individual or entity (or another) to own constructively more than 9.9% of the outstanding stock. If that happened, either the transfer or ownership would be void or the shares would be transferred to a charitable trust and then sold to someone who can own those shares without violating the 9.9% ownership limits.

The Board of Trustees and two-thirds of our shareholders eligible to vote at a shareholder meeting may remove these restrictions if they determine it is no longer in our best interests to attempt to qualify, or to continue to qualify, as a REIT. The 9.9% ownership restrictions may delay, defer or prevent a transaction or a change of our control that might involve a premium price for the common shares or otherwise be in the shareholders best interest.

Dividends of regular corporations receive favorable tax treatment, but those from REITs generally do not.

On May 28, 2003, the President signed into law the Jobs and Growth Tax Relief Reconciliation Act of 2003 (which we will refer to as the Act). Under the Act, the current maximum tax rate on the long-term capital gains of non-corporate taxpayers is reduced to 15% for tax years beginning on or before December 31, 2008. The Act also reduced the tax rate on qualified dividend income to the maximum capital gains rate. Because, as a REIT, we are not generally subject to tax on the portion of our REIT taxable income or capital gains distributed to our shareholders, our distributions are not generally eligible for this new tax rate on dividends. As a result, our ordinary REIT distributions continue to be taxed at the higher tax rates applicable to ordinary income. Without further legislation, the maximum tax rate on long-term capital gains will revert to 20% in 2009, and dividends will again be subject to tax at ordinary rates.

We cannot assure you we will continue to pay dividends at historical rates.

Our ability to continue to pay dividends on our common shares at historical rates or to increase our common share dividend rate, and our ability to pay dividends on our preferred shares and to service our debt, will

depend on a number of factors, including, among others, the following:

- our financial condition and results of future operations;
- the performance of lease terms by tenants;
- the terms of our loan covenants; and
- our ability to acquire, finance and lease additional properties at attractive rates.

If we do not maintain or increase the dividend rate on our common shares, it could have an adverse effect on the market price of our common shares. Our outstanding preferred shares have a fixed dividend rate, and, with respect to the right to the payment of dividends, such shares rank senior to our common shares. Any preferred shares we may offer in the future may have similar provisions. In addition to being subject to payment in full of the dividends on our outstanding preferred shares, payment of dividends on our common shares also are subject to payment of interest on any debt securities we may offer, and may be subject to payment in full of the dividends on any preferred shares we may offer in the future.

Certain tax and anti-takeover provisions of our declaration of trust and bylaws may inhibit a change of our control.

Certain provisions contained in our declaration of trust and bylaws and the Maryland General Corporation Law, as applicable to Maryland REITs, may discourage a third party from making a tender offer or acquisition proposal to us. If this were to happen, it could delay, deter or prevent a change in control or the removal of existing management. These provisions also may delay or prevent the shareholders from receiving a premium for their common shares over then-prevailing market prices. These provisions include:

- the REIT ownership limits described above;
- authorization of the issuance of our preferred shares with powers, preferences or rights to be determined by the Board of Trustees;
- the requirement that a two-thirds vote of the holders of common shares is needed to remove a member of the Board of Trustees; and
- the terms of our declaration of trust regarding business combinations and control share acquisitions.

We have entered into lock-out agreements that could result in our inability to sell properties at an opportune time and increased costs to us.

In connection with our use of units in the Partnership as consideration for the acquisition of properties, we have entered into agreements that restrict our ability to sell, finance and refinance some of our properties for a period of time. These agreements generally prohibit us from taking these actions unless the Partnership also pays the contributing partners based on their tax liabilities as a result of the sale. These restrictions could result in our inability to sell these properties at an opportune time and increased costs to us.

We have the right to change some of our policies that may be important to our shareholders without shareholder consent.

Our major policies, including our policies with respect to investments, leverage, financing, growth, debt capitalization, match-funding, as well as our distributions, are determined by the Board of Trustees or those

committees or officers to whom the Board of Trustees has delegated that authority. The Board of Trustees may amend or revise these and other policies from time to time without shareholder vote. Accordingly, the shareholders may not have control over changes in our policies.

CAPITAL AUTOMOTIVE REIT

We are a self-administered and self-managed real estate company operating as a real estate investment trust, commonly referred to as a REIT, for federal income tax purposes. We were organized under the laws of the State of Maryland on October 20, 1997. Our executive officers are Thomas D. Eckert, President and Chief Executive Officer; David S. Kay, Senior Vice President, Chief Financial Officer and Treasurer; Jay M. Ferriero, Senior Vice President and Director of Acquisitions; John M. Weaver, Senior Vice President, Secretary and General Counsel and Lisa M. Clements, Vice President and Chief Accounting Officer.

Our primary business strategy is to purchase real estate (land, buildings and other improvements), which we simultaneously lease to operators of franchised automobile dealerships and motor vehicle service, repair or parts businesses, used vehicle businesses and other related businesses under long-term, triple-net leases. Triple-net leases typically require the tenant to pay all operating expenses of a property, including, but not limited to, all real estate taxes, assessments and other government charges, insurance, utilities, repairs and maintenance. We focus on leasing properties to dealer groups that have a long history of operating multi-site, multi-franchised dealerships, generally targeting the largest dealer groups in terms of revenues in the largest metropolitan areas in the U.S. in terms of population. In addition, we provide facility improvement and expansion funding, construction financing and take-out commitments in certain circumstances. We believe that we are the only publicly-traded real estate company exclusively pursuing this strategy. The objective of our strategy is to generate long-term, predictable, stable cash flow.

As of March 31, 2004, we had invested more than $1.9 billion in 324 properties located in 31 states, comprising approximately 2,356 acres of land and containing approximately 13.7 million square feet of buildings and improvements. Our tenants operate 448 motor vehicle franchises on our properties, representing 43 brands of motor vehicles, which include all of the top selling brands in the U.S.

Our principal executive offices are located at 8270 Greensboro Drive, Suite 950, McLean, Virginia 22102 and our telephone number is (703) 288-3075. Our website address is www.capitalautomotive.com. We make available free of charge on our website our annual report on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, and amendments to those reports as soon as reasonably practicable after electronically filed with or furnished to the Securities and Exchange Commission, commonly referred to as the SEC. The information on our website is not a part of this prospectus.

USE OF PROCEEDS

Unless otherwise specified in the applicable prospectus supplement, we will contribute the net proceeds of a sale of securities to the Partnership in exchange for securities of the Partnership with substantially identical economic terms. The Partnership will use the net proceeds from the sale of securities for one or more of the following:

repayment of debt;

acquisition of additional properties;

facility improvements and expansion fundings;

construction financing and take-out commitments;

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

working capital and general corporate purposes.

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DESCRIPTION OF SHARES OF BENEFICIAL INTEREST

We are a Maryland real estate investment trust. Your rights as a shareholder are governed by the Code of Maryland, including Title 8 of the Corporations and Associations Article, our declaration of trust and our bylaws. The following summary of the material terms, rights and preferences of the shares of beneficial interest is not complete. You should read our declaration of trust and bylaws for more complete information.

Authorized Shares

Our declaration of trust allows us to issue up to 100,000,000 common shares of beneficial interest, par value $.01 per share, and 20,000,000 preferred shares of beneficial interest, par value $.01 per share. As of March 31, 2004, we had 35,187,392 common shares outstanding and 3,950,0000 preferred shares outstanding, which were designated as 71/2% Series A Cumulative Redeemable Preferred Shares. Subsequent to March 31, 2004, we issued an additional 2,600,000 preferred shares, which were designated as 8% Series B Cumulative Redeemable Preferred Shares.

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

- classify or reclassify any authorized but unissued common shares or preferred shares into one or more classes or series of shares of beneficial interest;
- amend the declaration of trust to change the total number of shares of beneficial interest authorized; or
- amend the declaration of trust to change the authorized number of shares of any class or series of shares of beneficial interest.

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

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

Shareholder Liability

Under Maryland law, you will not be personally liable for any obligation of ours solely because you are a shareholder. Under our declaration of trust, our shareholders are not liable for our debts or obligations by reason of being a shareholder and will not be subject to any personal liability, in tort, contract or otherwise, to any person in connection with our property or affairs by reason of being a shareholder.

Notwithstanding these limitations, common law theories of piercing the corporate veil may be used to impose liability on shareholders in certain instances. Also, to the extent that we conduct operations in another jurisdiction where the law of that jurisdiction:

- does not recognize the limitations of liability afforded by contract, Maryland law and our declaration of trust; and
- does not provide similar limitations of liability applicable to real estate investment trusts or other trusts,

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a third party could attempt, under limited circumstances, to assert a claim against our shareholders based on our obligations.

Common Shares

All common shares offered through this prospectus will be duly authorized, fully paid and nonassessable. As a shareholder, you will be entitled to receive distributions, or dividends, on the shares you own if the Board of Trustees authorizes a dividend out of our legally available assets. Your right to receive those dividends may be affected, however, by the preferential rights of any other class or series of shares of beneficial interest and the provisions of our declaration of trust regarding restrictions on the transfer of shares of beneficial interest. For example, you may not receive dividends if no funds are available for distribution after we pay dividends to holders of preferred shares. You will also be entitled to receive dividends based on our assets available for distribution to common shareholders if we liquidate, dissolve or wind-up our operations. The amount you, as a shareholder, would receive in the distribution would be determined by the amount of your beneficial ownership of us in comparison with other beneficial owners. Assets will be available for distribution to shareholders only after we have paid all of our known debts and liabilities and paid the holders of any preferred shares we may issue that are outstanding at that time.

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

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

- convert your shares into any other security;
- have any funds set aside for future payments;
- require us to repurchase your shares; or
- purchase any of our securities, if other securities are offered for sale, other than as a member of the general public.

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

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

- our intentional disqualification as a real estate investment trust or revocation of our election to be taxed as a real estate investment trust (which requires the affirmative vote of the holders of two-thirds of the number of common shares outstanding and entitled to vote on such a matter),
- the election of trustees (which requires a plurality of all the votes cast at a meeting of our shareholders at which a quorum is present),

the removal of trustees (which requires the affirmative vote of the holders of two-thirds of the number of common shares outstanding and entitled to vote on such a matter),

the amendment of our declaration of trust by shareholders (which requires the affirmative vote of a majority of votes entitled to be cast on the matter, except under certain circumstances specified in our declaration of trust that require the affirmative vote of two-thirds of all the votes entitled to be cast on the matter),

our dissolution (which requires the affirmative vote of two-thirds of all the votes entitled to be cast on the matter), and

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

Our declaration of trust permits the trustees by a two-thirds vote to amend the declaration of trust from time to time to qualify as a real estate investment trust under Maryland law without the approval of you or other shareholders. Our declaration of trust permits the Board of Trustees to amend the declaration of trust to increase or decrease the total number of shares of beneficial interest or the number of shares of any class of shares of beneficial interest that we have authority to issue without approval by you or other shareholders.

Preemptive Rights. Under our declaration of trust, no holder of shares of beneficial interest has any preemptive right to subscribe for any issuance of additional shares, other than as the Board of Trustees may provide in its sole discretion.

Stock Market Listing. Our common shares are traded on the Nasdaq National Market under the symbol CARS.

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

Preferred Shares

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

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

the title and stated value of those preferred shares;

the number of preferred shares offered and the offering price of those preferred shares;

the dividend rate(s), period(s) and/or payment date(s) or method(s) of calculation of any of those terms that apply to those preferred shares;

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

the terms and amount of a sinking fund, if any, for the purchase or redemption of those preferred shares;

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the redemption rights, including conditions and the redemption price(s), if applicable, of those preferred shares;

any listing of those preferred shares on any securities exchange or with any national securities association;

the terms and conditions, if applicable, upon which those preferred shares will be convertible into common shares or any of our other securities, including the conversion price or rate (or manner of calculation thereof);

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

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

the procedures for any auction and remarketing, if any, for those preferred shares;

any other specific terms, preferences, rights, limitations or restrictions of those preferred shares;

a discussion of any material federal income tax considerations applicable to those preferred shares; and

any limitations on direct or beneficial ownership and restrictions on transfer in addition to those described in Restrictions on Ownership and Transfer, in each case as may be appropriate to preserve our status as a real estate investment trust.

The terms of any preferred shares we issue through this prospectus will be set forth in an articles supplementary or amendment to our declaration of trust. We will file the articles supplementary or amendment as an exhibit to the registration statement that includes this prospectus, or as an exhibit to a filing with the SEC that is incorporated by reference into this prospectus. The description of preferred shares in any prospectus supplement will not describe all of the terms of the preferred shares in detail. You should read the applicable articles supplementary or amendment to our declaration of trust for a complete description of all of the terms.

Rank. Unless we say otherwise in a prospectus supplement, the preferred shares offered through that supplement will, with respect to dividend rights and rights upon our liquidation, dissolution or winding up, rank:

senior to all classes or series of our common shares, and to all other equity securities ranking junior to those preferred shares;

on a parity with our Series A and Series B preferred shares and all of our equity securities ranking on a parity with the preferred shares; and

junior to all of our equity securities ranking senior to the preferred shares.

The term equity securities does not include convertible debt securities.

Dividends. Subject to any preferential rights of any outstanding shares or series of shares and to the provisions of our declaration of trust regarding ownership of shares in excess of the ownership limitation described below under "-Restrictions on Ownership and Transfer, our preferred shareholders are entitled to receive dividends, when and as authorized by our Board of Trustees, out of legally available funds.

Redemption. If we provide for a redemption right in a prospectus supplement, the preferred shares offered

through that supplement will be subject to mandatory redemption or redemption at our option, in whole or in part, in each case upon the terms, at the times and at the redemption prices set forth in that supplement.

Liquidation Preference. As to any preferred shares offered through this prospectus, the applicable supplement shall provide that, upon the voluntary or involuntary liquidation, dissolution or winding up of our affairs, the holders of those preferred shares shall receive, before any distribution or payment shall be made to the holders of any other class or series of shares ranking junior to those preferred shares in our distribution of assets upon any liquidation, dissolution or winding up, and after payment or provision for payment of our debts and other liabilities, out of our assets legally available for distribution to shareholders, liquidating distributions in the amount of any liquidation preference per share (set forth in the applicable supplement), plus an amount, if applicable, equal to all distributions accrued and unpaid thereon (not including any accumulation in respect of unpaid distributions for prior distribution periods if those preferred shares do not have a cumulative distribution). After payment of the full amount of the liquidating distributions to which they are entitled, the holders of those preferred shares will have no right or claim to any of our remaining assets. In the event that, upon our voluntary or involuntary liquidation, dissolution or winding up, the legally available assets are insufficient to pay the amount of the liquidating distributions on all of those outstanding preferred shares and the corresponding amounts payable on all of our shares of other classes or series of equity security ranking on a parity with those preferred shares in the distribution of assets upon liquidation, dissolution or winding up, then the holders of those preferred shares and all other such classes or series of equity security shall share ratably in any such distribution of assets in proportion to the full liquidating distributions to which they would otherwise be respectively entitled.

If the liquidating distributions are made in full to all holders of preferred shares entitled to receive those distributions prior to any other classes or series of equity security ranking junior to the preferred shares upon our liquidation, dissolution or winding up, then our remaining assets shall be distributed among the holders of those junior classes or series of equity shares, in each case according to their respective rights and preferences and their respective number of shares.

Voting Rights. Unless otherwise indicated in the applicable supplement, holders of our preferred shares will not have any voting rights, except as may be required by applicable law or any applicable rules and regulations of the Nasdaq National Market.

Conversion Rights. The terms and conditions, if any, upon which any series of preferred shares is convertible into common shares will be set forth in the prospectus supplement relating to the offering of those preferred shares. These terms typically will include:

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

the conversion price (or manner of calculation thereof);

the conversion period;

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

the events requiring an adjustment of the conversion price; and