

SAUL CENTERS INC  
Form S-3  
May 17, 2013  
Table of Contents

As filed with the Securities and Exchange Commission on May 17, 2013

Registration No. 333-

**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

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

**SAUL CENTERS, INC.**

(Exact name of registrant as specified in its charter)

Maryland  
(State or other jurisdiction of

52-1833074  
(I.R.S. Employer

Edgar Filing: SAUL CENTERS INC - Form S-3

incorporation or organization)

Identification No.)

7501 Wisconsin Avenue

Bethesda, Maryland 20814

Telephone: (301) 986-6200

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

Scott V. Schneider

Saul Centers, Inc.

7501 Wisconsin Avenue

Bethesda, Maryland 20814

Telephone: (301) 986-6200

(Name, address, including zip code, and telephone number, including area code, of agent for service)

*Copies to:*

Jeffrey B. Grill, Esq.

Eric M. Green, Esq.

Pillsbury Winthrop Shaw Pittman LLP

2300 N Street, N.W.

Washington, D.C. 20037

(202) 663-8000

**Approximate date of commencement of proposed sale of the securities to the public:** From time to time following 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. "

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 only in connection with dividend or interest reinvestment plans, check the following box. x

## Edgar Filing: SAUL CENTERS INC - Form S-3

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. "

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. "

If this Form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box. "

If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box. "

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act. (Check One):

Large accelerated filer "	Accelerated filer	x
Non-accelerated filer " (Do not check if a smaller reporting company)	Smaller reporting company	"

### CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered	Amount to be Registered	Proposed Maximum Offering Price Per Unit (1)	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee (3)
Common Stock, \$0.01 par value per share(2)	4,929,447	\$45.11	\$222,367,355	\$30,331

- (1) Estimated solely for purposes of calculating the registration fee pursuant to Rule 457(c) under the Securities Act of 1933 and based upon the average of the high and low prices reported on the New York Stock Exchange on May 14, 2013.
- (2) Such shares are being registered for resale from time to time by various selling stockholders or their pledgees.
- (3) The selling stockholders will pay this registration fee. The registration fee does not include an additional 10,583,819 shares of common stock previously registered by the Registrant under its registration statements on Form S-3 (File Nos. 333-88127, 333-41436, 333-60064, 333-123982, 333-151515 and 333-166751) which are included in a combined prospectus herein pursuant to Rule 429 under the Securities Act of 1933. Registration fees were previously paid by the Registrant and the selling stockholders in connection with such registration statements.

**The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933, as amended, or until the registration statement shall become effective on such**

date as the Commission, acting pursuant to said Section 8(a), may determine.

**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, Commission File Nos. 333-88127, 333-41436, 333-60064, 333-123982, 333-151515 and 333-166751 previously filed by the Registrant with the Securities and Exchange Commission.**

**Table of Contents**

**The information in this prospectus is not complete and may be changed. This prospectus is included in the registration statement filed by Saul Centers, Inc. with the Securities and Exchange Commission. The selling stockholders cannot sell their shares until that registration statement becomes effective. This prospectus is not an offer to sell these securities and we are not soliciting offers to buy these securities in any jurisdiction where the offer or sale is not permitted.**

**SUBJECT TO COMPLETION, DATED MAY 17, 2013**

**PROSPECTUS**

**10,583,819 Previously Registered Shares of Common Stock**

**4,929,447 Shares of Common Stock**

**\$0.01 Par Value Per Share**

This prospectus relates to 10,583,819 previously registered shares of our common stock and an additional 4,929,447 shares of our common stock, or the Shares, that may be offered for sale or otherwise transferred from time to time by the selling stockholders named in this prospectus or their pledgees. We will not receive any proceeds from the sale of the Shares by the selling stockholders or their pledgees.

Our common stock is traded on the New York Stock Exchange under the symbol BFS. On May 14, 2013 the last reported sale price of our common stock on the New York Stock Exchange was \$45.25 per share.

**Investing in our common stock involves certain risks. See Risk Factors beginning on page 14 of our Annual Report on Form 10-K for the fiscal year ended December 31, 2012, which is incorporated herein by reference, for risks relating to an investment in our common stock.**

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

**The date of this prospectus , 2013.**

**Table of Contents**

**TABLE OF CONTENTS**

**Prospectus**

	<b>Page</b>
<u>About this Prospectus</u>	4
<u>Forward-Looking Information</u>	4
<u>The Company</u>	5
<u>Risk Factors</u>	5
<u>Use of Proceeds</u>	5
<u>Selling Stockholders</u>	5
<u>Certain Provisions of Maryland Law and Our Articles of Incorporation and Bylaws</u>	6
<u>Material Federal Income Tax Considerations</u>	12
<u>Plan of Distribution</u>	32
<u>Legal Matters</u>	33
<u>Experts</u>	33
<u>Where You Can Find More Information</u>	33

**You should rely only on the information in our prospectus, any prospectus supplement and the documents that are incorporated by reference. We have not authorized anyone else to provide you with different information. We are not offering these securities in any state where the offer is prohibited by law. You should not assume that the information in this prospectus, any prospectus supplement or any incorporated document is accurate as of any date other than the date of the document.**

**Table of Contents**

**ABOUT THIS PROSPECTUS**

This prospectus is part of a registration statement that we filed with the Securities and Exchange Commission, which we refer to as the SEC. The selling stockholders or their pledgees may sell the Shares described in this prospectus from time to time in one or more offerings. This prospectus provides you with a general description of the Shares. This prospectus does not contain all the information included in the registration statement. For further information, we refer you to the registration statement, including its exhibits. Statements contained in this prospectus about the provisions or contents of any agreement or other document are not necessarily complete. If the SEC's rules and regulations require that an agreement or document be filed as an exhibit to the registration statement, please see that agreement or document for a complete description of these matters.

References to we, us or our refer to Saul Centers, Inc. and Saul Holdings Limited Partnership, which we refer to as the Partnership, and their respective directly or indirectly owned subsidiaries, unless the context otherwise requires. References to Saul Centers and the Company refer solely to Saul Centers, Inc. We conduct our business and operations through the Partnership and/or directly or indirectly owned subsidiaries. The term you refers to a prospective investor. Saul Centers is the sole general partner of the Partnership and, as of March 31, 2013, owned approximately 74.5% of the units of partnership interest in the Partnership. In addition, B. Francis Saul II, our Chairman and Chief Executive Officer, family members of Mr. Saul, entities controlled by Mr. Saul and other affiliates of Mr. Saul, whom we collectively refer to as The Saul Organization, hold all of the limited partnership interests in the Partnership, which are represented by units. In general, units are convertible into shares of the common stock of Saul Centers on a one-for-one basis.

**FORWARD-LOOKING INFORMATION**

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

**Table of Contents**

**THE COMPANY**

Our primary business is the ownership, operation, management, leasing, acquisition, development and financing of community and neighborhood shopping centers and office properties, primarily in the Washington, D.C./Baltimore metropolitan area. As of March 31, 2013, we operated and managed a real estate portfolio of 50 shopping center properties, seven mixed-use properties which are comprised of office, retail and multi-family residential uses, and two (non-operating) development properties. For further information about the operation of these properties and Saul Centers, see our most recent Annual Report on Form 10-K and Quarterly Reports on Forms 10-Q, incorporated herein by reference. We elected to be taxed as a Real Estate Investment Trust, or REIT, for federal income tax purposes commencing with our taxable period ended December 31, 1993, and we intend to continue operating so as to qualify as a REIT.

Our principal executive offices are located at 7501 Wisconsin Avenue, Suite 1500, Bethesda, Maryland 20814-6522 and our telephone number is (301) 986-6200. Our website address is [www.saulcenters.com](http://www.saulcenters.com). The information contained in our website is not a part of this prospectus.

**RISK FACTORS**

You should consider carefully the risk factors incorporated in this prospectus by reference to our Annual Report on Form 10-K for the fiscal year ended December 31, 2012 and the other information contained in this prospectus before deciding to invest in our securities.

**USE OF PROCEEDS**

We will not receive any proceeds from the sale of shares of our common stock by the selling stockholders listed below. We paid all expenses related to the registration of 6,503,238 of the 10,583,819 shares that were previously registered under our registration statement on Form S-3 (File No. 333-88127) and are now included in this prospectus. The selling stockholders paid all expenses related to the registration of 4,080,581 of the 10,583,819 shares that were previously registered under our registration statements on Form S-3 (File Nos. 333-41436, 333-60064, 333-123982, 333-151515 and 333-166751) and will pay all expenses related to the registration of the additional 4,929,447 shares that are also included in this prospectus.

**SELLING STOCKHOLDERS**

Each of the selling stockholders is a member of The Saul Organization and is therefore an affiliate of B. Francis Saul II, our Chairman and Chief Executive Officer. The Shares covered by this prospectus were acquired by the selling stockholders (i) in open-market purchases on the New York Stock Exchange, (ii) through reinvestment of dividends through our dividend reinvestment plan or (iii) in transactions relating to our initial public offering. The selling stockholders have pledged a substantial amount of their shares of our common stock and their units issued by the Partnership (which are convertible into shares of our common stock) to secure financing obtained by the selling stockholders. As a result, pledgees of the selling stockholders may use this registration statement to sell shares pledged to them as collateral in the event the selling stockholders were to default and the pledgees were to sell their collateral. The selling stockholders also may plan to pledge the remaining shares of our common stock and units held by them to secure additional financing.



**Table of Contents**

The following table sets forth information as of May 7, 2013 with respect to direct ownership of common stock by the selling stockholders and has been provided to us by the selling stockholders.

Name	Shares Beneficially Owned Before Offering(1)	Percentage Beneficial Ownership Before Offering(1)	Number of Shares Offered by Selling Stockholder(1)	Percentage Beneficial Ownership After Offering(1)
B.F. Saul Real Estate Investment Trust	9,549,665	35.3%	9,549,665	
Dearborn, L.L.C.	2,276,682	8.4%	2,276,682	
Westminster Investing Corporation	643,779	2.4%	643,779	
B.F. Saul Property Company	564,618	2.1%	564,618	
B.F. Saul Company	258,852	1.0%	258,852	
Van Ness Square Corporation	609,173	2.2%	609,173	
Avenel Executive Park Phase II, L.L.C.	13,350	*	13,350	
SHLP Unit Acquisition Corp.	1,597,147	5.9%	1,597,147	

- (1) The ownership in Saul Centers reported above includes units of limited partnership interest of the Partnership held by the selling stockholders. In general, units are convertible into shares of our common stock on a one-for-one basis. However, units held by the selling stockholders are not convertible into our common stock at any time such conversion would cause The Saul Organization's ownership to exceed 39.9% in value of our issued and outstanding equity securities, which we refer to as the ownership limit. As of May 7, 2013, The Saul Organization (which includes the selling stockholders) was below the ownership limit. The units of limited partnership interest of the selling stockholders held as of May 7, 2013 are as follows:

B.F. Saul Real Estate Investment Trust	2,555,866
Dearborn, L.L.C.	1,810,922
Westminster Investing Corporation	240,053
B.F. Saul Property Company	224,496
B.F. Saul Company	
Van Ness Square Corporation	574,111
Avenel Executive Park Phase II, L.L.C.	10,967
SHLP Unit Acquisition Corp.	1,497,814

\* Less than one percent

**CERTAIN PROVISIONS OF MARYLAND LAW AND  
OUR ARTICLES OF INCORPORATION AND BYLAWS**

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

---

**Table of Contents**

more complete information. The business combination provisions and the control share acquisition provisions of Maryland law, both of which are discussed below, could have the effect of delaying or preventing a change in our control. Also, the removal of directors provisions and the advance notice provisions of the bylaws could have the effect of delaying or preventing a transaction or a change in our control. These provisions could have the effect of discouraging offers to acquire us and of increasing the difficulty of consummating any such offer, even if the offer contains a premium price for holders of our equity stock or otherwise benefits stockholders.

***Restrictions on Ownership and Transfer.*** Restrictions on ownership and transfer of shares are important to ensure that we meet certain conditions under the Internal Revenue Code of 1986, as amended, which we refer to as the Code, to qualify as a real estate investment trust, or a REIT. For example, the Code contains the following requirements.

No more than 50% in value of a REIT's stock may be owned, actually or constructively (based on attribution rules in the Code), by five or fewer individuals during the last half of a taxable year or a proportionate part of a shorter taxable year. Under the Code, individuals include certain tax-exempt entities, except that qualified domestic pension funds are not generally treated as individuals.

If a REIT, or an owner of 10% or more of a REIT, is treated as owning 10% or more of a tenant of the REIT's property, the rent received by the REIT from the tenant will not be qualifying income for purposes of the REIT gross income tests of the Code.

A REIT's stock or beneficial interests must be 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.

In order to maintain our qualification as a REIT, our articles of incorporation, subject to certain exceptions described below, provides that no person may own, or be deemed to own by virtue of the attribution provisions of the Code, more than 2.5% in value of our issued and outstanding equity securities with the exception of members of The Saul Organization, who are restricted to 39.9% in value of our issued and outstanding equity securities. In this prospectus, the term ownership limitation is used to describe this provision of our articles of incorporation.

Any transfer of shares will be null and void, and the intended transferee will acquire no rights in such shares if the transfer:

results in any person owning, directly or indirectly, shares in excess of the ownership limitation;

results in the shares being owned by fewer than 100 persons (determined without reference to any rules of attribution);

results in our being closely held (within the meaning of Section 856(h) of the Code); or

otherwise results in our failure to qualify as a REIT.

If a stockholder owns more than 1.9% of the value of our outstanding equity stock, then the stockholder must notify us of its share ownership by January 31 of each year.

The ownership limitation generally does not apply to the acquisition of stock by an underwriter that participates in a public offering of such stock. In addition, the Board of Directors may waive these restrictions on a case-by-case basis. The Board of Directors has authorized us to grant waivers to look-through entities, such as mutual funds, in which shares of equity stock owned by the entity are treated as owned proportionally by individuals who are the beneficial owners of the entity. Even though these entities may own stock in excess of the 2.5% ownership limit, no individual beneficially or constructively would own more than 2.5%. The Board of Directors has agreed to waive the ownership limit with respect to certain mutual funds and similar investors. In addition, the Board of Directors has agreed to waive the ownership limit with respect to certain bank pledgees of shares of our common stock and units issued by the Operating Partnership and held by members of The Saul Organization.



---

**Table of Contents**

The ownership limitation could have the effect of delaying, deferring or preventing a transaction or a change in our control that might involve a premium price for our stock or otherwise be in the best interest of our stockholders. All certificates representing shares of stock will bear a legend referring to the restrictions described above.

***Automatic Transfer of Stock to Trust.*** With certain exceptions described below, if any purported transfer of shares would violate any of the restrictions described in the immediately preceding paragraph, then the transfer will be null and void, and those shares will be designated as excess stock and transferred automatically to a trust. The transfer to the trust is effective as of the end of the business day next preceding the date of the purported transfer of such shares. The record holder of the shares that are designated as excess stock must deliver those shares to us for registration in the name of the trust. We will act as trustee of the trust. The beneficiary of the trust will be the persons to whom an interest in the excess stock is eventually transferred as provided below.

Any shares of excess stock remain issued and outstanding shares of stock. From and after the purported transfer resulting in excess stock, the record holder shall not be entitled to any dividends or distributions (except upon liquidation) or voting right, except as required by law, but shall be entitled to the right to payment of the purchase price of the shares. Any dividend or distribution paid to a record holder on excess stock shall be repaid to us upon demand. Subject to the ownership limitation, the excess stock may be retransferred by the record holder to any person if the excess stock will not be excess stock in the hands of the person at a price not to exceed:

the price paid by the record holder; or

if no consideration was paid, fair market value, at which point the excess stock will automatically be exchanged for the equity stock to which the excess stock was attributable.

In addition, the excess stock will be subject to repurchase by us at our election for a period of 90 days after the date of the purported transfer which resulted in such excess stock at a price per share equal to the lesser of (1) the price per share in the transaction that created the excess stock or (2) the fair market value of such shares on the date that we, or our designee, determine to exercise the repurchase right.

Any person who acquires or attempts to acquire shares of common stock or preferred stock which would be null and void under the restrictions described above, or any person who owned common stock or preferred stock that were transferred to a trust, must (1) give us immediate written notice of such event and (2) provide us such other information as requested in order to determine the effect, if any, of such transfer on our status as a REIT.

***Business Combinations.*** The Maryland General Corporation Law prohibits us from entering into business combinations and other corporate transactions unless special actions are taken. The business combinations that require these special actions include a merger, consolidation, share exchange, or, in certain circumstances, an asset transfer or issuance of equity securities when the combination is between us and an interested stockholder (as defined below). An interested stockholder is:

any person who beneficially owns 10% or more of the voting power of our shares; or

any of our affiliates which beneficially owned 10% or more of the voting power of our shares within two years prior to the date in question.

We may not engage in a business combination with an interested stockholder or any of its affiliates for five years after the interested stockholder becomes an interested stockholder. We may engage in business combinations with an interested stockholder if at least five years have passed since the person became an interested stockholder, but only if the transaction is:

recommended by our Board of Directors; and

approved by at least

80% of our outstanding shares entitled to vote; and

two-thirds of our outstanding shares entitled to vote that are not held by the interested stockholder.

## Table of Contents

Stockholder approval will not be required if our stockholders receive a minimum price (as defined in the statute) for their shares and our stockholders receive cash or the same form of consideration as the interested stockholder paid for its shares.

This prohibition does not apply to business combinations involving us that are exempted by the Board of Directors before the interested stockholder becomes an interested stockholder. Our articles of incorporation have exempted from this provision any business combination with a member of The Saul Organization.

**Control Share Acquisitions.** The Maryland General Corporation Law provides that control shares of a Maryland corporation acquired in a control share acquisition have no voting rights unless two-thirds of the stockholders (excluding shares owned by the acquirer, and by the officers and directors who are employees of the Maryland corporation) approve their voting rights.

Control Shares are shares that, if added with all other shares previously acquired, would entitle that person to vote, in electing the directors

10% or more but less than one-third of such shares;

one-third or more but less than a majority of such shares; or

a majority of the outstanding shares.

Control shares do not include shares the acquiring person is entitled to vote with stockholder approval. A control share acquisition means the acquisition of control shares, subject to certain exceptions.

If this provision becomes applicable to us, a person who has made or proposes to make a control share acquisition could, under certain circumstances, compel our Board of Directors to call a special meeting of stockholders to consider the voting rights of the control shares. We could also present the question at any stockholders meeting on our own.

If this provision becomes applicable to us, subject to certain conditions and limitations, we would be able to redeem any or all control shares. If voting rights for control shares were approved at a stockholders meeting and the acquirer were entitled to vote a majority of the shares entitled to vote, all other stockholders could exercise appraisal rights and exchange their shares for a fair value as defined by statute.

Our articles of incorporation state that the Maryland control share acquisition law will not apply to any acquisition of our capital stock by the following persons:

members of The Saul Organization;

directors, officers and employees of us and the Partnership; and

any other persons authorized by the Board of Directors.

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

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

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

## **Table of Contents**

***Indemnification of Directors and Officers.*** Our articles and bylaws require us to indemnify to the fullest extent permitted by and under the applicable provisions of Maryland General Corporation Law any person who is or was, or who agrees to become, one of our directors or officers or, while one of our directors, is or was serving or agrees to serve, as a director, officer, partner, joint venturer, employee or trustee of another entity, who, by reason of his or her status or service as such was, or is threatened to be made a party, or otherwise involved in any proceeding. The indemnification extends to all losses suffered and all expenses actually and reasonably incurred in connection with any proceeding. The Maryland General Corporation Law provides that we may indemnify directors and officers unless

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

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

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

Our articles of incorporation and bylaws require, as a condition to advancing expenses, (1) a written affirmation by the director or officer of his good faith belief that he has met the standard of conduct necessary for indemnification by us and (2) a written affirmation to repay the amount paid by us if it is determined that the director or officer was not entitled to indemnification.

Our articles of incorporation and bylaws also provide that:

we may, but are not required to, provide indemnification, payment or reimbursement of expenses to any of our employees or agents in such capacity or any person who is or was serving at our request as a director, officer, partner, joint venturer, employee, trustee or agent of another corporation or entity;

the Board of Directors may authorize management to act on our behalf in matters relating to indemnification, subject to any limitations that may be imposed by the Board of Directors and to the requirements of applicable law;

indemnification and payment or reimbursement of advances as may be permitted or required pursuant to our bylaws shall be furnished in accordance with the procedures set forth in the Maryland General Corporation Law; and

we may provide such other further indemnification or provision for the payment or advancement of expenses as may be permitted by the Maryland General Corporation Law for directors of Maryland corporations.

***Duties of Directors.*** Under Maryland law, there is a presumption that the act of a director satisfies the required standard of care. An act of a director relating to or affecting an acquisition or a potential acquisition of control is not subject under Maryland law to a higher duty or greater scrutiny than is applied to any other act of a director. This provision does not impose an enhanced level of scrutiny when a board implements anti-takeover measures in a change of control context, and shifts the burden of proof for demonstrating that the defensive mechanism adopted by a board is reasonable in relation to the threat posed to the board.

***Number of Directors; Classified Board.*** The number of directors may be increased or decreased pursuant to the bylaws, provided that the total number of directors may not be less than 3 or more than 15. Under Maryland law and our articles of incorporation, directors, subject to the rights of holders of any shares of preferred stock, are elected in three classes for staggered, three-year terms.

***Removal of Directors.*** Under the articles of incorporation, and subject to the rights of any holders of preferred stock, our stockholders may remove a director only with cause upon the affirmative vote of 75% of the Board of Directors or 75% of the number of shares outstanding and entitled to vote on that matter.





**Table of Contents**

***Vacancies on the Board of Directors.*** The bylaws provide that, subject to the rights of any holders of preferred stock, any vacancy on the Board of Directors, including a vacancy created by an increase in the number of directors, may be filled by vote of a majority of the remaining directors. Each director so elected shall serve for the unexpired term of the director he is replacing.

***Meetings of Stockholders.*** Our bylaws provide for an annual meeting of stockholders, to be held in April, to elect individuals to the Board of Directors for that class of directors then standing for election and transact such other business as may properly be brought before the meeting. Special meetings of stockholders may be called by our Chairman of the Board, President or by a majority of the Board of Directors, and shall be called at the request in writing of the holders of 25% of all votes entitled to be cast at the meeting.

Our bylaws provide that any action required or permitted to be taken at a meeting of stockholders may be taken without a meeting, if all of the shares entitled to vote on the matter consent to the action in writing, the written consents are filed with the records of the meetings of stockholders and each stockholder executed a written waiver of any right to dissent.

***Advance Notice for Stockholder Nominations and Stockholder New Business Proposals.*** Our bylaws require advance written notice for stockholders to nominate a director or bring other business before a meeting of stockholders. For an annual meeting, to nominate a director or bring other business before a meeting of stockholders, a stockholder must deliver notice to our Secretary not later than the close of business on the 60th day nor earlier than the close of business on the 90<sup>th</sup> day prior to the first anniversary of the preceding year's annual meeting. If the date of the annual meeting is advanced by more than 30 days or delayed by more than 60 days from the anniversary date, however, notice must be timely delivered not earlier than the close of business on the 90<sup>th</sup> day prior to such annual meeting and not later than the close of business on the later of the 60th day prior to the annual meeting or the 10<sup>th</sup> day following the date on which public announcement is first made of the annual meeting.

For a special meeting, to nominate a director, a stockholder must deliver notice to our Secretary not earlier than the close of business on the 90<sup>th</sup> day prior to the special meeting and not later than the close of business on the later of the 70th day prior to the special meeting or the 10<sup>th</sup> day following the date on which public announcement is first made of the special meeting. Nominations for elections to the Board of Directors at a special meeting may be made by stockholders only if the Board of Directors has determined that directors shall be elected at the special meeting.

The postponement or adjournment of an annual or special meeting to a later date or time shall not commence any new time periods for the giving of notice as described above. Our bylaws contain detailed requirements for the contents of stockholder notices of director nominations and new business proposals.

---

**Table of Contents**

**MATERIAL FEDERAL INCOME TAX CONSIDERATIONS**

The following section summarizes the material federal income tax issues that you may consider relevant relating to our taxation as a REIT under the Code, and the acquisition, ownership, and disposition of our common shares. Because this section is a summary, it does not address all of the tax issues that may be important to you. For example, the discussion of the tax treatment of our shareholders addresses only common shares held as capital assets (generally property held for investment) within the meaning of Section 1221 of the Code. This discussion is based on current law and does not purport to deal with all aspects of U.S. federal income taxation that may be relevant to a prospective shareholder in light of its particular circumstances. In addition, this section does not address the tax issues that may be important to certain types of shareholders that are subject to special treatment under the federal income tax laws, such as financial institutions, brokers, dealers in securities and commodities, insurance companies, former U.S. citizens or long-term residents, regulated investment companies, real estate investment trusts, tax-exempt organizations (except to the extent discussed in Taxation of Tax-Exempt U.S. Shareholders below), controlled foreign corporations, passive foreign investment companies, persons that acquire shares in connection with employment or other performance of personal services, persons subject to the alternative minimum tax, persons that are, or that hold their shares through, partnerships or other pass-through entities, persons whose functional currency is not the U.S. dollar, persons that hold shares as part of a straddle, hedge, conversion, synthetic security or constructive sale transaction for U.S. federal income tax purposes, persons that purchase or sell shares as part of a wash sale for tax purposes, or non-U.S. individuals and foreign corporations (except to the extent discussed in Taxation of Non-U.S. Shareholders below). In addition, this discussion is general in nature and is not exhaustive of all possible tax considerations, nor does it address any aspect of state, local or foreign taxation or any U.S. federal tax other than the income tax and, only to the extent specifically provided herein, certain excise taxes potentially applicable to REITs.

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

If a partnership, including an entity or arrangement that is treated as a partnership for U.S. federal income tax purposes, is a beneficial owner of our common shares, the treatment of the partnership, and partners in the partnership, will generally depend on the status of the partner and the activities of the partnership. Partnerships holding common shares, and partners in such partnerships, should consult their tax advisors with regard to the U.S. federal income tax treatment of an investment in common shares.

**PROSPECTIVE INVESTORS SHOULD CONSULT THEIR TAX ADVISORS REGARDING THE SPECIFIC FEDERAL, STATE, LOCAL, FOREIGN AND OTHER TAX CONSEQUENCES TO THEM OF THE ACQUISITION, OWNERSHIP AND DISPOSITION OF OUR COMMON SHARES, OUR ELECTION TO BE TAXED AS A REIT AND THE EFFECT OF POTENTIAL CHANGES IN APPLICABLE TAX LAWS.**

**Taxation of the Company**

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

We elected to be taxed as a REIT under the federal income tax laws when we filed our 1993 federal tax return. We have operated in a manner intended to qualify as a REIT and we intend to continue to operate in that manner. This section discusses the laws governing the federal income tax treatment of a REIT and its shareholders. These laws are highly technical and complex.

In the opinion of our tax counsel, Pillsbury Winthrop Shaw Pittman LLP, (i) we qualified as a REIT under Sections 856 through 859 of the Code with respect to each of our taxable years ended through December 31, 2012; and (ii) we are organized in conformity with the requirements for qualification as a REIT under the Code and our current method of operation and ownership will enable us to meet the requirements for qualification and taxation as a REIT for the current taxable year and for future taxable years,

**Table of Contents**

provided that we have operated and continue to operate in accordance with various assumptions and factual representations made by us concerning our diversity of stock ownership, business, properties and operations. We may not, however, have met or continue to meet such requirements. You should be aware that opinions of counsel are not binding on the Internal Revenue Service ( IRS ) or any court. Our qualification as a REIT depends on our ability to meet, on a continuing basis, certain qualification tests set forth in the federal tax laws. Those qualification tests involve the percentage of income that we earn from specified sources, the percentage of our assets that fall within certain categories, the diversity of the ownership of our shares, and the percentage of our earnings that we distribute. We describe the REIT qualification tests in more detail below. Pillsbury Winthrop Shaw Pittman LLP will not monitor our compliance with the requirements for REIT qualification on an ongoing basis. Accordingly, our actual operating results may not satisfy the qualification tests. Pillsbury Winthrop Shaw Pittman LLP's opinion does not foreclose the possibility that we may have to use one or more of the REIT savings provisions described below, which would require us to pay an excise or penalty tax (which could be material) in order for us to maintain our REIT qualification. For a discussion of the tax treatment of us and our shareholders if we fail to qualify as a REIT, see Requirements for REIT Qualification Failure to Qualify.

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

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

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

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

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

our subsidiaries that are C corporations, including our taxable REIT subsidiaries, generally will be required to pay federal corporate income tax on their earnings;

we will pay a 100% excise tax on transactions with a taxable REIT subsidiary that are not conducted on an arm's-length basis;

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

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



**Table of Contents**

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

if we fail to distribute during a calendar year at least the sum of (i) 85% of our REIT ordinary income for such year, (ii) 95% of our REIT capital gain net income for such year, and (iii) any undistributed taxable income from prior periods, we will pay a nondeductible 4% excise tax on the excess of such required distribution over (A) the amount we actually distributed, plus (B) retained amounts on which corporate-level tax was paid by us;

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

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