

Summit Hotel Properties, Inc.
Form S-8
February 10, 2011

As filed with the Securities and Exchange Commission on February 10, 2011

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

FORM S-8
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

Summit Hotel Properties, Inc.
(Exact name of registrant as specified in its charter)

Maryland
(State or other jurisdiction of
incorporation or organization)

27-2962512
(I.R.S. Employer
Identification No.)

2701 South Minnesota Avenue, Suite 6
Sioux Falls, South Dakota
(Address of principal executive offices)

57105
(Zip code)

Summit Hotel Properties, Inc. 2011 Equity Incentive Plan
(Full title of plans)

Daniel P. Hansen
President and Chief Executive Officer
2701 South Minnesota Avenue, Suite 6
Sioux Falls, South Dakota 57105
(Name and address of agent for service)

(605) 361-9566
(Telephone number, including area code, of agent for service)

With copies to:
David C. Wright, Esq.
Hunton & Williams LLP
Riverfront Plaza, East Tower
951 E. Byrd Street
Richmond, Virginia 23219-4074
(804) 788-8200

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.

Large accelerated filer ☐

Accelerated filer ☐

Non-accelerated filer ☐

Smaller reporting
company ☐

(Do not check if a smaller
reporting company)

CALCULATION OF REGISTRATION FEE

Title of securities to be registered	Amount to be registered⁽¹⁾	Proposed maximum offering price per share⁽²⁾	Proposed maximum aggregate offering price	Amount of registration fee
Common Stock, par value \$0.01 per share	2,344,045	\$9.79	\$22,948,201	\$2,665

- (1) Represents 2,344,045 shares of the Registrant's common stock, par value \$0.01 per share (Common Stock), issuable under the Summit Hotel Properties, Inc. 2011 Equity Incentive Plan (the Plan). Pursuant to Rule 416 under the Securities Act of 1933, as amended (the Securities Act), this Registration Statement shall also cover any additional shares of Common Stock that become issuable under the Plan by reason of any stock dividend, stock split, recapitalization or similar transaction effected without the Registrant's receipt of consideration which would increase the number of outstanding shares of Common Stock.
- (2) Calculated in accordance with Rule 457(c) under the Securities Act based on the average of the high and the low sales prices of the shares of Common Stock on the New York Stock Exchange on February 9, 2011.
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PART I
INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

Item 1. Plan Information.*

Item 2. Registrant Information and Employee Plan Annual Information.*

- * The document(s) containing the information specified in this Part I will be sent or given to participants in the Summit Hotel Properties, Inc. 2011 Equity Incentive Plan in accordance with Rule 428(b)(1) under the Securities Act. Such documents need not be filed with the Securities and Exchange Commission (the Commission) either as part of this Registration Statement or as prospectuses or prospectus supplements pursuant to Rule 424 promulgated under the Securities Act. These document(s) and the documents incorporated by reference in this Registration Statement pursuant to Item 3 of Part II hereof, taken together, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act.

PART II
INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents filed by Summit Hotel Properties, Inc. a Maryland corporation (the Company), with the Commission pursuant to the Securities Act, and the Securities Exchange Act of 1934, as amended (the Exchange Act) are incorporated herein by reference and made a part hereof:

(a) The Company's prospectus dated February 8, 2011 filed pursuant to Rule 424(b)(4) under the Securities Act on February 10, 2011.

(b) The description of the Company's shares of common stock, \$0.01 par value per share, contained in the Company's Registration Statement on Form 8-A filed under the Exchange Act on February 7, 2011.

All documents subsequently filed by the Company pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act, prior to the filing of a post-effective amendment which indicates that all securities offered hereby have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference into this Registration Statement and to be a part hereof from the date of filing of such documents.

Any statement contained herein or in a document, all or a portion of which is incorporated or deemed to be incorporated by reference herein, shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any other subsequently filed document that also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or amended, to constitute a part of this Registration Statement.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

None.

Item 6. Indemnification of Directors and Officers.

The Maryland General Corporation Law (the "MGCL") permits a Maryland corporation to include in its charter a provision limiting the liability of its directors and officers to the corporation and its stockholders for money damages, except for liability resulting from (1) actual receipt of an improper benefit or profit in money, property or services or (2) active and deliberate dishonesty that is established by a final judgment and is material to the cause of action. The Company's charter contains a provision that eliminates such liability to the maximum extent permitted by Maryland law.

The Company's charter and bylaws provide for indemnification of its officers and directors against liabilities to the maximum extent permitted by the MGCL, as amended from time to time.

The MGCL requires a corporation (unless its charter provides otherwise, which the Company's charter does not) to indemnify a director or officer who has been successful, on the merits or otherwise, in the defense of any proceeding to which he or she is made, or threatened to be made, a party by reason of his or her service in that capacity. The MGCL permits a corporation to indemnify its present and former directors and officers, among others, against judgments, penalties, fines, settlements and reasonable expenses actually incurred by them in connection with any proceeding to which they may be made, or threatened to be made, a party by reason of their service in those or other capacities unless it is established that:

- the act or omission of the director or officer was material to the matter giving rise to the proceeding and (1) was committed in bad faith or (2) was the result of active and deliberate dishonesty;

- the director or officer actually received an improper personal benefit in money, property or services;
- or

- in the case of any criminal proceeding, the director or officer had reasonable cause to believe that the act or omission was unlawful.

However, under the MGCL, a Maryland corporation may not indemnify for an adverse judgment in a suit by or in the right of the corporation or for a judgment of liability on the basis that personal benefit was improperly received, unless in either case a court orders indemnification if it determines that the director or officer is fairly and reasonably entitled to indemnification, and then only for expenses. In addition, the MGCL permits a Maryland corporation to advance reasonable expenses to a director or officer upon its receipt of:

- a written affirmation by the director or officer of his or her good faith belief that he or she has met the standard of conduct necessary for indemnification by the corporation; and

- a written undertaking by the director or officer or on the director's or officer's behalf to repay the amount paid or reimbursed by the corporation if it is ultimately determined that the director or officer did not meet the standard of conduct.

The Company's charter authorizes the Company, and the Company's bylaws obligate the Company, to the maximum extent permitted by Maryland law in effect from time to time, to indemnify and, without requiring a preliminary determination of the ultimate entitlement to indemnification, pay or reimburse reasonable expenses in advance of final disposition of such a proceeding to:

- any present or former director or officer of the Company who is made, or threatened to be made, a party to the proceeding by reason of his or her service in that capacity; or

- any individual who, while a director or officer of the Company and at the Company's request, serves or has served as a director, officer, partner, trustee, member or manager of another corporation, real estate investment trust, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise and who is made, or threatened to be made, a party to the proceeding by reason of his or her service in that capacity.

The Company's charter and bylaws also permit the Company to indemnify and advance expenses to any individual who served the Company's predecessor in any of the capacities described above and to any employee or agent of the Company or the Company's predecessor.

The Company has entered or expects to enter into customary indemnification agreements with each of the Company's directors and executive officers that would provide for indemnification to the maximum extent permitted by Maryland law.

Insofar as the foregoing provisions permit indemnification of directors, officers or persons controlling the Company for liability arising under the Securities Act, the Company has been informed that in the opinion of the Commission, this indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

Exhibit

Number Description

- | | |
|-------|--|
| 4.1 | Form of Certificate of Common Stock of Summit Hotel Properties, Inc. (incorporated herein by reference to Exhibit 4.1 to Amendment No. 5 to the Registration Statement on Form S-11/A (Registration No. 333-168686) filed by Summit Hotel Properties, Inc. on February 7, 2011). |
| 5.1* | Opinion of Venable LLP. |
| 23.1* | Consent of KPMG LLP. |
| 23.2* | Consent of Eide Bailly LLP. |
| 23.3* | Consent of Gordon, Hughes & Banks, LLP. |
| 23.4* | Consent of Venable LLP (included in Exhibit 5.1). |

* Filed herewith.

Item 9. Undertakings.

(a) The undersigned registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20 percent change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective registration statement;

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

Provided, however, That paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by

the registrant pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the city of Sioux Falls, state of South Dakota, on this 8th day of February, 2011.

SUMMIT HOTEL PROPERTIES, INC.

By: /s/ Kerry W. Boekelheide
Name: Kerry W. Boekelheide
Title: Executive Chairman of the Board and
Director

By: /s/ Daniel P. Hansen
Name: Daniel P. Hansen
Title: President and Chief Executive Officer
and
Director
(principal executive officer)

By: /s/ Stuart J. Becker
Name: Stuart J. Becker
Title: Executive Vice President and
Chief Financial Officer
(principal financial officer)

By: /s/ JoLynn M. Sorum
Name: JoLynn M. Sorum
Title: Vice President, Controller and
Chief Accounting Officer
(principal accounting officer)

By: /s/ Bjorn R. L. Hanson
Name: Bjorn R. L. Hanson
Title: Director

By: /s/ David S. Kay
Name: David S. Kay
Title: Director

By: /s/ Thomas W. Storey
Name: Thomas W. Storey
Title: Director

By: /s/ Wayne W. Wielgus
Name: Wayne W. Wielgus
Title: Director

EXHIBIT INDEX

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