OPTI INC
Form DEF 14A
April 16, 2012

SCHEDULE 14A INFORMATION

Proxy Statement Pursuant to Section 14(a) of the

Securities Exchange Act of 1934

Filed by the Registrant x Filed by a Party other than the Registrant ¨

Check the appropriate box:

¨ Preliminary Proxy Statement

¨ **Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))**

x Definitive Proxy Statement

¨ Definitive Additional Materials

¨ Soliciting Material Pursuant to §240.14a-11(c) or §240.14a-12

OPTi Inc.

(Name of Registrant as Specified In Its Charter)

(Name of Person(s) Filing Proxy Statement if other than Registrant)

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1) Amount Previously Paid:

2) Form, Schedule or Registration Statement No.:

3) Filing Party:

4) Date Filed:

OPTi Inc.

One First Street, Suite 14

Los Altos, CA 94022

CONSENT SOLICITATION STATEMENT

The Board of Directors (the Board) of OPTi Inc. (the Company) is providing this Consent Solicitation Statement to the Company s shareholders in connection with the solicitation of written consent pursuant to California General Corporation Law (CGCL) Section 603 and Section 2.10 of the Company s Bylaws. As discussed in more detail in this Consent Solicitation Statement, the Board has unanimously approved the voluntary winding up and dissolution of the Company pursuant to a Plan of Liquidation (the Proposal), subject to the approval of the Company s shareholders.

The Board is soliciting shareholder approval of the Proposal by written consent in lieu of a meeting of shareholders as the Board believes that it is in the best interests of the Company and its shareholders to solicit such approval in the most timely and cost effective manner. A form of written consent is enclosed for your use.

The Board intends to mail this Consent Solicitation Statement and accompanying form of written consent on or about April 19, 2012. The Board has fixed a record date of March 9, 2012 (the Record Date) for determination of those shareholders entitled to give written consent.

Your consent is important. Although the Board has approved the Proposal, a vote of shareholders holding shares representing 50% or more of the voting power is required to approve the Company s voluntary dissolution under California law.

The Board unanimously recommends that you consent to the Proposal. Voluntary proceedings for winding up the Company will commence upon the receipt of the written consent of shareholders holding shares representing 50% or more of the voting power of the Company. However, the Board would like to obtain as many consents as possible.

CONSENT PROCEDURE

General

As discussed in more detail in this Consent Solicitation Statement, the Board is asking the Company s shareholders to consent to the Proposal.

Voting; Record Date

Only holders of record of Company stock as of the Record Date are entitled to consent to the Proposal. There were 11,645,903 shares of Company common stock outstanding as of the Record Date. Each share of common stock is entitled to one vote on the Proposal.

Vote Required

The Proposal will be deemed approved when and if the written consents of shareholders representing fifty percent (50%) or more of the voting power of the outstanding common stock are received by the Company.

Revocation of Consent

Any shareholder giving written consent to the Proposal may revoke such consent in a writing received by the Company prior to the time that a sufficient number of written consents to approve the Proposal has been received by the Company.

Notice of Availability of Materials

This Consent Solicitation Statement and the written consent form to be completed by shareholders in connection herewith may be obtained by contacting Michael Mazzoni via email at mmazzoni@opti.com or by telephone at (650) 213-8550. The Company s financial statements for the last two fiscal years ended March 31, 2011 and 2010, and for the interim period ended December 31, 2011, are included below under Financial Statements . Shareholders are also encouraged to review the Company s Annual Report filed with the Securities and Exchange Commission on June 29, 2011 and its most recent Quarterly Report filed on February 16, 2012.

NO APPRAISAL RIGHTS

Neither California law nor the Company s Articles of Incorporation or Bylaws provide the Company s shareholders with dissenters rights with respect to the Proposal.

PROPOSAL

Voluntary Dissolution of Company Pursuant to Plan of Liquidation

The Company s shareholders are being asked to consent to wind up and dissolve the Company pursuant to the Plan of Liquidation (the Proposal). If approved, the Company will be liquidated pursuant to the Plan of Liquidation described below.

The Board has unanimously approved the voluntary winding up and dissolution of the Company, the Plan of Liquidation, and the submission of the Proposal to the Company s shareholders for approval.

If the Company s shareholders do not consent to the Proposal, then the Company will not liquidate at this time. However, the Board believes that it has carefully considered all viable alternatives available to the Company and that liquidation is the best alternative for the reasons set forth below, and accordingly recommends approval of the Proposal.

Background and Reasons for Dissolution

The Company s business strategy has been to pursue licensing opportunities to resolve potential infringement of the Company s proprietary intellectual property. However, the Company believes that it has already entered into license agreements with the major developers of core logic chipsets and has exhausted the litigation opportunities that may be worth pursuing. The Company currently has only one legal action pending, and after a thorough review of over twenty other companies using similar technology which was completed in the first half of 2011, the Company has not identified any other potential infringers that it would make economic sense to pursue. The Board also considered the fact that the Company s patents which form the basis of the Company s licensing and litigation efforts will expire in July 2015 and February 2016. The Board concluded that even in the unlikely event that the Company were able to identify another viable defendant and were successful in an infringement action against such defendant, by the time of settlement or other resolution of any such action, the value of any payments would be adversely affected by the limited remaining life of the patents. Accordingly, the Board concluded in December 2011 that it is in the best interests of the Company and its shareholders to cease spending the Company s cash in attempting to identify and pursue potential litigation opportunities which would likely have negative financial results for the Company.

In addition to attempting to identify other potential defendants, the Board has also explored entering into a partnership with another entity and becoming a non-practicing entity . Beginning in November 2010 the Company explored an opportunity which would have enabled the Company to license rights to a third party s intellectual property and pursue licensing opportunities and litigation to resolve potential infringement of such intellectual property. However, in the third quarter of 2011 the third party decided against this partnership in light of the Company s status as a public company with its resulting reporting obligations. The Company considered terminating its reporting obligations, but determined that doing so would cause the Company s stock to cease to be traded on the Over the Counter Bulletin Board which would result in loss of liquidity for the Company s shareholders. In addition, an announcement that the Company was terminating its reporting obligations would likely result in a material reduction in the Company s share price. The Board determined that these negative consequences to shareholders outweighed the potential benefits to the Company of pursuing this potential partnership.

In 2011, the Company also explored the possibility of operating as a non-practicing entity , in which the Company would raise capital to acquire intellectual property rights with the intent of pursuing licensing opportunities and litigation to resolve potential infringement of such intellectual property. However, the Company s efforts to do so were unsuccessful given the uncertainty that the acquisition of new intellectual property could result in successful litigation. In addition, the Company determined that it would need to raise at least $50 million of new capital in order to compete against larger, more established non-practicing entities to acquire a valuable and diversified intellectual property portfolio and to hire an experienced staff to maximize the value of such portfolio. In October 2011, the Board determined that the Company is not in a position to raise the necessary capital and therefore believes that taking such a course of action would not be in the best interests of the Company and its shareholders.

After considering the foregoing alternatives for more than a year and in light of the absence of other viable alternatives, in December 2011 the Board determined in its business judgment that the shareholders would obtain the greatest return by an orderly winding up and dissolution of the Company, pursuant to which proceeds from the resolution of any remaining litigation and any other assets less payment of applicable liabilities and obligations would be distributed to its shareholders. The Board reached this conclusion independently without participation from any of the major shareholders of the Company. See Board Approvals and Board Recommendation below.

Summary of the Plan of Liquidation

If approved by the Company s shareholders, the winding up of the Company s business and the Company s liquidation will proceed pursuant to the Plan of Liquidation (the Plan). The Plan is attached hereto as Exhibit A, and this summary of the Plan is qualified in its entirety by reference to Exhibit A.

Effective Date of the Plan; Liquidation Period.

The Plan will become effective upon its approval by the Company s shareholders holding shares representing fifty percent (50%) or more of the voting power. Pursuant to the Plan, the Company shall take all actions to complete the liquidation and dissolution within the liquidation period, which shall end by the last day of the third year ending after the close of the taxable year during which the first liquidating distribution is made (the Liquidation Period), which shall be March 31, 2016. The duration of the Liquidation Period was determined in light of the Company s ongoing litigation, as the Board was concerned with the Company having sufficient time to prosecute currently pending litigation and any potential appeals. A shorter liquidation period may not allow the Company adequate time to achieve these goals, possibly resulting in the shareholders of the Company not receiving the full value from such litigation. See Winding Up of Company Business; Ongoing Litigation below.

Liabilities; Liquidating Distributions.

During the Liquidation Period, the Company shall pay or discharge all of the Company s liabilities and obligations. The Company s only significant assets consist of cash and patent infringement claims which it intends to reduce to cash; the Company shall distribute to its shareholders cash available for distribution in such manner as may be determined by the Company s Board of Directors in its sole discretion subject to the cash needs of the Company to wind up its business, pay its liabilities, pursue pending litigation and defend any new litigation that may be filed against the Company. The cash available for distribution to the shareholders will be reduced by payment of the Company s outstanding liabilities and obligations, including the expenses of the Company in connection with the resolution of litigation and the winding up process. See Winding Up of Company Business; Ongoing Litigation below.

Contingent upon the approval of the Proposal by the Company s shareholders, the first liquidating distribution to the shareholders will be in the aggregate amount of $12,810,493.30 or $1.10 per share of the Company s Common Stock and will be made within sixty days after the Company s announcement that the Proposal has been approved. The pro forma effect of such distribution on the Company s balance sheet is as follows:

OPTi Inc

Pro Forma Consolidated Balance Sheet

(in thousands)

	December 31, 2011	Proposed Liquidating Distribution	Adjusted December 31, 2011
Current Assets			
Cash and cash equivalents	$ 22,507	$ 12,811	$ 9,696
Prepaid expenses and other current assets	49		49
Income tax receivable	1,174		1,174
Deferred tax assets			
Total current assets	23,730	12,811	10,919
Property and equipment, at cost			
Machinery and equipment	43		43
Furniture and fixtures	17		17
	60		60
Accumulated depreciation	(50)		(50)
Total Property and equipment, net	10		10
Other assets			
Deposits			
Non-current deferred tax assets			
Total other assets			
TOTAL ASSETS	$ 23,740	$ 12,811	$ 10,929
Current Liabilities			
Accounts payable	$ 79	$	$ 79
Accrued expenses	229		229
Accrued employee compensation	9		9
Taxes payable			
Total current liabilities	317		317
Other liabilities			
Non current deferred tax liability	3,759		3,759
Total Liabilities	4,076		4,076
Stockholders equity	19,664	12,811	6,853
Total stockholders equity	19,664	12,811	6,853
TOTAL LIABILITIES AND STOCKHOLDERS EQUITY	$ 23,740	$ 12,811	$ 10,929

Aside from a $7,200 Shareholder Return Bonus currently due, none of the Company s managers will be entitled to any portion of such distribution except in their capacities as shareholders of the Company. No additional Shareholder Return Bonus beyond such $7,200 will be paid unless and until the Company s pending litigation is successfully resolved. See Officer Bonus Arrangements below.

The amount and timing of future distributions will be determined at the sole discretion of the Board subject to the cash needs of the Company to wind up its business, pay its liabilities, pursue pending litigation and defend any new litigation that may be filed against the Company. As soon as it is reasonable and practicable during the Liquidation Period, the Company will make further liquidating distributions to its shareholders. However, the dates and amounts of such subsequent distributions are unpredictable since they are dependent on the outcome and timing of the Company s currently pending litigation and the amount of expenses to be incurred by the Company in connection with the winding up of the Company (including any expenses incurred in defending the Company and/or its directors against potential litigation from its shareholders or others with respect to the Plan of Liquidation or other matters). See below Uncertainty Over Winding Up and Dissolution of the Company; Third Party Actions . No distribution will be made of any business or properties of the Company other than the proceeds of litigation.

Tax Considerations.

The following discussion summarizes certain U.S. federal income tax consequences of the Plan that may be relevant to the shareholders of Company stock. This summary is based on the Internal Revenue Code of 1986, as amended (the Code), U.S. Treasury regulations issued under the Code, law, judicial decisions, and administrative pronouncements, all of which are subject to different interpretation or change. Any change may be applied retroactively and may adversely affect the federal income tax consequences described herein. This discussion only applies to shareholders who hold their shares of Company stock as capital assets and only addresses distributions of cash proceeds as part of the Plan. This discussion does not address all of the tax consequences that may be relevant to particular shareholders in light of their particular circumstances (such as shareholders subject to the alternative minimum tax, the Medicare contribution tax or back-up withholding or shareholders owning multiple blocks of Company stock) or that are subject to special treatment under U.S. federal income tax laws (including, without limitation, financial institutions, partnerships, disregarded entities or other flow-through entities, mutual funds, tax-exempt organizations, trusts, estates, retirement plans, regulated investment companies, shareholders whose functional currency for U.S. federal income tax purposes is not the U.S. dollar, grantor trusts, insurance companies, traders or dealers in securities or foreign currencies, persons (including traders in securities) using a mark-to-market method of accounting, persons holding the Company stock as part of a hedge, straddle, constructive sale, conversion or other integrated transaction, any person who is not a United States person within the meaning of the Code, former U.S. citizens or long-term residents subject to taxation as expatriates under Section 877 of the Code, or persons who acquire Company stock in connection with employment or other performance of services). This summary does not discuss the effect of other U.S. federal tax laws (such as estate and gift tax laws), and does not discuss any state, local, or foreign tax laws or tax treaties.

We have not sought and will not seek a ruling from the U.S. Internal Revenue Service (the IRS) with respect to any matters discussed in this section, and we cannot assure you that the IRS will not take a different position concerning the tax consequences of the Plan, or that any such position would not be sustained.

Company shareholders should consult their own tax advisors with regard to the application of the tax consequences discussed herein and the application of any other U.S. federal, state, local and foreign tax laws and tax treaties including gift and estate tax laws.

The transactions completed pursuant to the Plan are to result in the complete liquidation of the Company within the meaning of Sections 331 and 336 of the Code and the Treasury regulations promulgated thereunder. In general, as part of a complete liquidation, shareholders compute gain or loss by subtracting their adjusted basis of the stock from the amount realized (i.e., the net proceeds received in the liquidation) and report any difference as capital gain or loss. See below Uncertainty Over Winding Up and Dissolution of the Company; Third Party Actions . Such capital gain or loss will generally be long-term capital gain or loss if a Company shareholder s holding period in respect of the stock is more than one year. Net long-term capital gains, recognized by a Company shareholder who is an individual, are currently subject to a fifteen percent (15%) rate. As of the date hereof, such reduced rates for long term capital gain are scheduled to increase for tax years beginning after December 31, 2012. The long-term capital gains of Company shareholders that are corporations and the short-term capital gains of both corporate and non-corporate Company shareholders are taxed at the same rates as their ordinary income. The deductibility of capital losses of corporate and non-corporate Company shareholders are subject to limitations. As described above, the Company may make several liquidating distributions (of differing amounts and on various dates) to shareholders pursuant to the Plan. Generally, in a complete liquidation, a shareholder recognizes gain after all basis is recovered but any resulting loss may not be recognized until the shareholder receives the final liquidating distribution.

The Company will, within thirty (30) days after the effective date of the Plan, file a United States Internal Revenue Service Form 966 pursuant to Section 6043 of the Code and such additional forms and reports with the Internal Revenue Service as may be necessary or appropriate in connection with the Plan and the carrying out thereof. Further, the Company will provide any shareholder receiving property pursuant to the Plan in excess of $600 or more in a calendar year an IRS Form 1099-DIV.

Each shareholder of Company stock should consult with their own tax advisor to determine whether the shareholder needs to include a statement described in Treasury regulation Section 1.331-1(d)(2) with its federal income tax return for years ending prior to the completion of the complete liquidation.

TO ENSURE COMPLIANCE WITH TREASURY DEPARTMENT CIRCULAR 230, COMPANY SHAREHOLDERS ARE HEREBY NOTIFIED THAT: (1) ANY DISCUSSION OF UNITED STATES FEDERAL TAX ISSUES CONTAINED OR REFERRED TO IN THIS CONSENT SOLICITATION STATEMENT OR ANY ATTACHED EXHIBIT IS NOT INTENDED OR WRITTEN TO BE RELIED UPON, AND CANNOT BE RELIED UPON, BY SHAREHOLDERS FOR THE PURPOSE OF AVOIDING PENALTIES THAT MAY BE IMPOSED UNDER U.S. FEDERAL TAX LAW; (2) SUCH DISCUSSION IS WRITTEN IN CONNECTION WITH THE PROMOTION OF THE PLAN; AND (3) COMPANY SHAREHOLDERS SHOULD SEEK ADVICE FROM AN INDEPENDENT TAX ADVISOR.

Winding Up of Company Business; Ongoing Litigation

Upon the receipt by the Company of sufficient shareholder consents for the Proposal, the Company shall cease to carry on business except to the extent necessary for the beneficial winding up thereof and except as to preserve the Company s goodwill or going-concern value.

The Company intends to continue to conduct its ongoing litigation against VIA Technologies, Inc. and Silicon Integrated Systems Corp. during the Liquidation Period. A trial date has been set for November 2012, however, this date will likely be postponed.

In addition, the Company may be compelled to defend itself and its directors against litigation initiated by its shareholders or others in connection with the Plan of Liquidation and the winding up of the Company. See below Uncertainty Over Winding Up and Dissolution of the Company; Third Party Actions .

Governance of the Company During Liquidation Period

Pursuant to CGCL Sections 1903(b) and 2001, the Board and the officers of the Company shall continue to manage and govern the affairs of the Company during the winding up period, through the date of the Company s dissolution. The Board shall have full powers to wind up and settle the affairs of the Company. During the Liquidation Period, the Board and the officers of the Company will seek to maximize shareholder value in order to maximize the liquidating distributions to each shareholder.

The Company anticipates conducting annual elections for its directors during the Liquidation Period. The Company does not anticipate making changes to the composition of the Board absent the resignation of directors, as the Board will be focused on the orderly winding up of the Company.

The Board and officers of the Company shall continue to be indemnified to the fullest extent permitted by applicable law. It is anticipated that management compensation will remain at current levels until the Company s litigation has been finally resolved.

Continued Trading of Company Stock

The Company intends to allow for the continued trading of the Company s stock on the Over the Counter Bulletin Board during the winding up of the Company, until the date of the Company s final dissolution. While the Company has verified with the OTC Bulletin Board that its stock will continue to trade during the Liquidation Period, there can be no assurance that there will be sufficient activity to permit the stock to do so.

Continued SEC Reporting

The Company also intends to continue to file required reports with the Securities and Exchange Commission until the date of the Company s final dissolution.

Uncertainty Over Winding Up and Dissolution of the Company; Third Party Actions

The Company s shareholders are being asked to consent to the Proposal, but may not approve the Proposal. This may result in the Company incurring substantial expense in attempting to develop other alternatives which may not be available or viable. Even if the Company s shareholders approve the Proposal, there can be no assurances that third parties will not take actions that may delay or derail the Company s winding up and dissolution. For example, on February 9, 2012 a class action was filed in Federal District Court for the Northern District of California alleging that the directors of the Company breached their fiduciary duties in approving the Proposal and violated Section 14(a) of the Securities Exchange Act of 1934 and Rule 14a-9 in allegedly issuing a consent solicitation statement with the intention of obtaining shareholder approval. The complaint also alleged that the Company aided and abetted the directors breach of fiduciary duty. The Company believes that this action was without merit. The complaint was voluntarily dismissed without prejudice on February 24, 2012, but other actions could be filed by the same plaintiff or others. Defending such actions could reduce the assets of the Company available for distribution to its shareholders.

In addition, on March 24, 2012, the Company s Chief Executive Officer met with the chief executive officer of a small unrelated public company at the request of the unrelated company s CEO. The CEO of such company stated that it is considering acquiring control of the Company from the Company s major shareholders after the payment of the first liquidating distribution with the intent of revoking the election to wind up and dissolve and using the Company to pursue litigation involving patents other than the Company s current patents. Unlike the partnership that the Board previously considered, this unrelated company has a very limited intellectual property portfolio, and with approximately $4 million in cash, $500,000 in annual operating revenue and significant operating losses, does not have the resources to make a partnership with the Company viable. There can be no assurance that the unrelated company would be successful in acquiring control of the Company, nor if it did so that such company could reverse the Company s election to wind up and dissolve after the first liquidating distribution has been made. Although there is no case law on point, Section 1902 of the CGCL provides that a company s election to wind up and dissolve cannot be revoked after the distribution of any assets. Accordingly, the Company believes that the unrelated public company would not be able to reverse the election to dissolve after the Company s first liquidating distribution. However, if it were successful in reversing the election to dissolve, the first liquidating distribution may no longer be eligible for capital gains treatment, and the information contained in this Consent Solicitation Statement regarding the Plan of Liquidation would no longer be applicable. Although the Company has been unable to ascertain whether this company s interest in buying the Company s shares is bona fide, the foregoing is indicative of the uncertainty associated with implementing the proposed Plan of Liquidation.

The Company s shareholders may also petition the California Superior Court to take jurisdiction over the dissolution of the Company, resulting in uncertainty as to the method and timing of the Company s dissolution.

There can be no assurance that the liquidation will proceed smoothly or on time or be finally consummated as a result of pending litigation and/or future litigation or other events.

Board Approval and Board Recommendation

The Board has unanimously approved the Proposal and recommends that the Company s shareholders consent to the Proposal.

The Company s largest shareholder (S. Muoio & Co. LLC and its affiliates) holds approximately 35% of the Company s outstanding common stock, and has indicated in its public filings with the Securities and Exchange Commission that it may engage in discussions with the Company regarding the timing and characterization of cash distributions to shareholders and the potential orderly liquidation of the Company. As previously disclosed, this shareholder unsuccessfully attempted to elect its representative to the Company s Board, but it has not engaged in discussions with the Company regarding liquidation. See Note 10 to the Company s audited financial statements for the year ended March 31, 2011 below. Although the Board was aware of the position of this shareholder as indicated in the shareholder s public filings, the Board reached its decision to approve the Proposal independently. No shareholder (other than members of the Board) participated in the decision.

Questions

Any questions regarding the Proposal should be directed to Bernard Marren at bernie@opti.com. However, management s comments will be limited to the contents of this Consent Solicitation Statement.

DISCLOSURE OF INTERESTED PARTIES

Security Ownership of Certain Beneficial Owners and Management

As of the Record date, there were 11,645,903 shares of Company common stock outstanding. The following table sets forth as of April 13, 2012 information regarding the ownership of Company common stock with respect to Company officers and directors and all persons which own more than 5% of the Company s stock.

Name of Beneficial Owner	Shares Owned	Percentage Owned
Officers and Directors		
Bernard Marren	15,788	*
Kapil Nanda	4,000	*
William Welling	21,333	*
Michael Mazzoni		*
Stephen Diamond**		*
5% Owners		
S. Muoio & Co., LLC	4,097,088	35.2
Raffles Associates LP	716,834	6.1
Weiss Asset Management LP	682,927	5.9
Dimension Fund Advisors Inc.	581,210	5.0

* *Represents beneficial ownership of less than 1% of the Company s outstanding common stock.*

** *Resigned from Board on November 15, 2011.*

Officer Bonus Arrangements

The Company has a shareholder return bonus program (the Bonus) under which Bernard Marren and Michael Mazzoni receive between 1% to 3% collectively of all third party payments (TPP) received by the Company as a result of the Company s intellectual property strategy. The Bonus is payable upon the earlier of (1) such time as the Company distributes TPP to its shareholders or (2) six months and one day after the Company receives the TPP at issue. The exact percentage of TPP due to Messrs. Marren and Mazzoni under the Bonus is as follows:

	Bonus Percentage Due	
Amount of TPP	*Bernard Marren*	*Michael Mazzoni*
$1 - $4,980,951	1.8%	1.2%
$4,980,952 - $29,980,951	1.2%	0.8%
Amounts above $29,980,951	0.6%	0.4%

On June 13, 2011, the Company paid Messrs. Marren and Mazzoni a Bonus as disclosed in the Company s 10-K filed June 29, 2011. One TPP of $240,000 has been received by the Company since the TPP triggering the June 13, 2011 Bonus, for which Messrs. Marren and Mazzoni will receive an aggregate Bonus of $7,200 upon distribution to shareholders. Such $7,200 will be divided between them based on the above schedule, with Mr. Marren receiving $4,320 and Mr. Mazzoni receiving $2,880. In the event the Company receives additional TPP during the Liquidation Period, Messrs. Marren and Mazzoni would be eligible for a Bonus upon the distribution of such TPP to shareholders.

Compensation

Since the Company s managers will oversee the Company s orderly winding up and dissolution pursuant to the Plan of Liquidation while still directing the Company s pending litigation, the Board does not anticipate altering the base compensation to the Company s managers.

Director Opposition

The Board unanimously approved the Proposal. No director of the Company has stated his opposition to the Company s winding up and dissolution or to the Plan of Liquidation.

SHAREHOLDER PROPOSALS

No shareholder proposals are included in this Consent Solicitation Statement.

HOUSEHOLDING OF SOLICITATION

The Securities and Exchange Commission permits the Company to satisfy delivery requirements by delivering one consent solicitation statement with respect to two or more shareholders sharing the same address. This process, known as householding, potentially provides conveniences for shareholders and savings for the Company.

Only one Consent Solicitation Statement is being mailed to each address in the Company s records representing a shareholder of record. If additional copies are required, please contact Michael Mazzoni by telephone at (650) 213-8550, by mail at One First Street, Suite 14, Los Altos, CA 94022 or by email at mmazzoni@opti.com.

FINANCIAL STATEMENTS

The Company s interim unaudited financial statements for the period ended December 31, 2011, and audited financial statements for the years ended March 31, 2011 and 2010, are included below.

OPTi INC.

CONDENSED CONSOLIDATED BALANCE SHEETS

(in thousands)

	December 31, 2011 (unaudited)	March 31, 2011 (audited)*
ASSETS		
Current assets:		
Cash and cash equivalents	$ 22,507	$ 25,779
Prepaid expenses and other current assets	49	105
Income tax receivable	1,174	
Deferred tax asset		556
Total current assets	23,730	26,440
Property and equipment, at cost		
Machinery and equipment	43	62
Furniture and fixtures	17	17
	60	79
Accumulated depreciation	(50)	(70)
	10	9
Other assets		
Non-current deferred tax assets		783
Total other assets		783
Total assets	$ 23,740	$ 27,232
LIABILITIES AND STOCKHOLDERS EQUITY		
Current liabilities:		
Accounts payable	$ 79	$ 32
Accrued expenses	229	211
Accrued employee compensation	9	684
Total current liabilities	317	927
Other liabilities:		
Non-current taxes payable	3,759	4,098
Total liabilities	4,076	5,025
Stockholders equity:		
Preferred stock, no par value		
Authorized shares 5,000		
No shares issued or outstanding		
Common stock		
Authorized shares 50,000		
Issued and outstanding 11,646 at December 31, 2011 and March 31, 2011	13,544	13,544
Retained earnings	6,120	8,663
Total stockholders equity	19,664	22,207

Total liabilities and stockholders equity	$ 23,740	$ 27,232

* The balance sheet as of March 31, 2011 has been derived from the audited financial statements.

The accompanying notes are an integral part of these condensed consolidated financial statements.

OPTi Inc.

CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS

(in thousands, except for per share data)

(unaudited)

	Three Months Ended December 31, 2011	Three Months Ended December 31, 2010	Nine Months Ended December 31, 2011	Nine Months Ended December 31, 2010
Sales				
License and royalties	$ 240	$ 12,250	$ 240	$ 50,625
Net sales	240	12,250	240	50,625
Costs and expenses				
Selling, general and administrative	495	1,382	2,161	4,442
Total costs and expenses	495	1,382	2,161	4,442
Operating income (loss)	(255)	10,868	(1,921)	46,183
Interest and other income, net	3	3	10	8
Income (loss) before provision for income taxes	(252)	10,871	(1,911)	46,191
Income tax provision (benefit)	1,137	6,048	632	20,232
Net income (loss)	$ (1,389)	$ 4,823	$ (2,543)	$ 25,959
Basic net income (loss) per share	$ (0.12)	$ 0.41	$ (0.22)	$ 2.23
Shares used in computing basic per share amounts	11,646	11,646	11,646	11,645
Diluted net income (loss) per share	$ (0.12)	$ 0.41	$ (0.22)	$ 2.23
Shares used in computing diluted per share amounts	11,646	11,646	11,646	11,646
Dividend paid per common share		$ 0.65		$ 1.40

The accompanying notes are an integral part of these condensed consolidated financial statements.

OPTi INC.

CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS

(in thousands)

(unaudited)

	Nine Months Ended December 31, 2011	Nine Months Ended December 31, 2010
Cash flows from operating activities:		
Net income (loss)	$ (2,543)	$ 25,959
Adjustments to reconcile net income (loss) to net cash provided by (used in) operating activities:		
Depreciation	7	3
Deferred income taxes	1,339	10,030
Changes in operating assets and liabilities:		
Accounts receivable		(7,000)
Prepaid expenses and other current assets	56	(12)
Income taxes receivable	(1,174)	
Accounts payable	47	(2,057)
Accrued expenses	18	(285)
Accrued employee compensation	(675)	959
Income taxes payable	(339)	6,017
Net cash provided by (used in) operating activities	(3,264)	33,614
Cash flows from investing activities:		
Purchase of equipment	(8)	(1)
Net cash used in investing activities	(8)	(1)
Cash flows from financing activities:		
Proceeds from exercise of stock options		5
Dividend		(16,304)
Net cash used in financing activities		(16,299)
Net increase (decrease) in cash and cash equivalents	(3,272)	17,314
Cash and cash equivalents, beginning of period	25,779	3,578
Cash and cash equivalents, end of period	$ 22,507	$ 20,892
Supplemental disclosures of cash flow information		
Income Taxes paid	$ 739	$ 4,185

The accompanying notes are an integral part of these condensed consolidated financial statements.

OPTi Inc.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

December 31, 2011

(Unaudited)

1. Basis of Presentation

The information as of December 31, 2011 and for the three-month and nine-month periods ended December 31, 2011 and 2010, are unaudited, but include all adjustments (consisting of normal recurring adjustments) which the Company s management believes to be necessary for the fair presentation of the financial position, results of operations and cash flows for the periods presented. Interim results are not necessarily indicative of results for a full year.

The accompanying financial statements should be read in conjunction with the Company s audited financial statements for the year ended March 31, 2011, which are included in this Consent Solicitation Statement and in the annual report on Form 10-K filed by the Company with the Securities and Exchange Commission.

Use of Estimates

The preparation of financial statements in accordance with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Actual results could differ from those estimates under different assumptions or conditions.

Summary of Significant Accounting Policies, Income Taxes

Income taxes are calculated under Accounting Standard Codification Topic 740 Accounting for Income Taxes . Under ASC 740, the liability method is used in accounting for income taxes, which includes the effects of deferred tax assets or liabilities. Deferred tax assets or liabilities are recognized for the expected tax consequences of temporary differences between the financial statement and tax bases of assets and liabilities using the enacted tax rates that will be in effect when these differences reverse. The Company provides a valuation allowance to reduce deferred tax assets to the amount that is expected, based on whether such assets are more likely than not to be utilized.

2. Net Income (Loss) Per Share

Basic net income (loss) per share is computed by dividing net income (loss) by the average number of common shares outstanding during the period.

Diluted net income (loss) per share is computed by dividing net income (loss) by the weighted average number of common shares that would be outstanding if all convertible securities were converted into common stock.

The following table sets forth the computation of basic and diluted net income (loss) per share (in thousands, except per share amounts):

	Three Months ended December 31,		Nine Months ended December 31,	
	2011	2010	2011	2010
Net income (loss)	$ (1,389)	$ 4,823	$ (2,543)	$ 25,959
Weighted average number of common shares outstanding	11,646	11,646	11,646	11,645
Basic net income (loss) per share	$ (0.12)	$ 0.41	$ (0.22)	$ 2.23
Weighted average number of common shares outstanding	11,646	11,646	11,646	11,645
Effect of dilutive securities:				
Employee stock options				1
Denominator for diluted net income (loss) per share	11,646	11,646	11,646	11,646
Diluted net income (loss) per share	$ (0.12)	$ 0.41	$ (0.22)	$ 2.23

The Company has excluded options for the purchase of 4,000 shares of Common Stock from the calculation of diluted net (loss) per share for the three and nine months ended December 31, 2011, because such securities are anti-dilutive.

3. Taxes

As part of the process of preparing the unaudited consolidated financial statements, the Company is required to estimate its income taxes in each of the jurisdictions in which it operates. This process involves estimating the current tax liability under the most recent tax laws and assessing temporary differences from differing treatment of items for tax and accounting purposes. These differences result in deferred tax assets and liabilities, which are included in the unaudited condensed consolidated balance sheets.

Income tax expense for the three months ended December 31, 2011 was $1.1 million, or (441) % of pre-tax loss, compared to $6.0 million or 56% of pre-tax income for the three months ended December 31, 2010. Income tax expense for the nine-month period ending December 31, 2011 was $0.6 million, or (33) % of pre-tax loss as compared to $20.2 million, or approximately 44% of pre-tax income for the nine-month period ended December 31, 2010. The effective tax rate for the three and nine-month periods ended December 31, 2011 differs from the U.S. federal statutory rate of 34% primarily due to the prior year tax true up. The effective tax rate for the three and nine-month periods ended December 31, 2010 differs from the U.S. federal statutory rate of 35% primarily due to the unfavorable impact of current federal and state income taxes.

As of December 31, 2011, the Company s total gross unrecognized tax benefit has decreased by $0.3 million as compared with the balance as of September 30, 2011. The Company has recorded a liability of approximately $3.5 million representing unrecognized tax benefits relating to Federal and State research and development credits. All of this amount would impact the Company s effective tax rate, if recognized. Penalty and interest of approximately $0.2 million has been accrued in income tax expense.

4. Cash and Cash Equivalents

The following is a summary of cash and cash equivalents as of December 31 and March 31, 2011 (in thousands):

	December 31, 2011	March 31, 2011
Cash	$ 100	$ 100
Money markets funds	22,407	25,679
	$ 22,507	$ 25,779

The accounting standard for fair value establishes a framework for measuring fair value and requires disclosures about fair value measurements by establishing a hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. The hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (Level 1 measurements) and lowest priority to unobservable inputs (Level 3 measurements). The three levels of the fair value hierarchy are described below:

Level I	Observable inputs such as quoted prices in active markets;
Level II	Inputs other than the quoted prices in active markets that are observable either directly or indirectly; and
Level III	Unobservable inputs in which there is little or no market data, which requires the Company to develop its own assumptions. This hierarchy requires the Company to use observable market data, when available, and to minimize the use of unobservable inputs when determining fair value. On a recurring basis, the Company measures its investments and marketable securities at fair value.

As December 31, 2011 and March 31, 2011, the Company had investments in money market funds of $22.4 million and $25.7 million, respectively, in cash equivalents classified as Level I of the fair market hierarchy and no Level II or Level III investments.

5. Commitments

The Company leases its facility under a non-cancelable operating lease that expired in December 2011.

Rental expense for the operating lease amounted to $29,000 and $29,000, respectively, for the three months ended December 31, 2011 and December 31, 2010. For the nine-month periods ended December 31, 2011 and 2010, rental expense was $87,000 and $87,000, respectively.

As of December 31, 2011, the Company had no future minimum lease commitments.

In January 2012, the Company entered into a two year non-cancelable operating lease that expires on January 31, 2014.

6. Subsequent Events

On January 12, 2012, the Company filed a preliminary consent solicitation statement with the Securities and Exchange Commission (SEC). Upon finalization of the Consent Solicitation Statement, the Company s shareholders will be asked to consent to wind up and dissolve the Company pursuant to the Plan of Liquidation. If the holders of shares representing 50% or more of the voting power of the Company consent, the Company will wind up and dissolve pursuant to the Plan of Liquidation as set forth in the Consent Solicitation Statement. If such consent is not obtained, the Company will not liquidate.

In January 2012, the Company entered into a two-year non-cancelable operating lease that expires on January 31, 2014.

Future minimum lease commitments by fiscal year for the facility are as follows:

March 31, 2012	$ 7,875
March 31, 2013	47,565
March 31, 2014	40,950
Total lease commitment:	$ 96,390

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Shareholders of

OPTi, Inc.

Palo Alto, CA

We have audited the accompanying consolidated balance sheet of OPTi, Inc. (the Company) as of March 31, 2011 and 2010, and the related consolidated statements of income, shareholders equity, and cash flows for the two years then ended. These financial statements are the responsibility of the Company s management. Our responsibility is to express an opinion on the financial statements based on our audit.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. Our audits included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company s internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, such consolidated financial statements present fairly, in all material respects, the financial position of OPTi, Inc. as of March 31, 2011 and 2010, and the results of its operations and cash flows for the two years then ended in conformity with accounting principles generally accepted in the United States of America.

/s/ Armanino McKenna, LLP

San Ramon, California

June 29, 2011

OPTi Inc.

CONSOLIDATED BALANCE SHEETS

(In thousands, except share amounts)

	March 31, 2011	March 31, 2010
ASSETS		
Current assets		
Cash and cash equivalents	$ 25,779	$ 3,578
Accounts receivable		450
Prepaid expenses and other current assets	105	24
Deferred tax asset	556	11,385
Total current assets	26,440	15,437
Equipment and furniture		
Office equipment	62	58
Furniture and fixtures	17	17
	79	75
Accumulated depreciation	(70)	(66)
	9	9
Other assets		
Deposits		18
Non-current deferred tax asset	783	56
Total other assets	783	74
Total assets	$ 27,232	$ 15,520
LIABILITIES AND SHAREHOLDERS EQUITY		
Current liabilities		
Accounts payable	$ 32	$ 2,173
Accrued expenses	211	448
Accrued employee compensation	684	12
Taxes payable		
Total current liabilities	927	2,633
Other liabilities		
Non current deferred tax liability	4,098	
Total liabilities	5,025	2,633
Shareholders equity		
Preferred stock, no par value:		
Authorized shares - 5,000,000		
No shares issued or outstanding		
Common stock, no par value:		
Authorized shares - 50,000,000		

Issued and outstanding shares - 11,645,903 at March 31, 2011 and 11,641,903 at March 31, 2010	13,544	13,539
Retained earnings (Accumulated deficit)	8,663	(652)
Total shareholders equity	22,207	12,887
Total liabilities and shareholders equity	$ 27,232	$ 15,520

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OPTi Inc.

CONSOLIDATED STATEMENTS OF INCOME

(In thousands, except per share data)

	Year Ended March 31, 2011	Year Ended March 31, 2010
Sales		
License sales	$ 50,625	$ 650
Net sales	50,625	650
Costs and expenses		
General and administrative	5,094	7,440
Total costs and expenses	5,094	7,440
Operating income (loss)	45,531	(6,790)
Interest income and other	12	2,319
Income (loss) before provision for income taxes	45,543	(4,471)
Income tax provision (benefit)	19,923	(11,439)
Net income	$ 25,620	$ 6,968
Basic net income per share	$ 2.20	$ 0.60
Shares used in computing basic per share amounts	11,645	11,642
Diluted net income per share	$ 2.20	$ 0.60
Shares used in computing diluted per share amounts	11,646	11,645

The accompanying notes are an integral part of these consolidated financial statements.

OPTI INC.

CONSOLIDATED STATEMENTS OF SHAREHOLDERS EQUITY

(In thousands, except share amounts)

	COMMON STOCK			
	SHARES	AMOUNT	RETAINED EARNINGS/ (ACCUMULATED DEFICIT)	TOTAL SHAREHOLDERS EQUITY
Balance at March 31, 2009	11,641,903	$ 13,539	$ (7,620)	$ 5,919
Net income			6,968	6,968
Balance at March 31, 2010	11,641,903	$ 13,539	(652)	$ 12,887
Issuance of common stock under stock option plans	4,000	5		5
Cash dividends			(16,305)	(16,305)
Net income			25,620	25,620
Balance at March 31, 2011	11,645,903	$ 13,544	$ 8,663	$ 22,207

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OPTi Inc.

CONSOLIDATED STATEMENTS OF CASH FLOWS

(In thousands)

	Year Ended March 31, 2011	Year Ended March 31, 2010
Operating activities		
Net income	$ 25,620	$ 6,968
Adjustments to reconcile net income to net cash provided by (used) in operating activities:		
Depreciation and amortization	4	6
Release of tax valuation allowance	14,200	(11,441)
Changes in operating assets and liabilities:		
Accounts receivable	450	300
Prepaid expenses and other current assets	(63)	4
Accounts payable	(2,141)	1,066
Accrued expenses	(237)	(121)
Accrued employee expenses	672	(226)
Net cash provided by (used in) operating activities	38,505	(3,444)
Investing activities		
Purchases of property and equipment	(4)	(10)
Net cash used in investing activities	(4)	(10)
Financing activities		
Cash dividends	(16,305)	
Proceeds from issuance of common stock	5	
Net cash used in financing activities	(16,300)	
Net increase (decrease) in cash and cash equivalents	22,201	(3,454)
Cash and cash equivalents at beginning of year	3,578	7,032
Cash and cash equivalents at end of year	$ 25,779	$ 3,578
Supplemental cash flow information		
Cash paid for income taxes	$ 5,792	$ 2

OPTi INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Note 1 Summary of Significant Accounting Policies

The Company OPTi Inc., a California corporation, is engaged in licensing its intellectual property for use principally by personal computer manufacturers and semiconductor device manufacturers.

Principles of Consolidation The consolidated financial statements include the Company and its wholly-owned subsidiaries. All significant intercompany transactions and balances have been eliminated.

Use of Estimates The preparation of financial statements in accordance with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Actual results could differ from those estimates.

Cash and Cash Equivalents The Company considers all highly liquid investments purchased with an original maturity of three months or less to be cash equivalents. Cash equivalents are carried at cost, which approximates fair value. At March 31, 2011 and 2010 substantially all cash and cash equivalents consisted of money market accounts.

Income Taxes Deferred tax assets and liabilities are recognized for the expected tax consequences of temporary differences between the tax bases of assets and liabilities and their reported amounts using enacted tax rates in effect for the year the differences are expected to reverse. The Company records a valuation allowance to reduce the deferred tax assets to the amount that is more likely than not to be recognized.

Property and Equipment Property and equipment are stated at cost, less accumulated depreciation and amortization. Depreciation is computed by the straight-line method over the estimated useful lives of the assets, ranging from two to five years.

Revenue Recognition Revenue from license arrangements is recognized when persuasive evidence of an arrangement exists, delivery has occurred and there are no future performance obligations, fees are fixed or determinable and collectability is reasonably assured. Royalties are recorded as revenue when earned and collectability is reasonably assured.

Net Income Per Share Basic net income per share is computed on the basis of the weighted-average number of shares outstanding for the reporting period. The Company has computed weighted-average shares outstanding for all of the periods presented. Diluted income per share is computed on the basis of the weighted-average number of shares plus dilutive potential common shares outstanding using the treasury method.

Recent Accounting Pronouncements

In January 2010, the Financial Accounting Standards Board(FASB) issued Accounting Standards Update (ASU) 2010-06, Improving Disclosures About Fair Value Measurements (ASU 2010-06), which amends the Fair Value Measurements and Disclosures Topic of the ASC (ASC Topic 820). ASU No. 2010-06 provides additional disclosure requirements on the transfers of assets and liabilities between Level 1 (quoted prices in active market for identical assets or liabilities) and Level 2 (significant other observable inputs) of the fair value measurement hierarchy, including the reasons for and the timing of the transfers. Additionally, the guidance requires a roll forward of activities on purchases, sales, issuance, and settlements of the assets and liabilities measured using significant unobservable inputs (Level 3 fair value measurements). This standard is effective for interim and annual reporting periods beginning after December 15, 2009 with the exception of disclosures regarding the purchase, sale, issuance, and settlement of Level 3 fair value measures which are effective for fiscal years beginning after December 15, 2010. The adoption of this standard is not expected to have a material effect on the Company s consolidated financial statements.

Note 2 Shareholders Equity

Preferred Stock

The Board of Directors has authority to issue up to 5,000,000 shares of Preferred Stock in one or more series and to fix the rights, preferences, privileges, qualifications, limitations and restrictions thereof, including dividend rights, dividend rates, conversion rights, voting rights, terms of redemption, redemption prices, liquidation preferences and the number of shares constituting any series or the designation of such series, without any further vote or action by the shareholders.

Stock Option Plans

No options were granted to employees during fiscal years 2011 and 2010.

1993 Stock Option Plan

The Company s 1993 Stock Option Plan (the 1993 Plan), which was adopted in February 1993, provides for the granting of 8,066,478 incentive stock options to employees or for the granting of nonstatutory stock options to employees and consultants of the Company. The Board of Directors determines the term of each option, the option price and the condition under which the option becomes exercisable. The options generally vest over four years from the date of grant and expire ten years from the date of grant.

There were no shares outstanding as of March 31, 2011, 2010 and 2009 under the 1993 Stock Option Plan.

1993 Director Stock Option Plan

In February 1993, the Company adopted the 1993 Director Stock Option Plan (the Director Plan) and reserved 50,000 shares of common stock for issuance thereunder. Under this plan, non-employee directors are granted options to purchase common stock at 100% of fair market value on dates specified in the plan. The options generally vest over four years from the date of grant and expire ten years from the date of grant. In May 1996, the Company s shareholders authorized an additional 50,000 shares for grant under the plan.

The activity under the 1993 Director Plan is as follows:

	Outstanding	
		Weighted Ave. Exercise Price
	Shares	Per Share
Outstanding at March 31, 2009	8,000	$ 2.01
Outstanding at March 31, 2010	8,000	$ 2.01
Exercised in 2011	(4,000)	$ 1.27
Outstanding at March 31, 2011	4,000	$ 2.74

As of March 31, 2011 and 2010, there were 4,000 and 8,000 options outstanding and exercisable, respectively. The weighted average exercise price for the exercisable shares as of March 31, 2011 was $2.74.

Stock Options Outstanding and Stock Options Exercisable:

The following table summarizes information about options outstanding at March 31, 2011:

Options Outstanding	Options Exerciseable

Range of Exercise Price *Per Share*	Number of *Shares*	Weighted Average Contractural Life *(in years)*	Weighted Average Per Share *Exercise Price*	Number of *Shares*	Average Weighted Exercise *Price Per Share*
$2.74	4,000	0.76	$2.74	4,000	$2.74

Activity under our Stock Option Plans is summarized as follows:

	Number of Shares	Weighted Average Per Share Exercise Price	Weighted Average Remaining Contractual Life (in years)	Aggregate Intrinsic Value (in thousands)
Outstanding at April 1, 2010	8,000	$ 2.01		
Outstanding at March 31, 2011	4,000	$ 2.74	.76	
Exercisable at March 31, 2011	4,000	$ 2.74	.76	

There were no options granted during the fiscal years ended March 31, 2011 and 2010.

Common Stock Reserved

At March 31, 2011, the Company has reserved shares of common stock for future issuance as follows:

1993 Director Stock Option Plan	4,000

whether the debt securities will be issued in denominations other than $1,000 and any integral multiple of $1,000;

the applicability of the defeasance and covenant defeasance provisions of the applicable base indenture;

the guarantor, if any, who will guarantee the debt securities and the methods for determining, and releasing, such guarantor, if any;

the trustee for that series of debt securities, if other than U.S. Bank National Association;

the U.S. federal income tax consequences of owning the debt securities; and

any other terms of the debt securities consistent with the provisions of the applicable base indenture.

Debt securities may be issued as original issue discount securities to be offered and sold at a substantial discount from their stated principal amount. Special U.S. federal income tax, accounting and other considerations applicable to original issue discount securities may be described in the applicable prospectus supplement.

Unless otherwise provided with respect to a series of debt securities, the debt securities will be issued only in registered form, without coupons, in denominations of $1,000 and integral multiples of $1,000.

Certificated Debt Securities

Except as otherwise provided in the applicable prospectus supplement, debt securities will not be issued in certificated form. If, however, debt securities are to be issued in certificated form, no service charge will be made for any transfer or exchange of any of those debt securities, but the issuer may require payment of a sum sufficient to cover any tax or governmental charge payable in connection therewith.

Book-Entry Debt Securities

The debt securities of a series may be issued in whole or in part in the form of one or more fully registered global securities that will be deposited with the depositary identified in the applicable prospectus supplement, which will keep a computerized record of its participants (for example, brokers) whose clients have purchased the debt securities. Each participant will then keep a record of its clients who purchased the debt securities. Unless a global security is exchanged in whole or in part for debt securities in certificated form, it may not be transferred. However, transfers of the whole security between the depositary for that global security and its nominees or their respective successors are permitted.

Unless otherwise provided in the applicable prospectus supplement, The Depository Trust Company, New York, New York ("DTC") will act as depositary for each series of global securities, and DTC will register the global securities in the name of its nominee, Cede & Co. Beneficial interests in global securities will be shown on, and transfers of global securities will be effected only through, records maintained by DTC and its participants.

DTC has provided the following information to us. DTC, the world's largest securities depository, is a:

- limited purpose trust company organized under the New York Banking Law;
- "banking organization" within the meaning of the New York Banking Law;
- member of the Federal Reserve System;
- "clearing corporation" within the meaning of the New York Uniform Commercial Code; and

"clearing agency" registered pursuant to the provisions of Section 17A of the Exchange Act.

DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments (from over 100 countries) that its direct participants deposit with DTC. DTC also facilitates the post-trade settlement among direct participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between direct participants' accounts. This eliminates the need for physical movement of securities certificates. Direct participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations and certain other organizations. DTC is a wholly owned subsidiary of The Depository Trust & Clearing Corporation ("DTCC"). DTCC is the holding company for DTC, National Securities Clearing Corporation and

Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies and clearing corporations that clear through or maintain a custodial relationship with a direct participant, either directly or indirectly. DTC has a Standard & Poor's rating of AA+. The rules applicable to DTC and its direct and indirect participants are on file with the SEC.

Principal and interest payments on global securities registered in the name of DTC's nominee will be made in immediately available funds to DTC's nominee as the registered owner of the global securities. The issuer and the trustee will treat DTC's nominee as the owner of the global securities for all other purposes as well. Accordingly, the issuer, the trustee and any paying agent will have no direct responsibility or liability to pay amounts due on the global securities to owners of beneficial interests in the global securities. DTC's practice is to credit direct participants' accounts upon receipt of any payment of principal or interest on the payment date in accordance with their respective holdings of beneficial interests in the global securities as shown on DTC's records. Payments by direct and indirect participants to owners of beneficial interests in the global securities will be governed by standing instructions and customary practices. These payments will be the responsibility of the direct and indirect participants and not of DTC, the trustee or the issuer, subject to any statutory or regulatory requirements as may be in effect from time to time.

Debt securities represented by a global security will be exchangeable for debt securities in definitive form of like amount and terms in authorized denominations only if:

- DTC notifies us that it is unwilling or unable to continue as depositary;
- DTC ceases to be a registered clearing agency and a successor depositary is not appointed by us within 120 days; or
- we determine not to require all of the debt securities of a series to be represented by a global security and notify the applicable trustee of our decision.

The information in this section concerning DTC and DTC's book-entry system has been obtained from sources that we believe to be reliable, but we take no responsibility for the accuracy thereof.

Merger Covenant

Pursuant to the terms of each indenture, Ventas, Inc. may not, directly or indirectly: (1) consolidate or merge with or into another person or entity, or (2) sell, assign, transfer, convey, lease (other than to an unaffiliated operator in the ordinary course of business) or otherwise dispose of all or substantially all of the properties or assets of Ventas, Inc. and its subsidiaries taken as a whole, in one or more related transactions, to another person or entity, unless:

either (a) Ventas, Inc. is the surviving corporation or (b) the person or entity formed by or surviving any such consolidation or merger (if other than Ventas, Inc.) or to which such sale, assignment, transfer, conveyance or other disposition has been made is a corporation organized or existing under the laws of the United States, any state of the United States or the District of Columbia;

the person or entity formed by or surviving any such consolidation or merger (if other than Ventas, Inc.) or the person or entity to which such sale, assignment, transfer, conveyance or other disposition has been made assumes all of Ventas, Inc.'s obligations under the applicable debt securities and the applicable indenture pursuant to agreements reasonably satisfactory to the trustee; and

immediately after such transaction, on a pro forma basis giving effect to such transaction or series of transactions (and treating any obligation of Ventas, Inc. or any subsidiary incurred in connection with or as a result of such transaction or series of transactions as having been incurred at the time of such transaction), no default or event of default exists under the applicable indenture.

Upon any consolidation or merger, or any sale, assignment, transfer, conveyance, lease or other disposition of all or substantially all of the properties or assets of Ventas, Inc. in accordance with the foregoing provisions, the successor person or entity formed by such consolidation or into which Ventas, Inc. is merged or to which such sale, assignment, transfer, conveyance, lease or other disposition is made, will succeed to, and be substituted for, and may exercise every right and power of, Ventas, Inc. under the applicable indenture with the same effect as if such successor initially had been named as Ventas, Inc. therein. When a successor assumes all the obligations of its predecessor under the applicable indenture and the applicable debt securities following a consolidation or merger, or any sale, assignment, transfer, conveyance, lease or other disposition of all or substantially all of the assets of the predecessor in accordance with the foregoing provisions, the predecessor will be released from those obligations.

The foregoing restrictions will not apply to: (1) a sale, assignment, transfer, conveyance or other disposition of assets between or among Ventas, Inc. and its subsidiaries; (2) a sale or transfer of assets from a guarantor to the issuer; or (3) the consolidation or merger of a guarantor with or into the issuer.

Events of Default, Notice and Waiver

Each indenture provides that the following are events of default with respect to any series of debt securities issued thereunder, unless the applicable prospectus supplement states otherwise:

- default by Ventas, Inc. or its subsidiaries for 30 days in the payment of any interest on any debt security of that series;

- default by Ventas, Inc. or its subsidiaries in the payment of the principal or premium, if any, on any debt security of that series when due and payable;

- default by Ventas, Inc. or its subsidiaries in the making of any sinking fund payment required for any debt security of that series when due;

- breach by Ventas, Inc. or its subsidiaries of any other term of that indenture for 60 days after receipt of notice of default stating they are in breach (either the applicable trustee or the holders of more than 25% in aggregate principal amount of the applicable debt securities of that series then outstanding may send the notice);

- default under any other indebtedness of Ventas, Inc. or its subsidiaries in an aggregate principal amount exceeding $100.0 million after any applicable grace period, which default results in the acceleration of the maturity of such indebtedness and where that indebtedness is not discharged or that acceleration is not rescinded or annulled within ten days after receipt of written notice specifying the default (either the applicable trustee or the holders of more than 25% in aggregate principal amount of the applicable debt securities of that series then outstanding may send the notice);

certain events of bankruptcy, insolvency or reorganization of Ventas, Inc. or its significant subsidiaries;

the cessation of any guarantee of the debt securities of that series to be in full force and effect or the disaffirmance or denial by any guarantor of its obligations with respect to any guarantee of the debt securities; and any other event of default provided with respect to the debt securities of that series and described in the applicable prospectus supplement.

The applicable trustee will be required to give notice to the holders of the applicable debt securities within 90 days after a default under the applicable indenture unless the default has been cured or waived. The applicable trustee may withhold notice to the holders of the applicable debt securities of any default, except a default in the payment of the principal of, premium or additional amounts, if any, or interest on the applicable debt securities, if specified responsible officers of the applicable trustee in good faith determine that withholding the notice is in the interest of the holders.

If an event of default with respect to the applicable debt securities has occurred and has not been cured, either the applicable trustee or the holders of at least 25% in principal amount of the applicable debt securities then outstanding may declare the entire principal amount of the applicable debt securities to be due and immediately payable by written notice to Ventas, Inc., the issuer and the applicable trustee. If an event of default occurs because of certain events in bankruptcy, insolvency or reorganization, the principal amount of all outstanding debt securities will be automatically accelerated, without any action by the applicable trustee or any holder. At any time after the applicable trustee or the holders have accelerated the applicable debt securities, but before a judgment or decree for payment of the money due has been obtained, the holders of at least a majority in principal amount of the applicable debt securities then outstanding may, under certain circumstances, rescind and annul such acceleration.

Holders of a majority in principal amount of outstanding debt securities of any series may, subject to some limitations, waive any past default with respect to that series and the consequences of the default (including without limitation waivers obtained in connection with the purchase of, or tender offer or exchange offer for, such debt securities). The prospectus supplement relating to any series of debt securities that are original issue discount securities will describe the particular provisions relating to acceleration of a portion of the principal amount of those original issue discount securities upon the occurrence and continuation of an event of default.

Except in cases of default, where a trustee has some special duties, the applicable trustee is not required to take any action under the applicable indenture at the request of any holders of applicable debt securities unless such holders offer the applicable trustee satisfactory protection from expenses and liability. We refer to this as an "indemnity." If reasonable indemnity is provided, the holders of a majority in principal amount of the applicable debt securities then outstanding may direct the time, method and place of conducting any lawsuit or other formal legal action seeking any remedy available to the applicable trustee. These majority holders may also direct the applicable trustee in performing any other action under the applicable indenture, subject to certain limitations.

Before a holder bypasses the applicable trustee and brings its own lawsuit or other formal legal action or takes other steps to enforce its rights or protect its interests relating to the applicable debt securities, the following must occur:

the holder must give the applicable trustee written notice that an event of default with respect to the applicable debt securities has occurred and remains uncured;

the holders of at least a majority in principal amount of all applicable debt securities outstanding must make a written request that the applicable trustee take action because of the default, and must offer reasonable indemnity to the applicable trustee against the cost and other liabilities of taking that action;

the applicable trustee must have not taken action for 60 days after receipt of the notice and offer of indemnity; and the holders of at least a majority in principal amount of all applicable debt securities outstanding must not have given the applicable trustee a direction inconsistent with such request within such 60-day period.

However, a holder is entitled at any time to bring a lawsuit for the payment of money due on any debt security after its due date.

Within 120 days after the end of each fiscal year, Ventas, Inc. and the guarantor, if any, will furnish to the applicable trustee a written statement by certain of Ventas, Inc.'s officers certifying that, to their knowledge, Ventas, Inc. is in compliance with the applicable indenture and the applicable debt securities, or otherwise specifying any default.

Modification of the Indentures

Except as provided in the next two succeeding paragraphs, each indenture and/or the applicable debt securities may be amended or supplemented with the written consent of the holders of at least a majority in principal amount of the debt securities then outstanding issued under the applicable indenture affected by such amendment or supplement, voting as a single class (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, such debt securities), and any existing default, event of default (other than a default or event of default with respect to the payment of the principal of, or premium or additional amounts, if any, or interest on, the applicable debt securities, except a payment default resulting from an acceleration that has been rescinded) or compliance with any provision of the applicable indenture or the applicable debt securities may be waived with the consent of the holders of a majority in principal amount of the debt securities then outstanding issued under the applicable indenture affected thereby, voting as a single class (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, the applicable debt securities).

Without the consent of each holder affected, an amendment or waiver may not (with respect to any debt securities held by a non-consenting holder):

reduce the principal amount of debt securities whose holders must consent to an amendment, supplement or waiver;

reduce the principal amount, or change the fixed maturity, of any debt security, reduce the rate of, or change the time for payment of, interest or any premium on any debt security or alter the provisions with respect to the redemption thereof (excluding, for the avoidance of doubt, the number of days before a redemption date that a notice of redemption must be mailed to holders of such debt securities, which may be amended with the written consent of the holders of at least a majority in aggregate principal amount of the debt securities then outstanding);

reduce the rate of or change the time for payment of interest on any debt security, the payment of any sinking fund or analogous obligation, or impair the right to institute suit for the enforcement of any such payment on or after the stated maturity of such security;

reduce the amount of principal of an original issue discount security that would be due and payable upon declaration of acceleration of its maturity;

waive a default or event of default in the payment of principal of, or interest or premium, or additional amounts, if any, on the debt securities (except a rescission of acceleration of the debt securities by the holders of at least a majority in aggregate principal amount of the debt securities then outstanding and a waiver of the payment default that resulted from such acceleration);

make a debt security payable in a currency, currencies or currency unit(s) other than the currency stated in such debt security;

- make any change in the provisions of the applicable indenture relating to waivers of past defaults or the rights of holders of debt securities to receive payments of principal of, or interest or premium, or additional amounts, if any, on such debt securities;

- release any guarantor from any of its obligations under its guarantee of the debt securities or the applicable indenture except in accordance with the terms of such indenture;

- impair the rights of holders of the debt securities to convert their securities, if convertible, upon the terms established pursuant to or in accordance with the provisions of the applicable indenture;

- waive a redemption payment with respect to any debt security; or

- make any change in the amendment and waiver provisions set forth above.

Any such consent need only approve the substance, rather than the particular form, of the proposed amendment.

Notwithstanding the preceding, without the consent of any holder of debt securities, the indentures and the applicable debt securities issued thereunder may be amended or supplemented to:

- cure any ambiguity, defect or inconsistency;

- provide for uncertificated debt securities in addition to or in place of certificated debt securities;

- provide for the assumption of the obligations of the issuer to holders of debt securities in the case of a merger or consolidation or sale of all or substantially all of the assets of the issuer;

- add to the covenants of the issuer for the benefit of the holders of all or any series of debt securities (and if such covenants are to be for the benefit of less than all series of debt securities, stating that such covenants are expressly being included solely for the benefit of the debt securities of that series);

- add any additional events of default for the benefit of the holders of all or any series of debt securities (and if such events of default are to be for the benefit of less than all series of debt securities, stating that such events of default are expressly being included solely for the benefit of the debt securities of that series); *provided*, *however*, that in respect of any such additional events of default, such supplemental indenture may provide for a particular period of grace after default (which may be shorter or longer than that allowed in the case of other defaults), may provide for an immediate enforcement upon such default, may limit the remedies available to the trustee upon such default or may limit the right of the holders of a majority in aggregate principal amount of that or those series of debt securities to which such additional events of default apply to waive such default;

add to, change or eliminate any of the provisions of an indenture, so long as any such addition not otherwise permitted under the applicable indenture shall (i) neither apply to any Securities of any series created prior to the execution of such amendment or supplement and entitled to the benefit of such provision nor modify the rights of the Holders of any such Security with respect to the benefit of such provision or (ii) become effective only when there is no such Security outstanding;

establish the form or terms of debt securities of any series as permitted by the applicable indenture, including the provisions and procedures relating to debt securities convertible into Ventas, Inc. common stock;

evidence and provide for the acceptance of appointment under the applicable indenture by a successor trustee with respect to the debt securities of one or more series and to add to or change any of the provisions of the applicable indenture as shall be necessary to provide for or facilitate the administration of the trusts thereunder by more than one trustee;

evidence the succession of another entity to Ventas, Inc. and the assumption by the successor of the covenants of Ventas, Inc. contained in the applicable indenture;

supplement any of the provisions of the applicable indenture to such extent as shall be necessary to permit or facilitate the defeasance and discharge of any series of debt securities pursuant thereto, *provided* that any such action will not adversely affect the interests of the holders of debt securities of that series or any other series of debt securities in any material respect;

add additional guarantees with respect to the applicable debt securities;

secure the applicable debt securities;

make any other change that would provide any additional rights or benefits to the holders of debt securities or that does not adversely affect the legal rights under the applicable indenture of any such holder;

comply with requirements of the SEC in order to effect or maintain the qualification of the applicable indenture under the Trust Indenture Act;

with respect to any series of debt securities, to conform the text of such series of debt securities or the indenture applicable thereto to any provision of the "Description of the Notes," "Description of Notes" or "Description of Debt Securities" sections of the offering memorandum, prospectus supplement or other like offering document relating to the initial offering of such series of debt securities, to the extent that such provision was intended to be a verbatim recitation of a provision of such series of debt securities or the indenture applicable thereto; or

to provide for the issuance of additional debt securities as permitted by the applicable indenture.

Defeasance and Covenant Defeasance

When the issuer establishes a series of debt securities, it may provide that the debt securities of that series are subject to the defeasance and discharge provisions of the applicable indenture. If those provisions are made applicable, the issuer may elect either:

- to defease and, together with the guarantor (if any), be legally released from, subject to some limitations, all of their respective obligations with respect to the debt securities of that series; or
- to be released from the obligations to comply with specified covenants and eliminate certain events of default relating to the debt securities of that series as described in the applicable prospectus supplement.

To effect defeasance or covenant defeasance, the issuer must irrevocably deposit in trust with the applicable trustee an amount in any combination of funds or government obligations, which, through the payment of principal and interest in accordance with their terms, will provide money sufficient to make payments on the debt securities of that series and any mandatory sinking fund or analogous payments on the debt securities of that series.

Upon such defeasance, the issuer will not be released from obligations:

- to pay additional amounts, if any, on the debt securities of that series upon the occurrence of some events;
- to register the transfer or exchange of the debt securities of that series;
- to replace some of the debt securities of that series;

- to maintain an office relating to the debt securities of that series; or
- to hold moneys for payment in trust.

To establish such a trust, the issuer must, among other things, deliver to the applicable trustee an opinion of counsel to the effect that the holders of the debt securities of that series:

- will not recognize income, gain or loss for U.S. federal income tax purposes as a result of the defeasance or covenant defeasance; and
- will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if the defeasance or covenant defeasance had not occurred. In the case of defeasance, the opinion of counsel must be based upon a ruling of the Internal Revenue Service (the "IRS") or a change in applicable U.S. federal income tax law occurring after the date of the applicable indenture.

Government obligations generally mean securities which are:

- direct obligations of the U.S. or of the government that issued the foreign currency in which the applicable debt securities are payable, in each case, where the issuer has pledged its full faith and credit to pay the obligations; or
- obligations of an agency or instrumentality of the U.S. or of the government that issued the foreign currency in which the applicable debt securities are payable, the payment of which is unconditionally guaranteed as a full faith and credit obligation by the U.S. or that other government.

In any case, the issuer of government obligations cannot have the option to call or redeem the obligations. In addition, government obligations include, subject to certain qualifications, a depository receipt issued by a bank or trust company as custodian with respect to any government obligation or a specific payment of interest on or principal of any such government obligation held by the custodian for the account of a depository receipt holder.

If the issuer effects covenant defeasance with respect to the debt securities of any series, the amount on deposit with the applicable trustee will be sufficient to pay amounts due on the debt securities of that series at the time of their stated maturity. However, the debt securities of that series may become due and payable prior to their stated maturity if there is an event of default with respect to a covenant from which the issuer has not been released. In that event, the amount on deposit may not be sufficient to pay all amounts due on the debt securities of that series at the time of the acceleration and the holders of those debt securities will be required to look to the issuer and the guarantor, if any, for repayment of any shortfall.

The applicable prospectus supplement may further describe the provisions, if any, permitting defeasance or covenant defeasance, including any modifications to the provisions described above.

Ranking

Each series of senior debt securities will constitute senior indebtedness and will rank equally with each other series of senior debt securities and other senior indebtedness and senior to all subordinated indebtedness, including, but not limited to, all subordinated debt securities. Each series of subordinated debt securities will constitute subordinated indebtedness and will rank equally with each other series of subordinated debt securities but subordinate to all senior indebtedness.

Payments on the subordinated debt securities will be subordinated to the senior indebtedness of the issuer and the guarantor, if any, described under "Guarantees" below, whether outstanding on the date of the subordinated indenture or incurred after that date. As of December 31, 2017, we had $7.6 billion of outstanding senior indebtedness (excluding unamortized fair value adjustment and unamortized discounts). The prospectus supplement relating to each issuance of subordinated debt securities will specify the aggregate amount of our outstanding indebtedness as of the most recent practicable date that would rank senior to the subordinated debt securities.

If any of the following events occur, the holders of senior indebtedness must receive payment of the full amount due on the senior indebtedness, or that payment must be duly provided for, before the issuer may make payments on the subordinated debt securities:

- any distribution of our assets upon our liquidation, reorganization or other similar transaction except for a distribution in connection with a merger or other transaction complying with the covenant described above under " Merger Covenant";
- the occurrence and continuation of a payment default on any senior indebtedness; or
- a declaration of the principal of any series of subordinated debt securities, or, in the case of original issue discount securities, the portion of the principal amount specified under their terms, as due and payable, that has not been rescinded and annulled.

However, if the event is the acceleration of any series of subordinated debt securities, only the holders of senior indebtedness outstanding at the time of the acceleration of those subordinated debt securities, or, in the case of original issue discount securities, that portion of the principal amount specified under their terms, must receive payment of the full amount due on that senior indebtedness, or such payment must be duly provided for, before the issuer makes payments on the subordinated debt securities.

As a result of the subordination provisions, some of our general creditors, including holders of senior indebtedness, may recover more, ratably, than the holders of the subordinated debt securities in the event of insolvency.

For purposes of the subordinated indenture, "senior indebtedness" of the issuer and any guarantor means the following indebtedness and obligations:

- the principal of and premium, if any, and unpaid interest on indebtedness for money borrowed;
- purchase money and similar obligations;
- obligations under capital leases;
- guarantees, assumptions or purchase commitments relating to, or other transactions as a result of which the issuer or the guarantor, if any, are responsible for

the payment of, the indebtedness of others;

renewals, extensions and refundings of the foregoing indebtedness;

interest or obligations in respect of the foregoing indebtedness accruing after the commencement of any insolvency or bankruptcy proceedings; and

obligations associated with derivative products.

However, indebtedness and obligations do not constitute senior indebtedness if the instrument by which the issuer or the guarantor becomes obligated for that indebtedness or those obligations expressly provides that indebtedness or those obligations are junior in right of payment to any other indebtedness or obligations of the issuer or the guarantor, as applicable.

Convertible Debt Securities

Unless otherwise provided in the applicable prospectus supplement, the following provisions will apply to debt securities of Ventas, Inc. that will be convertible into shares of Ventas, Inc. common stock.

Each holder of unredeemed convertible debt securities may, at any time during the period specified in the applicable prospectus supplement, convert those convertible debt securities into shares of Ventas, Inc. common stock. The conversion price or rate for each $1,000 principal amount of convertible debt securities will be specified in the applicable prospectus supplement. The holder of a convertible debt security may convert only a portion of the convertible debt security that is $1,000 principal amount or any integral multiple of $1,000. In the case of convertible debt securities called for redemption, conversion rights will expire at the close of business on the date fixed for the redemption. However, in the case of repayment at the option of the applicable holder, conversion rights will terminate upon receipt of written notice of the holder's exercise of that option.

The conversion price or rate may be subject to adjustment in certain events, as specified in the applicable indenture, including:

- the issuance of shares of Ventas, Inc. common stock as a dividend on the common stock;
- subdivisions and combinations of Ventas, Inc. common stock;
- the issuance to all holders of Ventas, Inc. common stock of rights or warrants entitling such holders for a period not exceeding 45 days to subscribe for or purchase shares of common stock at a price per share less than its then current per share market price; and
- the distribution to all holders of Ventas, Inc. common stock of (i) shares of Ventas, Inc. capital stock, other than common stock, (ii) evidence of Ventas, Inc. indebtedness or assets excluding cash dividends or distributions paid from its retained earnings or (iii) subscription rights or warrants other than those referred to above.

However, Ventas, Inc. will not be required to make any adjustment of the conversion price or rate of less than 1%. Fractional shares of common stock will not be issued upon conversion. In lieu of fractional shares, Ventas, Inc. will pay a cash adjustment. Unless otherwise specified in the applicable prospectus supplement, debt securities surrendered for conversion between any record date for an interest payment and the related interest payment date must be accompanied by payment of an amount in cash equal to the interest payment on the surrendered debt security. However, that payment does not have to accompany debt securities surrendered for conversion if those debt securities have been called for redemption during that period. Furthermore, upon conversion of any original issue discount security, the fixed number of shares of common stock into which such original issue discount security is convertible will first be applied to the portion attributable to the accrued original issue discount relating to the period from the date of issuance to the date of conversion of the original issue discount security, and, second, to the portion attributable to the balance of the principal amount of such debt securities.

Guarantees

If the applicable prospectus supplement relating to a series of debt securities provides that those debt securities will have the benefit of a guarantee by Ventas, Inc. or Ventas Realty, then the debt securities will be fully and unconditionally guaranteed by Ventas, Inc. or Ventas Realty, as applicable. In the event of a bankruptcy, liquidation or reorganization of any of the non-guarantor subsidiaries of the issuer, the non-guarantor subsidiaries will pay the holders of their debt and their trade creditors before they will be able to distribute any of their assets to the issuer. The guarantees will be general obligations of each guarantor. If a series of debt securities is so guaranteed, a supplemental indenture to the applicable base indenture will be executed by each guarantor. Ventas, Inc. is the guarantor under the indentures governing all of Ventas Realty's existing senior notes, including those co-issued with Ventas Capital Corporation ("Ventas Capital"). Ventas Capital is a wholly-owned subsidiary of Ventas Realty organized under the laws of the State of Delaware for the purpose of serving as co-issuer with Ventas Realty of certain previously issued debt securities. Ventas Capital has no assets or operations and will not be a co-issuer to any debt securities that may be offered pursuant to this prospectus and any applicable prospectus supplement.

The obligations of each guarantor under its guarantee will be limited as necessary to prevent that guarantee from constituting a fraudulent conveyance under applicable law. A guarantor may not sell or otherwise dispose of all or substantially all of its assets to, or consolidate with or merge into another company, other than an issuer or another guarantor, unless the person acquiring the property in any such sale or disposition or the person formed by or surviving any such consolidation or merger assumes all of the obligations of that guarantor pursuant to a supplemental indenture satisfactory to the applicable trustee, and only if immediately after giving effect to the transaction, no default or event of default would exist. The terms of any guarantee and the conditions upon which a guarantor may be released from its obligations under that guarantee will be set forth in the applicable prospectus supplement.

CERTAIN U.S. FEDERAL INCOME TAX CONSIDERATIONS

The following is a general summary of certain material U.S. federal income tax considerations regarding our election to be taxed as a REIT and the acquisition, ownership or disposition of our capital stock or debt securities. Supplemental U.S. federal income tax considerations relevant to holders of the securities offered by this prospectus (including warrants, preferred stock and depositary shares) may be provided in the prospectus supplement that relates to those securities. For purposes of this discussion, references to "we," "our" and "us" mean only Ventas, Inc. and do not include any of its subsidiaries, except as otherwise indicated. This summary is for general information only and is not tax advice. The information in this summary is based on:

- the Internal Revenue Code of 1986, as amended (the "Code");
- current, temporary and proposed Treasury Regulations promulgated under the Code;
- the legislative history of the Code;
- administrative interpretations and practices of the IRS; and
- court decisions;

in each case, as of the date of this prospectus. In addition, the administrative interpretations and practices of the IRS include its practices and policies as expressed in private letter rulings that are not binding on the IRS except with respect to the particular taxpayers who requested and received those rulings. The sections of the Code and the corresponding Treasury Regulations that relate to qualification and taxation as a REIT are highly technical and complex. The following discussion sets forth certain material aspects of the sections of the Code that govern the U.S. federal income tax treatment of a REIT and its stockholders. This summary is qualified in its entirety by the applicable Code provisions, Treasury Regulations promulgated under the Code, and administrative and judicial interpretations thereof. Potential tax reforms may result in significant changes to the rules governing U.S. federal income taxation. New legislation, Treasury Regulations, administrative interpretations and practices and/or court decisions may significantly and adversely affect our ability to qualify as a REIT, the U.S. federal income tax consequences of such qualification, or the U.S. federal income tax consequences of an investment in us, including those described in this discussion. Moreover, the law relating to the tax treatment of other entities, or an investment in other entities, could change, making an investment in such other entities more attractive relative to an investment in a REIT. Any such changes could apply retroactively to transactions preceding the date of the change. We have not requested, and do not plan to request, any rulings from the IRS that we qualify as a REIT, and the statements in this prospectus are not binding on the IRS or any court. Thus, we can provide no assurance that the tax considerations contained in this discussion will not be challenged by the IRS or will be sustained by a court if challenged by the

IRS. This summary does not discuss any state, local or non-U.S. tax consequences, or any tax consequences arising under any U.S. federal tax laws other than U.S. federal income tax laws, associated with the acquisition, ownership or disposition of our capital stock or debt securities, or our election to be taxed as a REIT.

You are urged to consult your tax advisor regarding the tax consequences to you of:

- **the acquisition, ownership and disposition of our capital stock or debt securities, including the U.S. federal, state, local, non-U.S. and other tax consequences;**
- **our election to be taxed as a REIT for U.S. federal income tax purposes; and**
- **potential changes in applicable tax laws.**

Taxation of Our Company

General

We have elected to be taxed as a REIT under Sections 856 through 860 of the Code, commencing with our taxable year ended December 31, 1999. We believe that we have been organized and have operated in a manner that has allowed us to qualify for taxation as a REIT under the Code commencing with such taxable year, and we intend to continue to be organized and operate in this manner. However, qualification and taxation as a REIT depend upon our ability to meet the various qualification tests imposed under the Code, including through actual operating results, asset composition, distribution levels and diversity of stock ownership. Accordingly, no assurance can be given that we have been organized and have operated, or will continue to be organized and operate, in a manner so as to qualify or remain qualified as a REIT. See " Failure to Qualify" for potential tax consequences if we fail to qualify as a REIT.

Latham & Watkins LLP has acted as our tax counsel in connection with this prospectus and our election to be taxed as a REIT. Latham & Watkins LLP has rendered an opinion to us, as of the date of this prospectus, to the effect that, commencing with our taxable year ending December 31, 2013, we have been organized and have operated in conformity with the requirements for qualification and taxation as a REIT under the Code, and our proposed method of operation will enable us to continue to meet the requirements for qualification and taxation as a REIT under the Code. It must be emphasized that this opinion was based on various assumptions and representations as to factual matters, including representations made by us in a factual certificate provided by one or more of our officers. In addition, this opinion was based upon our factual representations set forth in this prospectus. Moreover, our qualification and taxation as a REIT depend upon our ability to meet the various qualification tests imposed under the Code, which are discussed below, including through actual operating results, asset composition, distribution levels and diversity of stock ownership, the results of which have not been and will not be reviewed by Latham & Watkins LLP. Accordingly, no assurance can be given that our actual results of operation for any particular taxable year have satisfied or will satisfy those requirements. Further, the anticipated U.S. federal income tax treatment described herein may be changed, perhaps retroactively, by legislative, administrative or judicial action at any time. Latham & Watkins LLP has no obligation to update its opinion subsequent to the date of such opinion.

Provided we qualify for taxation as a REIT, we generally will not be required to pay U.S. federal corporate income taxes on our REIT taxable income that is currently distributed to our stockholders. This treatment substantially eliminates the "double taxation" that ordinarily results from investment in a C corporation. A C corporation is a corporation that generally is required to pay tax at the corporate level. Double taxation means taxation once at the corporate level when income is earned and once again at the stockholder level when the income is distributed. We will, however, be required to pay U.S. federal income tax as follows:

First, we will be required to pay regular U.S. federal corporate income tax on any undistributed REIT taxable income, including undistributed capital gain.

Second, if we have (1) net income from the sale or other disposition of "foreclosure property" held primarily for sale to customers in the ordinary course of business or (2) other nonqualifying income from foreclosure property, we will be required to pay regular U.S. federal corporate income tax on this income. To the extent that income from foreclosure property is otherwise qualifying income for purposes of the 75% gross income test, this tax is not applicable. Subject to certain other requirements, foreclosure property generally is defined as property we acquired through foreclosure or after a default on a loan secured by the property or a lease of the property. See " Foreclosure Property."

Third, we will be required to pay a 100% tax on any net income from prohibited transactions. Prohibited transactions are, in general, sales or other taxable dispositions of property, other than foreclosure property, held as inventory or primarily for sale to customers in the ordinary course of business.

Fourth, if we fail to satisfy the 75% gross income test or the 95% gross income test, as described below, but have otherwise maintained our qualification as a REIT because certain other requirements are met, we will be required to pay a tax equal to (1) the greater of (A) the amount by which we fail to satisfy the 75% gross income test and (B) the amount by which we fail to satisfy the 95% gross income test, multiplied by (2) a fraction intended to reflect our profitability.

Fifth, if we fail to satisfy any of the asset tests (other than a de minimis failure of the 5% or 10% asset tests), as described below, due to reasonable cause and not due to willful neglect, and we nonetheless maintain our REIT qualification because of specified cure provisions, we will be required to pay a tax equal to the greater of $50,000 or the corporate tax rate multiplied by the net income generated by the nonqualifying assets that caused us to fail such test.

Sixth, if we fail to satisfy any provision of the Code that would result in our failure to qualify as a REIT (other than a violation of the gross income tests or certain violations of the asset tests, as described below) and the violation is due to reasonable cause and not due to willful neglect, we may retain our REIT qualification but we will be required to pay a penalty of $50,000 for each such failure.

Seventh, we will be required to pay a 4% excise tax to the extent we fail to distribute during each calendar year at least the sum of (1) 85% of our ordinary income for the year, (2) 95% of our capital gain net income for the year, and (3) any undistributed taxable income from prior periods.

Eighth, if we acquire any asset from a corporation that is or has been a C corporation in a transaction in which our tax basis in the asset is less than the fair market value of the asset, in each case determined as of the date on which we acquired the asset, and we subsequently recognize gain on the disposition of the asset during the five-year period beginning on the date on which we acquired the asset, then we generally will be required to pay regular U.S. federal corporate income tax on this gain to the extent of the excess of (1) the fair market value of the asset over (2) our adjusted tax basis in the asset, in each case determined as of the date on which we acquired the asset. The results described in this paragraph with respect to the recognition of gain assume that the C corporation will refrain from making an election to receive different treatment under applicable Treasury Regulations on its tax return for the year in which we acquire the asset from the C corporation. Under applicable Treasury Regulations, any gain from the sale of property we acquired in an exchange under Section 1031 (a like-kind exchange) or Section 1033 (an involuntary conversion) of the Code generally is excluded from the application of this built-in gains tax.

Ninth, our subsidiaries that are C corporations, including our "taxable REIT subsidiaries" described below, generally will be required to pay U.S. federal corporate income tax on their earnings.

Tenth, we will be required to pay a 100% tax on any "redetermined rents," "redetermined deductions," "excess interest" or "redetermined TRS service income," as described below under " Penalty Tax." In general, redetermined rents are rents from real property that are overstated as a result of services furnished to any of our tenants by a taxable REIT subsidiary of ours. Redetermined deductions and excess interest generally represent amounts that are deducted by a taxable REIT subsidiary of ours for amounts paid to us that are in excess of the amounts that would have been deducted based on arm's length negotiations. Redetermined TRS service income generally represents income of a taxable REIT subsidiary that is understated as a result of services provided to us or on our behalf.

Eleventh, we may elect to retain and pay income tax on our net capital gain. In that case, a stockholder would include its proportionate share of our undistributed capital gain (to the extent we make a timely designation of such gain to the stockholder) in its income, would be deemed to have paid the tax that we paid on such gain, and would be allowed a credit for its proportionate share of the tax deemed to have been paid, and an adjustment would be made to increase the tax basis of the stockholder in our capital stock.

Twelfth, if we fail to comply with the requirement to send annual demand letters to our stockholders holding at least a certain percentage of our stock, as determined by Treasury Regulations, requesting information regarding the actual ownership of our stock, and the failure is not due to reasonable cause or due to willful neglect, we will be subject to a $25,000 penalty, or if the failure is intentional, a $50,000 penalty.

We and our subsidiaries may be subject to a variety of taxes other than U.S. federal income tax, including payroll taxes and state and local income, property and other taxes on our assets and operations.

From time to time we may own properties in other countries which may impose taxes on our operations within their jurisdictions. To the extent possible, we will structure our activities to minimize our non-U.S. tax liability. However, there can be no assurance that we will be able to eliminate our non-U.S. tax liability or reduce it to a specified level. Furthermore, as a REIT, both we and our stockholders will derive little or no benefit from foreign tax credits arising from those non-U.S. taxes.

Requirements for Qualification as a REIT

The Code defines a REIT as a corporation, trust or association:

(1) that is managed by one or more trustees or directors;

(2) that issues transferable shares or transferable certificates to evidence its beneficial ownership;

(3) that would be taxable as a domestic corporation, but for Sections 856 through 860 of the Code;

(4) that is not a financial institution or an insurance company within the meaning of certain provisions of the Code;

(5) that is beneficially owned by 100 or more persons;

(6) not more than 50% in value of the outstanding stock of which is owned, actually or constructively, by five or fewer individuals, including certain specified entities, during the last half of each taxable year; and

(7) that meets other tests, described below, regarding the nature of its income and assets and the amount of its distributions.

The Code provides that conditions (1) to (4), inclusive, must be met during the entire taxable year and that condition (5) must be met during at least 335 days of a taxable year of 12 months, or during a proportionate part of a taxable year of less than 12 months. Conditions (5) and (6) do not apply until after the first taxable year for which an election is made to be taxed as a REIT. For purposes of condition (6), the term "individual" includes a supplemental unemployment compensation benefit plan, a private foundation or a portion of a trust permanently set aside or used exclusively for charitable purposes, but generally does not include a qualified pension plan or profit sharing trust.

We believe that we have been organized and have operated in a manner that has allowed us, and will continue to allow us, to satisfy conditions (1) through (7) inclusive, during the relevant time periods. In addition, our charter provides for restrictions regarding ownership and transfer of our shares that are intended to assist us in continuing to satisfy the share ownership requirements described in conditions (5) and (6) above. A description of the share ownership and transfer restrictions relating to our capital stock is contained in the discussion in this prospectus under the heading "Description of Ventas, Inc. Common Stock Restrictions on Ownership and Transfer" and "Description of Ventas, Inc. Preferred Stock Restrictions on Ownership and Transfer." These restrictions, however, do not ensure that we have previously satisfied, and may not ensure that we will, in all cases, be able to continue to satisfy, the share ownership requirements described in conditions (5) and (6) above. If we fail to satisfy these share ownership requirements, except as provided in the next sentence, our status as a REIT will terminate. If, however, we comply with the rules contained in applicable Treasury Regulations that require us to ascertain the actual ownership of our shares and we do not know, or would not have known through the exercise of reasonable diligence, that we failed to meet the requirement described in condition (6) above, we will be treated as having met this requirement. See " Failure to Qualify."

In addition, we may not maintain our status as a REIT unless our taxable year is the calendar year. We have and will continue to have a calendar taxable year.

Ownership of Interests in Partnerships, Limited Liability Companies and Qualified REIT Subsidiaries

In the case of a REIT that is a partner in a partnership or a member in a limited liability company treated as a partnership for U.S. federal income tax purposes, Treasury Regulations provide that the REIT will be deemed to own its proportionate share of the assets of the partnership or limited liability company, as the case may be, based on its interest in partnership capital, subject to special rules relating to the 10% asset test described below. Also, the REIT will be deemed to be entitled to its proportionate share of the income of that entity. The assets and gross income of the partnership or limited liability company retain the same character in the hands of the REIT for purposes of Section 856 of the Code, including satisfying the gross income tests and the asset tests. Thus, our pro rata share of the assets and items of income of any partnership or limited liability company treated as a partnership or disregarded entity for U.S. federal income tax purposes in which we directly or indirectly own an interest is treated as our assets and items of income for purposes of applying the requirements described in this discussion, including the gross income and asset tests described below. A brief summary of the rules governing the U.S. federal income taxation of partnerships and limited liability companies is set forth below in " Tax Aspects of the Subsidiary Partnerships and the Limited Liability Companies."

We generally have control of most of the subsidiary partnerships and limited liability companies in which we own an interest and intend to operate them in a manner consistent with the requirements for our qualification as a REIT. We may from time to time be a limited partner or non-managing member in some of our partnerships and limited liability companies. If a partnership or limited liability company in which we own an interest takes or expects to take actions that could jeopardize our status as a REIT or require us to pay tax, we may be forced to dispose of our interest in such entity. In addition, it is possible that a partnership or limited liability company could take an action which could cause us to fail a gross income or asset test, and that we would not become aware of such action in time to dispose of our interest in the partnership or limited liability company or take other corrective action on a timely basis. In that case, we could fail to qualify as a REIT unless we were entitled to relief, as described below.

We may from time to time own and operate certain properties through wholly-owned subsidiaries that we intend to be treated as "qualified REIT subsidiaries" under the Code. A corporation will qualify as our qualified REIT subsidiary if we own 100% of the corporation's outstanding stock and do not elect with the subsidiary to treat it as a "taxable REIT subsidiary," as described below. A qualified

REIT subsidiary is not treated as a separate corporation, and all assets, liabilities and items of income, gain, loss, deduction and credit of a qualified REIT subsidiary are treated as assets, liabilities and items of income, gain, loss, deduction and credit of the parent REIT for all purposes under the Code, including all REIT qualification tests. Thus, in applying the U.S. federal tax requirements described in this discussion, any qualified REIT subsidiaries we own are ignored, and all assets, liabilities and items of income, gain, loss, deduction and credit of such corporations are treated as our assets, liabilities and items of income, gain, loss, deduction and credit. A qualified REIT subsidiary is not subject to U.S. federal income tax, and our ownership of the stock of a qualified REIT subsidiary will not violate the restrictions on ownership of securities, as described below under "   Asset Tests."

Ownership of Interests in Taxable REIT Subsidiaries

We currently own an interest in a number of taxable REIT subsidiaries and may acquire securities in additional taxable REIT subsidiaries in the future. A taxable REIT subsidiary is a corporation (or other entity treated as a corporation for U.S. federal income tax purposes) other than a REIT in which a REIT directly or indirectly holds stock, and that has made a joint election with such REIT to be treated as a taxable REIT subsidiary. If a taxable REIT subsidiary owns more than 35% of the total voting power or value of the outstanding securities of another corporation, such other corporation will also be treated as a taxable REIT subsidiary. Other than some activities relating to lodging and health care properties, a taxable REIT subsidiary may generally engage in any business, including the provision of customary or non-customary services to tenants of its parent REIT. A taxable REIT subsidiary is subject to U.S. federal income tax as a regular C corporation. A REIT's ownership of securities of a taxable REIT subsidiary is not subject to the 5% or 10% asset test described below. See "   Asset Tests." For taxable years beginning after December 31, 2017, taxpayers are subject to a 30% limitation on their ability to deduct net business interest, subject to certain exceptions. See "   Annual Distribution Requirements." While not clear, this provision may limit the ability of our taxable REIT subsidiaries to deduct interest, which could increase their taxable income.

Ownership of Interests in Subsidiary REITs

We own and may acquire direct or indirect interests in one or more entities that have elected or will elect to be taxed as REITs under the Code (each, a "Subsidiary REIT"). A Subsidiary REIT is subject to the various REIT qualification requirements and other limitations described herein that are applicable to us. If a Subsidiary REIT were to fail to qualify as a REIT, then (i) that Subsidiary REIT could become subject to U.S. federal income tax or could become a qualified REIT subsidiary and (ii) the Subsidiary REIT's failure to qualify could have an adverse effect on our ability to comply with the REIT income and asset tests, and thus could impair our ability to qualify as a REIT unless we could avail ourselves of certain relief provisions.

Income Tests

We must satisfy two gross income requirements annually to maintain our qualification as a REIT. First, in each taxable year we must derive directly or indirectly at least 75% of our gross income (excluding gross income from prohibited transactions, certain hedging transactions and certain foreign currency gains) from investments relating to real property or mortgages on real property, including "rents from real property," dividends from other REITs and, in certain circumstances, interest, or certain types of temporary investments. Second, in each taxable year we must derive at least 95% of our gross income (excluding gross income from prohibited transactions, certain hedging transactions, and certain foreign currency gains) from the real property investments described above or dividends, interest and gain from the sale or disposition of stock or securities, or from any combination of the foregoing. For these purposes, the term "interest" generally does not include any amount received or accrued, directly or indirectly, if the determination of all or some of the amount depends in any way on the income or profits of any person. However, an amount received or accrued generally will not be excluded from the term "interest" solely by reason of being based on a fixed percentage or percentages of receipts or sales.

Rents we receive from a tenant will qualify as "rents from real property" for the purpose of satisfying the gross income requirements for a REIT described above only if all of the following conditions are met:

The amount of rent is not based in whole or in part on the income or profits of any person. However, an amount we receive or accrue generally will not be excluded from the term "rents from real property" solely because it is based on a fixed percentage or percentages of receipts or sales;

Neither we nor an actual or constructive owner of 10% or more of our capital stock actually or constructively owns 10% or more of the interests in the assets or net profits of a non-corporate tenant, or, if the tenant is a corporation, 10% or more of the total combined voting power of all classes of stock entitled to vote or 10% or more of the total value of all classes of stock of the tenant. Rents we receive from such a tenant that is a taxable REIT subsidiary of ours, however, will not be excluded from the definition of "rents from real property" as a result of this condition if at least 90% of the space at the property to which the rents relate is leased to third parties, and the rents paid by the taxable REIT subsidiary are substantially comparable to rents paid by our other tenants for comparable space. Whether rents paid by a taxable REIT subsidiary are substantially comparable to rents paid by other tenants is determined at the time the lease with the taxable REIT subsidiary is entered into, extended, and modified, if such modification increases the rents due under such lease. Notwithstanding the foregoing, however, if a lease with a "controlled taxable REIT subsidiary" is modified and such modification results in an increase in the rents payable by such taxable REIT subsidiary, any such increase will not qualify as "rents from real property." For purposes of this rule, a "controlled taxable REIT subsidiary" is a taxable REIT subsidiary in which the parent REIT owns stock possessing more than 50% of the voting power or more than 50% of the total value of the outstanding stock of such taxable REIT subsidiary;

Rent attributable to personal property, leased in connection with a lease of real property, is not greater than 15% of the total rent received under the lease. If this condition is not met, then the portion of the rent attributable to personal property will not qualify as "rents from real property." To the extent that rent attributable to personal property, leased in connection with a lease of real property, exceeds 15% of the total rent received under the lease, we may transfer a portion of such personal property to a taxable REIT subsidiary; and

We generally may not operate or manage the property or furnish or render services to our tenants, subject to a 1% de minimis exception and except as provided below. We may, however, perform services that are "usually or customarily rendered" in connection with the rental of space for occupancy only and are not otherwise considered "rendered to the occupant" of the property. Examples of these services include the provision of light, heat, or other utilities, trash removal and general maintenance of common areas. In addition, we may employ an independent contractor from whom we derive no revenue to provide customary services to our tenants, or a taxable REIT subsidiary (which may be wholly or partially owned by us) to provide both customary and non-customary services to our tenants without causing the rent we receive from those tenants to fail to qualify as "rents from real property."

A substantial portion of our rental income is derived from leases of health care properties to our taxable REIT subsidiaries. In order for the rent payable under each of these leases to constitute "rents from real property," each lease must be respected as a true lease for U.S. federal income tax purposes and must not be treated as a service contract, joint venture, or some other type of arrangement. We believe that each such lease is a true lease for U.S. federal income tax purposes. However, this determination is inherently a question of fact, and we cannot assure you that the IRS will not successfully assert a contrary position. If any lease is not respected as a true lease, part or all of the payments that we receive as rent from our taxable REIT subsidiary with respect to such lease may not be considered rent or may not otherwise satisfy the various requirements for qualification as "rents from real property." In that case, we may not be able to satisfy either the 75% or 95% gross income test and, as a result, could fail to qualify as a REIT.

Also, as described above, our taxable REIT subsidiaries may not operate or manage a health care property or provide rights to any brand name under which any health care property is operated. However, rents we receive from a lease of a health care property to our taxable REIT subsidiary will constitute "rents from real property" if the following conditions are satisfied:

First, the health care property must be a "qualified health care property." A qualified health care property is any real property (including interests therein), and any personal property incident to such real property, which is (or is necessary or incidental to the use of) a hospital, nursing facility, assisted living facility, congregate care facility, qualified continuing care facility, or other licensed facility which extends medical or nursing or ancillary services to patients and which is operated by a provider of such services which is eligible for participation in Medicare with respect to such facility; and

Second, the health care property must be managed by an "eligible independent contractor." An eligible independent contractor is an independent contractor that, at the time the management contract is entered into, is actively engaged in the trade or business of operating qualified health care property for any person not related to us or any of our taxable REIT subsidiaries. For this purpose, an independent contractor means any person (i) that does not own (taking into account relevant attribution rules) more than 35% of our capital stock, and (ii) with respect to which no person or group owning directly or indirectly (taking into account relevant attribution rules) 35% or more of our capital stock owns 35% or more directly or indirectly (taking into account relevant attribution rules) of the ownership interest in the contractor.

We believe each health care property that we lease to our taxable REIT subsidiaries is a qualified health care property, and each health care property manager engaged by our taxable REIT subsidiaries to manage each health care property is an eligible independent contractor. Furthermore, while we will monitor the activities of the eligible independent contractors to maximize the value of our health care property investments, neither we nor our taxable REIT subsidiary lessees will directly or indirectly operate or manage our health care properties. Thus, we believe that the rents we derive from our taxable REIT subsidiaries with respect to the leases of our health care properties will qualify as "rents from real property."

We generally do not intend to take actions we believe will cause us to fail to satisfy the rental conditions described above. However, we may intentionally fail to satisfy some of these conditions to the extent we determine, based on the advice of our tax counsel, that the failure will not jeopardize our tax status as a REIT. In addition, with respect to the limitation on the rental of personal property, we generally have not obtained appraisals of the real property and personal property leased to tenants. Accordingly, there can be no assurance that the IRS will not disagree with our determinations of value.

From time to time, we may enter into hedging transactions with respect to one or more of our assets or liabilities. Our hedging activities may include entering into interest rate swaps, caps, and floors, options to purchase these items, and futures and forward contracts. Income from a hedging transaction, including gain from the sale or disposition of such a transaction, that is clearly identified as a hedging transaction as specified in the Code will not constitute gross income under, and thus will be exempt from, the 75% and 95% gross income tests. The term "hedging transaction," as used above, generally means (A) any transaction we enter into in the normal course of our business primarily to manage risk of (1) interest rate changes or fluctuations with respect to borrowings made or to be made by us to acquire or carry real estate assets, or (2) currency fluctuations with respect to an item of qualifying income under the 75% or 95% gross income test or any property which generates such income and (B) new transactions entered into to hedge the income or loss from prior hedging transactions, where the property or indebtedness which was the subject of the prior hedging transaction was extinguished or disposed of. To the extent that we do not properly identify such transactions as hedges or we hedge with other types of financial instruments, the income from those transactions will not be treated as qualifying income for purposes of the gross income tests. We intend to structure any hedging transactions in a manner that does not jeopardize our status as a REIT.

We have investments in several entities located outside the United States and from time to time may invest in additional entities or properties located outside the United States, through a taxable REIT subsidiary or otherwise. These acquisitions could cause us to incur foreign currency gains or losses. Any foreign currency gains, to the extent attributable to specified items of qualifying income or gain, or specified qualifying assets, however, generally will not constitute gross income for purposes of the 75% and 95% gross income tests, and therefore will be excluded from these tests.

To the extent our taxable REIT subsidiaries pay dividends or interest, our allocable share of such dividend or interest income will qualify under the 95%, but not the 75%, gross income test (except to the extent the interest is paid on a loan that is adequately secured by real property).

We will monitor the amount of the dividend and other income from our taxable REIT subsidiaries and will take actions intended to keep this income, and any other nonqualifying income, within the limitations of the gross income tests. Although we expect these actions will be sufficient to prevent a violation of the gross income tests, we cannot guarantee that such actions will in all cases prevent such a violation.

If we fail to satisfy one or both of the 75% or 95% gross income tests for any taxable year, we may nevertheless qualify as a REIT for the year if we are entitled to relief under certain provisions of the Code. We generally may make use of the relief provisions if:

- following our identification of the failure to meet the 75% or 95% gross income tests for any taxable year, we file a schedule with the IRS setting forth each item of our gross income for purposes of the 75% or 95% gross income tests for such taxable year in accordance with Treasury Regulations to be issued; and

- our failure to meet these tests was due to reasonable cause and not due to willful neglect.

It is not possible, however, to state whether in all circumstances we would be entitled to the benefit of these relief provisions. For example, if we fail to satisfy the gross income tests because nonqualifying income that we intentionally accrue or receive exceeds the limits on nonqualifying income, the IRS could conclude that our failure to satisfy the tests was not due to reasonable cause. If these relief provisions do not apply to a particular set of circumstances, we will not qualify as a REIT. See " Failure to Qualify" below. As discussed above in " Taxation of Our

Company General," even if these relief provisions apply, and we retain our status as a REIT, a tax would be imposed with respect to our nonqualifying income. We may not always be able to comply with the gross income tests for REIT qualification despite periodic monitoring of our income.

Prohibited Transaction Income

Any gain that we realize on the sale of property held as inventory or otherwise held primarily for sale to customers in the ordinary course of business, including any gain realized by our qualified REIT subsidiaries and our share of any gain realized by any of the partnerships or limited liability companies in which we own an interest, will be treated as income from a prohibited transaction that is subject to a 100% penalty tax, unless certain safe harbor exceptions apply. This prohibited transaction income may also adversely affect our ability to satisfy the gross income tests for qualification as a REIT. Under existing law, whether property is held as inventory or primarily for sale to customers in the ordinary course of a trade or business is a question of fact that depends on all the facts and circumstances surrounding the particular transaction. We intend to hold our properties for investment with a view to long-term appreciation, to engage in the business of acquiring, developing and owning our properties and to make occasional sales of the properties as are consistent with our investment objectives. We do not intend, and do not intend to permit any of the partnerships or limited liability companies in which we own an interest, to enter into any sales that are prohibited transactions. However, the IRS may successfully contend that some or all of the sales made by us or our subsidiary partnerships or limited liability companies are prohibited transactions. We would be required to pay the 100% penalty tax on our allocable share of the gains resulting from any such sales. The 100% penalty tax will not apply to gains from the sale of assets that are held through a taxable REIT subsidiary, but such income will be subject to regular U.S. federal corporate income tax.

Penalty Tax

Any redetermined rents, redetermined deductions, excess interest or redetermined TRS service income we generate will be subject to a 100% penalty tax. In general, redetermined rents are rents from real property that are overstated as a result of any services furnished to any of our tenants by a taxable REIT subsidiary of ours, redetermined deductions and excess interest represent any amounts that are deducted by a taxable REIT subsidiary of ours for amounts paid to us that are in excess of the amounts that would have been deducted based on arm's length negotiations, and redetermined TRS service income is income of a taxable REIT subsidiary that is understated as a result of services provided to us or on our behalf. Rents we receive will not constitute redetermined rents if they qualify for certain safe harbor provisions contained in the Code.

We do not believe we have been, and do not expect to be, subject to this penalty tax, although any rental or service arrangements we enter into from time to time may not satisfy the safe-harbor provisions described above. These determinations are inherently factual, and the IRS has broad discretion to assert that amounts paid between related parties should be reallocated to clearly reflect their respective incomes. If the IRS successfully made such an assertion, we would be required to pay a 100% penalty tax on any overstated rents paid to us, or any excess deductions or understated income of our taxable REIT subsidiaries.

Asset Tests

At the close of each calendar quarter of our taxable year, we must also satisfy certain tests relating to the nature and diversification of our assets. First, at least 75% of the value of our total assets must be represented by real estate assets, cash, cash items and U.S. government securities. For purposes of this test, the term "real estate assets" generally means real property (including interests in real property and interests in mortgages on real property and, to a limited extent, personal property), shares (or transferable certificates of beneficial interest) in other REITs, any stock or debt instrument attributable to the investment of the proceeds of a stock offering or a public offering of debt with a term of at least five years (but only for the one-year period beginning on the date the REIT receives such proceeds), debt instruments of publicly offered REITs, and personal property leased in connection with a lease of real property for which the rent attributable to personal property is not greater than 15% of the total rent received under the lease.

Second, not more than 25% of the value of our total assets may be represented by securities (including securities of taxable REIT subsidiaries), other than those securities includable in the 75% asset test.

Third, of the investments included in the 25% asset class, and except for certain investments in other REITs, our qualified REIT subsidiaries and taxable REIT subsidiaries, the value of any one issuer's securities may not exceed 5% of the value of our total assets, and we may not own more than 10% of the total vote or value of the outstanding securities of any one issuer except, in the case of the 10% value test, securities satisfying the "straight debt" safe-harbor or securities issued by a partnership that itself would satisfy the 75% income test if it were a REIT. Certain types of securities we may own are disregarded as securities solely for purposes of the 10% value test, including, but not limited to, any loan to an individual or an estate, any obligation to pay rents from real property and any security issued by a REIT. In addition, solely for purposes of the 10% value test, the determination of our interest in the assets of a partnership or limited liability company in which we own an interest will be based on our proportionate interest in any securities issued by the partnership or limited liability company, excluding for this purpose certain securities described in the Code. From time to time we may own securities (including debt securities) of issuers that do not qualify as a REIT, a qualified REIT subsidiary or a taxable REIT subsidiary. We intend that our ownership of any such securities will be structured in a manner that allows us to comply with the asset tests described above.

Fourth, not more than 20% of the value of our total assets may be represented by the securities of one or more taxable REIT subsidiaries. We currently own the stock of certain corporations that have elected, together with us, to be treated as our taxable REIT subsidiaries, and we may acquire securities in additional taxable REIT subsidiaries in the future. So long as each of these companies qualifies as a taxable REIT subsidiary, we will not be subject to the 5% asset test, the 10% voting securities limitation or the 10% value limitation with respect to our ownership of the securities of such companies. We believe that the aggregate value of our taxable REIT subsidiaries has not exceeded, and in the future will not exceed, 20% of the aggregate value of our gross assets. We generally do not obtain independent appraisals to support these conclusions. In addition, there can be no assurance that the IRS will not disagree with our determinations of value.

Fifth, not more than 25% of the value of our total assets may be represented by debt instruments of publicly offered REITs to the extent those debt instruments would not be real estate assets but for the inclusion of debt instruments of publicly offered REITs in the meaning of real estate assets, as described above (e.g., a debt instrument issued by a publicly offered REIT that is not secured by a mortgage on real property).

The asset tests must be satisfied at the close of each calendar quarter of our taxable year in which we (directly or through our qualified REIT subsidiaries, partnerships or limited liability companies) acquire securities in the applicable issuer, and also at the close of each calendar quarter in which we increase our ownership of securities of such issuer (including as a result of an increase in our interest in any partnership or limited liability company that owns such securities). For example, our indirect ownership of securities of each issuer may increase as a result of our capital contributions to, or the redemption of other partners' or members' interests in, a partnership or limited liability company in which we have an ownership interest. Also, after initially meeting the asset tests at the close of any quarter, we will not lose our status as a REIT for failure to satisfy the asset tests at the end of a later quarter solely by reason of changes in asset values. If we fail to satisfy an asset test because we acquire securities or other property during a quarter (including as a result of an increase in our interest in any partnership or limited liability company), we may cure this failure by disposing of sufficient nonqualifying assets within 30 days after the close of that quarter. We believe that we have maintained, and we intend to maintain, adequate records of the value of our assets to ensure compliance with the asset tests. If we fail to cure any noncompliance with the asset tests within the 30-day cure period, we would cease to qualify as a REIT unless we are eligible for certain relief provisions discussed below.

Certain relief provisions may be available to us if we discover a failure to satisfy the asset tests described above after the 30-day cure period. Under these provisions, we will be deemed to have met the 5% and 10% asset tests if the value of our nonqualifying assets (i) does not exceed the lesser of

(a) 1% of the total value of our assets at the end of the applicable quarter or (b) $10,000,000, and (ii) we dispose of the nonqualifying assets or otherwise satisfy such tests within (a) six months after the last day of the quarter in which the failure to satisfy the asset tests is discovered or (b) the period of time prescribed by Treasury Regulations to be issued. For violations of any of the asset tests due to reasonable cause and not due to willful neglect and that are, in the case of the 5% and 10% asset tests, in excess of the de minimis exception described above, we may avoid disqualification as a REIT after the 30-day cure period by taking steps including (i) the disposition of sufficient nonqualifying assets, or the taking of other actions, which allow us to meet the asset tests within (a) six months after the last day of the quarter in which the failure to satisfy the asset tests is discovered or (b) the period of time prescribed by Treasury Regulations to be issued, (ii) paying a tax equal to the greater of (a) $50,000 or (b) the corporate tax rate multiplied by the net income generated by the nonqualifying assets, and (iii) disclosing certain information to the IRS.

Although we believe we have satisfied the asset tests described above and plan to take steps to ensure that we satisfy such tests for any quarter with respect to which retesting is to occur, there can be no assurance that we will always be successful, or will not require a reduction in our overall interest in an issuer (including in a taxable REIT subsidiary). If we fail to cure any noncompliance with the asset tests in a timely manner, and the relief provisions described above are not available, we would cease to qualify as a REIT.

Annual Distribution Requirements

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

90% of our REIT taxable income; and

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

the excess of the sum of certain items of non-cash income over 5% of our REIT taxable income.

For these purposes, our REIT taxable income is computed without regard to the dividends paid deduction and our net capital gain. In addition, for purposes of this test, non-cash income generally means income attributable to leveled stepped rents, original issue discount, cancellation of indebtedness, or a like-kind exchange that is later determined to be taxable.

In addition, our REIT taxable income will be reduced by any taxes we are required to pay on any gain we recognize from the disposition of any asset we acquired from a corporation that is or has been a C corporation in a transaction in which our tax basis in the asset is less than the fair market value of the asset, in each case determined as of the date on which we acquired the asset, within the five-year period following our acquisition of such asset, as described above under "   General."

For taxable years beginning after December 31, 2017, our deduction for net business interest expense will generally be limited to 30% of our taxable income, as adjusted for certain items of income, gain, deduction or loss. Any business interest deduction that is disallowed due to this limitation may be carried forward to future taxable years. If we are subject to this interest expense limitation, our REIT taxable income for a taxable year may be increased. Taxpayers that conduct certain real estate businesses may elect not to have this interest expense limitation apply to them, provided that they use an alternative depreciation system to depreciate certain property. We believe that we will be eligible to make this election. If we make this election, although we would not be subject to the interest expense limitation described above, our depreciation deductions may be reduced and, as a result, our REIT taxable income for a taxable year may be increased.

We generally must pay, or be treated as paying, the distributions described above in the taxable year to which they relate. At our election, a distribution will be treated as paid in a taxable year if it is declared before we timely file our tax return for such year and paid on or before the first regular dividend payment after such declaration, provided such payment is made during the 12-month period following the close of such year. These distributions are treated as received by our stockholders in the year in which they are paid. This is so even though these distributions relate to the prior year for purposes of the 90% distribution requirement. In order to be taken into account for purposes of our distribution requirement, except as provided below, the amount distributed must not be preferential i.e., every stockholder of the class of stock to which a distribution is made must be treated the same as every other stockholder of that class, and no class of stock may be treated other than according to its dividend rights as a class. This preferential limitation will not apply to distributions made by us, provided we qualify as a "publicly offered REIT." We believe that we are, and expect we will continue to be, a "publicly offered REIT." To the extent that we do not distribute all of our net capital gain, or distribute at least 90%, but less than 100%, of our REIT taxable income, as adjusted, we will be required to pay regular U.S. federal corporate income tax on the undistributed amount. We believe that we have made, and we intend to continue to make, timely distributions sufficient to satisfy these annual distribution requirements and to minimize our corporate tax obligations.

We expect that our REIT taxable income will be less than our cash flow because of depreciation and other non-cash charges included in computing REIT taxable income. Accordingly, we anticipate that we generally will have sufficient cash or liquid assets to enable us to satisfy the distribution requirements described above. However, from time to time, we may not have sufficient cash or other liquid assets to meet these distribution requirements due to timing differences between the actual receipt of income and actual payment of deductible expenses, and the inclusion of income and deduction of expenses in determining our taxable income. In addition, we may decide to retain our cash, rather than distribute it, in order to repay debt or for other reasons. If these timing differences occur, we may borrow funds to pay dividends or pay dividends in the form of taxable stock distributions in order to meet the distribution requirements, while preserving our cash.

Under some circumstances, we may be able to rectify an inadvertent failure to meet the 90% distribution requirement for a year by paying "deficiency dividends" to our stockholders in a later year, which may be included in our deduction for dividends paid for the earlier year. In that case, we may be able to avoid being taxed on amounts distributed as deficiency dividends, subject to the 4% excise tax described below. However, we will be required to pay interest to the IRS based upon the amount of any deduction claimed for deficiency dividends. While the payment of a deficiency dividend will apply to a prior year for purposes of our REIT distribution requirements, it will be treated as an additional distribution to our stockholders in the year such dividend is paid.

Furthermore, we will be required to pay a 4% excise tax to the extent we fail to distribute during each calendar year at least the sum of 85% of our ordinary income for such year, 95% of our capital gain net income for the year and any undistributed taxable income from prior periods. Any ordinary income and net capital gain on which corporate income tax is imposed for any year is treated as an amount distributed during that year for purposes of calculating this excise tax.

For purposes of the 90% distribution requirement and excise tax described above, dividends declared during the last three months of the taxable year, payable to stockholders of record on a specified date during such period and paid during January of the following year, will be treated as paid by us and received by our stockholders on December 31 of the year in which they are declared.

We have net operating loss carryforwards that we may use (subject to certain limitations) to reduce our annual distribution requirements.

Like-Kind Exchanges

We may dispose of real property that is not held primarily for sale in transactions intended to qualify as like-kind exchanges under the Code. Such like-kind exchanges are intended to result in the deferral of gain for U.S. federal income tax purposes. The failure of any such transaction to qualify as a like-kind exchange could require us to pay U.S. federal income tax, possibly including the 100% prohibited transaction tax, depending on the facts and circumstances surrounding the particular transaction.

Tax Liabilities and Attributes Inherited Through Merger or Acquisitions

We may from time to time acquire other REITs through a merger or acquisition. If any such REIT failed to qualify as a REIT for any of its taxable years, such REIT would be liable for (and we, as the surviving corporation in the merger or acquisition, would be obligated to pay) U.S. federal income tax on its taxable income at regular rates. Furthermore, after the merger or acquisition is effective, the asset and income tests will apply to all of our assets, including the assets we acquire from such REIT, and to all of our income, including the income derived from the assets we acquire from such REIT. As a result, the nature of the assets that we acquire from such REITs and the income we derive from those assets may have an effect on our tax status as a REIT.

Foreclosure Property

The foreclosure property rules permit us (by our election) to foreclose or repossess properties without being disqualified as a REIT as a result of receiving income that does not qualify under the gross income tests. However, in such a case, we would be subject to the U.S. federal corporate income tax on the net non-qualifying income from "foreclosure property," and the after-tax amount would increase the dividends we would be required to distribute to stockholders. See " Annual Distribution Requirements." This corporate tax would not apply to income that qualifies under the REIT 75% income test.

Foreclosure property treatment will end on the first day on which we enter into a lease of the applicable property that will give rise to income that does not qualify under the REIT 75% income test, but will not end if the lease will give rise only to qualifying income under such test. Foreclosure property treatment also will end if any construction takes place on the property (other than completion of a building or other improvement that was more than 10% complete before default became imminent). Foreclosure property treatment (other than for qualified health care property) is available for an initial period of three years and may, in certain circumstances, be extended for an additional three years. Foreclosure property treatment for qualified health care property is available for an initial period of two years and may, in certain circumstances, be extended for an additional four years.

Failure to Qualify

If we discover a violation of a provision of the Code that would result in our failure to qualify as a REIT, certain specified cure provisions may be available to us. Except with respect to violations of the gross income tests and asset tests (for which the cure provisions are described above), and provided the violation is due to reasonable cause and not due to willful neglect, these cure provisions generally impose a $50,000 penalty for each violation in lieu of a loss of REIT status. If we fail to satisfy the requirements for taxation as a REIT in any taxable year, and the relief provisions do not apply, we will be required to pay regular U.S. federal corporate income tax, including any applicable alternative minimum tax for taxable years beginning before January 1, 2018, on our taxable income. Distributions to stockholders in any year in which we fail to qualify as a REIT will not be deductible by us. As a result, we anticipate that our failure to qualify as a REIT would reduce the cash available for distribution by us to our stockholders. In addition, if we fail to qualify as a REIT, we will not be required to distribute any amounts to our stockholders, and all distributions to stockholders will be taxable as regular corporate dividends to the extent of our current and accumulated earnings and profits. In such event, corporate distributees may be eligible for the dividends-received deduction. In addition, non-corporate stockholders, including individuals, may be eligible for the preferential tax rates on qualified dividend income. Non-corporate stockholders, including individuals, generally may deduct 20% of dividends from a REIT, other than capital gain dividends and dividends treated as qualified dividend income, for taxable years beginning after December 31, 2017 and before January 1, 2026. If we fail to qualify as a REIT, such stockholders may not claim this deduction with respect to dividends paid by us. Unless entitled to relief under specific statutory provisions, we would also be ineligible to elect to be treated as a REIT for the four taxable years following the year for which we lose our qualification. It is not possible to state whether in all circumstances we would be entitled to this statutory relief.

Tax Aspects of the Subsidiary Partnerships and the Limited Liability Companies

General

From time to time, we may own, directly or indirectly, interests in various partnerships and limited liability companies. We expect these will be treated as partnerships or disregarded entities for U.S. federal income tax purposes. In general, entities that are treated as partnerships or disregarded entities for U.S. federal income tax purposes are "pass-through" entities which are not required to pay U.S. federal income tax. Rather, partners or members of such entities are allocated their shares of the items of income, gain, loss, deduction and credit of the partnership or limited liability company, and are potentially required to pay tax on this income, without regard to whether they receive a distribution from the partnership or limited liability company. We will include in our income our share of these partnership and limited liability company items for purposes of the various gross income tests, the computation of our REIT taxable income, and the REIT distribution requirements. Moreover, for purposes of the asset tests, we will include our pro rata share of assets held by these partnerships and limited liability companies, based on our capital interests in each such entity. See " Taxation of Our Company."

Entity Classification

Our interests in the subsidiary partnerships and limited liability companies involve special tax considerations, including the possibility that the IRS might challenge the status of these entities as partnerships or disregarded entities. For example, an entity that would otherwise be treated as a partnership for U.S. federal income tax purposes may nonetheless be taxable as a corporation if it is a "publicly traded partnership" and certain other requirements are met. A partnership or limited liability company would be treated as a publicly traded partnership if its interests are traded on an established securities market or are readily tradable on a secondary market or a substantial equivalent thereof, within the meaning of applicable Treasury Regulations. We do not anticipate that any subsidiary partnership or limited liability company will be treated as a publicly traded partnership that is taxable as a corporation. However, if any such entity were treated as a corporation, it would be required to pay an entity-level tax on its income. In this situation, the character of our assets and items of gross income would change and could prevent us from satisfying the REIT asset tests and possibly the REIT income tests. See " Taxation of Our Company Asset Tests" and " Income Tests." This, in turn, could prevent us from qualifying as a REIT. See " Failure to Qualify" for a discussion of the effect of our failure to meet these tests. In addition, a change in the tax status of one or more of the partnerships or limited liability companies might be treated as a taxable event. If so, we might incur a tax liability without any related cash payment. We believe that each of our partnerships and limited liability companies are and will continue to be treated as partnerships or disregarded entities for U.S. federal income tax purposes.

Allocations of Income, Gain, Loss and Deduction

A partnership agreement (or, in the case of a limited liability company treated as a partnership for U.S. federal income tax purposes, the limited liability company agreement) generally will determine the allocation of income and loss among partners. These allocations, however, will be disregarded for tax purposes if they do not comply with the provisions of Section 704(b) of the Code and the Treasury Regulations thereunder. Generally, Section 704(b) of the Code and the Treasury Regulations thereunder require that partnership allocations respect the economic arrangement of the partners. If an allocation of partnership income or loss does not comply with the requirements of Section 704(b) of the Code and the Treasury Regulations thereunder, the item subject to the allocation will be reallocated in accordance with the partners' interests in the partnership. This reallocation will be determined by taking into account all of the facts and circumstances relating to the economic arrangement of the partners with respect to such item. We intend that the allocations of taxable income and loss in each of the partnerships and limited liability companies in which we own an interest from time to time comply with the requirements of Section 704(b) of the Code and the Treasury Regulations thereunder.

Tax Allocations With Respect to the Properties

Under Section 704(c) of the Code, income, gain, loss and deduction attributable to appreciated or depreciated property that is contributed to a partnership (including a limited liability company treated as a partnership for U.S. federal income tax purposes) in exchange for an interest in the partnership, must be allocated in a manner so that the contributing partner is charged with the unrealized gain or benefits from the unrealized loss associated with the property at the time of the contribution. The amount of the unrealized gain or unrealized loss generally is equal to the difference between the fair market value or book value and the adjusted tax basis of the contributed property at the time of contribution (this difference is referred to as a book-tax difference), as adjusted from time to time. These allocations are solely for U.S. federal income tax purposes and do not affect the book capital accounts or other economic or legal arrangements among the partners. Some of the partnerships and/or limited liability companies in which we own an interest were formed by way of contributions of appreciated property. The relevant partnership and/or limited liability company agreements require that allocations be made in a manner consistent with Section 704(c) of the Code. Under Section 704(c) of the Code we could be allocated less depreciation or more gain on sale with respect to a contributed property than the amounts that would have been allocated to us if we had instead acquired the contributed property with an initial tax basis equal to its fair market value. Such allocations might adversely affect our ability to comply with the REIT distribution requirements. See " Taxation of Our Company Requirements for Qualification as a REIT" and " Annual Distribution Requirements."

Any property acquired by a subsidiary partnership or limited liability company in a taxable transaction will initially have a tax basis equal to its fair market value, and Section 704(c) of the Code generally will not apply.

Partnership Audit Rules

The Bipartisan Budget Act of 2015 changed the rules applicable to U.S. federal income tax audits of partnerships. Under the new rules (which are generally effective for taxable years beginning after December 31, 2017), among other changes and subject to certain exceptions, any audit adjustment to items of income, gain, loss, deduction, or credit of a partnership (and any partner's distributive share thereof) is determined, and taxes, interest, or penalties attributable thereto are assessed and collected, at the partnership level. Although it is uncertain how certain aspects of these new rules will be implemented, it is possible that they could result in partnerships in which we directly or indirectly invest being required to pay additional taxes, interest and penalties as a result of an audit adjustment, and we, as a direct or indirect partner of these partnerships, could be required to bear the economic burden of those taxes, interest, and penalties even though we, as a REIT, may not otherwise have been required to pay additional corporate-level taxes as a result of the related audit adjustment. The changes created by these new rules are sweeping and in many respects dependent on the promulgation of future regulations or other guidance by the U.S. Department of the Treasury. Investors are urged to consult their tax advisors with respect to these changes and their potential impact on their investment in our capital stock.

Material U.S. Federal Income Tax Consequences to Holders of Our Capital Stock and Debt Securities

The following discussion is a summary of the material U.S. federal income tax consequences to you of acquiring, owning and disposing of our capital stock or debt securities. This discussion is limited to holders who hold our capital stock or debt securities as "capital assets" within the meaning of Section 1221 of the Code (generally, property held for investment). This discussion does not address all U.S. federal income tax consequences relevant to a holder's particular circumstances. In addition, except where specifically noted, it does not address consequences relevant to holders subject to special rules, including, without limitation:

- U.S. expatriates and former citizens or long-term residents of the United States;
- persons subject to the alternative minimum tax;
- U.S. holders (as defined below) whose functional currency is not the U.S. dollar;
- persons holding our capital stock or debt securities as part of a hedge, straddle or other risk reduction strategy or as part of a conversion transaction or other integrated investment;
- banks, insurance companies, and other financial institutions;
- REITs or regulated investment companies;
- brokers, dealers or traders in securities;
- "controlled foreign corporations," "passive foreign investment companies," and corporations that accumulate earnings to avoid U.S. federal income tax;
- S corporations, partnerships or other entities or arrangements treated as partnerships for U.S. federal income tax purposes (and investors therein);
- tax-exempt organizations or governmental organizations;

- persons subject to special tax accounting rules as a result of any item of gross income with respect to our capital stock being taken into account in an applicable financial statement;
- persons deemed to sell our capital stock or debt securities under the constructive sale provisions of the Code; and
- persons who hold or receive our capital stock pursuant to the exercise of any employee stock option or otherwise as compensation.

THIS DISCUSSION IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT INTENDED AS TAX ADVICE. INVESTORS SHOULD CONSULT THEIR TAX ADVISORS WITH RESPECT TO THE APPLICATION OF THE U.S. FEDERAL INCOME TAX LAWS TO THEIR PARTICULAR SITUATIONS AS WELL AS ANY TAX CONSEQUENCES OF THE ACQUISITION, OWNERSHIP AND DISPOSITION OF OUR CAPITAL STOCK OR DEBT SECURITIES ARISING UNDER OTHER U.S. FEDERAL TAX LAWS (INCLUDING ESTATE AND GIFT TAX LAWS), UNDER THE LAWS OF ANY STATE, LOCAL OR NON-U.S. TAXING JURISDICTION OR UNDER ANY APPLICABLE TAX TREATY.

For purposes of this discussion, a "U.S. holder" is a beneficial owner of our capital stock or debt securities that, for U.S. federal income tax purposes, is or is treated as:

- an individual who is a citizen or resident of the United States;

a corporation created or organized under the laws of the United States, any state thereof or the District of Columbia;

an estate the income of which is subject to U.S. federal income tax regardless of its source; or

a trust that (1) is subject to the primary supervision of a U.S. court and the control of one or more "United States persons" (within the meaning of Section 7701(a)(30) of the Code) or (2) has a valid election in effect to be treated as a United States person for U.S. federal income tax purposes.

For purposes of this discussion, a "non-U.S. holder" is any beneficial owner of our capital stock or debt securities that is neither a U.S. holder nor an entity treated as a partnership for U.S. federal income tax purposes.

If an entity treated as a partnership for U.S. federal income tax purposes holds our capital stock or debt securities, the tax treatment of a partner in the partnership will depend on the status of the partner, the activities of the partnership and certain determinations made at the partner level. Accordingly, partnerships holding our capital stock or debt securities and the partners in such partnerships should consult their tax advisors regarding the U.S. federal income tax consequences to them.

Taxation of Taxable U.S. Holders of Our Capital Stock

Distributions Generally

Distributions out of our current or accumulated earnings and profits will be treated as dividends and, other than with respect to capital gain dividends and certain amounts which have previously been subject to corporate level tax, as discussed below, will be taxable to our taxable U.S. holders as ordinary income when actually or constructively received. See " Tax Rates" below. As long as we qualify as a REIT, these distributions will not be eligible for the dividends-received deduction in the case of U.S. holders that are corporations or, except to the extent described in " Tax Rates" below, the preferential rates on qualified dividend income applicable to non-corporate U.S. holders, including individuals. For purposes of determining whether distributions to holders of our capital stock are out of our current or accumulated earnings and profits, our earnings and profits will be allocated first to our outstanding preferred stock, if any, and then to our outstanding common stock.

To the extent that we make distributions on our capital stock in excess of our current and accumulated earnings and profits allocable to such stock, these distributions will be treated first as a tax-free return of capital to a U.S. holder to the extent of the U.S. holder's adjusted tax basis in such shares of stock. Distributions in excess of our current and accumulated earnings and profits and in excess of a U.S. holder's adjusted tax basis in its shares will be taxable as capital gain. Such gain will be taxable as long-term capital gain if the shares have been held for more than one year. Dividends we declare in October, November, or December of any year and which are payable to a holder of record on a specified date in any of these months will be treated as both paid by us and received by the holder on December 31 of that year, provided we actually pay the dividend on or before January 31 of the following year. U.S. holders may not include in their own income tax returns any of our net operating losses or capital losses.

U.S. holders that receive taxable stock distributions, including distributions partially payable in our common stock and partially payable in cash, would be required to treat the full amount of the distribution (*i.e.*, the cash and the stock portion) as a dividend (subject to certain exceptions) to the extent of our current and accumulated earnings and profits for U.S. federal income tax purposes, as described above. The amount of any distribution payable in our common stock generally is equal to the amount of cash that could have been received instead of the common stock. Depending on the circumstances of a U.S. holder, the tax on the distribution may exceed the amount of the distribution received in cash, in which case such U.S. holder would have to pay the tax using cash from other sources. If a U.S. holder sells the common stock it received in connection with a taxable stock distribution in order to pay this tax and the proceeds of such sale are less than the amount required to be included in income with respect to the stock portion of the distribution, such U.S. holder could have a capital loss with respect to the stock sale that could not be used to offset such dividend income. A U.S. holder that receives common stock pursuant to such distribution generally has a tax basis in such common stock equal to the amount of cash that could have been received instead of such common stock as described above, and has a holding period in such common stock that begins on the day immediately following the payment date for the distribution.

Capital Gain Dividends

Dividends that we properly designate as capital gain dividends will be taxable to our taxable U.S. holders as a gain from the sale or disposition of a capital asset held for more than one year, to the extent that such gain does not exceed our actual net capital gain for the taxable year and may not exceed our dividends paid for the taxable year, including dividends paid the following year that are treated as paid in the current year. U.S. holders that are corporations may, however, be required to treat up to 20% of certain capital gain dividends as ordinary income. If we properly designate any portion of a dividend as a capital gain dividend then, except as otherwise required by law, we presently intend to allocate a portion of the total capital gain dividends paid or made available to holders of all classes of our capital stock for the year to the holders of each class of our capital stock in proportion to the amount that our total dividends, as determined for U.S. federal income tax purposes, paid or made available to the holders of each such class of our capital stock for the year bears to the total dividends, as determined for U.S. federal income tax purposes, paid or made available to holders of all classes of our capital stock for the year. In addition, except as otherwise required by law, we will make a similar allocation with respect to any undistributed long-term capital gains which are to be included in our stockholders' long-term capital gains, based on the allocation of the capital gain amount which would have resulted if those undistributed long-term capital gains had been distributed as "capital gain dividends" by us to our stockholders.

Retention of Net Capital Gains

We may elect to retain, rather than distribute as a capital gain dividend, all or a portion of our net capital gains. If we make this election, we would pay tax on our retained net capital gains. In addition, to the extent we so elect, our earnings and profits (determined for U.S. federal income tax purposes) would be adjusted accordingly, and a U.S. holder generally would:

- include its pro rata share of our undistributed capital gain in computing its long-term capital gains in its return for its taxable year in which the last day of our taxable year falls, subject to certain limitations as to the amount that is includable;

- be deemed to have paid its share of the capital gains tax imposed on us on the designated amounts included in the U.S. holder's income as long-term capital gain;

receive a credit or refund for the amount of tax deemed paid by it;

increase the adjusted tax basis of its capital stock by the difference between the amount of includable gains and the tax deemed to have been paid by it; and

in the case of a U.S. holder that is a corporation, appropriately adjust its earnings and profits for the retained capital gains in accordance with Treasury Regulations to be promulgated by the IRS.

Passive Activity Losses and Investment Interest Limitations

Distributions we make and gain arising from the sale or exchange by a U.S. holder of our capital stock will not be treated as passive activity income. As a result, U.S. holders generally will not be able to apply any "passive losses" against this income or gain. A U.S. holder generally may elect to treat capital gain dividends, capital gains from the disposition of our capital stock and income designated as qualified dividend income, as described in " Tax Rates" below, as investment income for purposes of computing the investment interest limitation, but in such case, the holder will be taxed at ordinary income rates on such amount. Other distributions made by us, to the extent they do not constitute a return of capital, generally will be treated as investment income for purposes of computing the investment interest limitation.

Dispositions of Our Capital Stock

Except as described below under "Redemption or Repurchase by Us," if a U.S. holder sells or disposes of shares of our capital stock, it will recognize gain or loss for U.S. federal income tax purposes in an amount equal to the difference between the amount of cash and the fair market value of any property received on the sale or other disposition and the holder's adjusted tax basis in the shares. This gain or loss, except as provided below, will be long-term capital gain or loss if the holder has held such capital stock for more than one year. However, if a U.S. holder recognizes a loss upon the sale or other disposition of capital stock that it has held for six months or less, after applying certain holding period rules, the loss recognized will be treated as a long-term capital loss to the extent the U.S. holder received distributions from us which were required to be treated as long-term capital gains.

Redemption or Repurchase by Us

A redemption or repurchase of shares of our capital stock will be treated under Section 302 of the Code as a distribution (and taxable as a dividend to the extent of our current and accumulated earnings and profits as described above under " Distributions Generally") unless the redemption or repurchase satisfies one of the tests set forth in Section 302(b) of the Code and is therefore treated as a sale or exchange of the redeemed or repurchased shares. The redemption or repurchase generally will be treated as a sale or exchange if it:

- is "substantially disproportionate" with respect to the U.S. holder;
- results in a "complete redemption" of the U.S. holder's stock interest in us; or
- is "not essentially equivalent to a dividend" with respect to the U.S. holder,

all within the meaning of Section 302(b) of the Code.

In determining whether any of these tests has been met, shares of our capital stock, including common stock and other equity interests in us, considered to be owned by the U.S. holder by reason of certain constructive ownership rules set forth in the Code, as well as shares of our capital stock actually owned by the U.S. holder, generally must be taken into account. Because the determination as to whether any of the alternative tests of Section 302(b) of the Code will be satisfied with respect to the U.S. holder depends upon the facts and circumstances at the time that the determination must be made, U.S. holders are advised to consult their tax advisors to determine such tax treatment.

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

If a redemption or repurchase of shares of our capital stock is not treated as a distribution, it will be treated as a taxable sale or exchange in the manner described under " Dispositions of Our Capital Stock."

Tax Rates

The maximum tax rate for non-corporate taxpayers for (1) long-term capital gains, including certain "capital gain dividends," generally is 20% (although depending on the characteristics of the assets which produced these gains and on designations which we may make, certain capital gain dividends may be taxed at a 25% rate) and (2) "qualified dividend income" generally is 20%. In general, dividends payable by REITs are not eligible for the reduced tax rate on qualified dividend income, except to the extent that certain holding period requirements have been met and the REIT's dividends are attributable to dividends received from taxable corporations (such as its taxable REIT subsidiaries) or to income that was subject to tax at the corporate/REIT level (for example, if the REIT distributed taxable income that it retained and paid tax on in the prior taxable year). Capital gain dividends will only be eligible for the rates described above to the extent that they are properly designated by the REIT as "capital gain dividends." U.S. holders that are corporations may be required to treat up to 20% of some capital gain dividends as ordinary income. In addition, non-corporate U.S. holders, including individuals, generally may deduct 20% of dividends from a REIT, other than capital gain dividends and dividends treated as qualified dividend income, for taxable years beginning after December 31, 2017 and before January 1, 2026.

Taxation of Tax-Exempt Holders of Our Capital Stock

Dividend income from us and gain arising upon a sale of shares of our capital stock generally should not be unrelated business taxable income, or UBTI, to a tax-exempt holder, except as described below. This income or gain will be UBTI, however, to the extent a tax-exempt holder holds its shares as "debt-financed property" within the meaning of the Code. Generally, "debt-financed property" is property the acquisition or holding of which was financed through a borrowing by the tax-exempt holder.

For tax-exempt holders that are social clubs, voluntary employee benefit associations, supplemental unemployment benefit trusts, or qualified group legal services plans exempt from U.S. federal income taxation under Sections 501(c)(7), (c)(9), (c)(17) or (c)(20) of the Code, respectively, income from an investment in our shares will constitute UBTI unless the organization is able to properly claim a deduction for amounts set aside or placed in reserve for specific purposes so as to offset the income generated by its investment in our shares. These prospective investors should consult their tax advisors concerning these "set aside" and reserve requirements.

Notwithstanding the above, however, a portion of the dividends paid by a "pension-held REIT" may be treated as UBTI as to certain trusts that hold more than 10%, by value, of the interests in the REIT. A REIT will not be a "pension-held REIT" if it is able to satisfy the "not closely held" requirement without relying on the "look-through" exception with respect to certain trusts or if such REIT is not "predominantly held" by "qualified trusts." As a result of restrictions on ownership and transfer of our stock contained in our charter, we do not expect to be classified as a "pension-held REIT," and as a result, the tax treatment described above should be inapplicable to our holders.

However, because our common stock is (and, we anticipate, will continue to be) publicly traded, we cannot guarantee that this will always be the case.

Taxation of Non-U.S. Holders of Our Capital Stock

The following discussion addresses the rules governing U.S. federal income taxation of the acquisition, ownership and disposition of our capital stock by non-U.S. holders. These rules are complex, and no attempt is made herein to provide more than a brief summary of such rules. Accordingly, the discussion does not address all aspects of U.S. federal income taxation and does not address other federal, state, local or non-U.S. tax consequences that may be relevant to a non-U.S. holder in light of its particular circumstances. We urge non-U.S. holders to consult their tax advisors to determine the impact of U.S. federal, state, local and non-U.S. income and other tax laws and any applicable tax treaty on the acquisition, ownership and disposition of shares of our capital stock, including any reporting requirements.

Distributions Generally

Distributions (including any taxable stock dividends) that are neither attributable to gains from sales or exchanges by us of United States real property interests, or USRPIs, nor designated by us as capital gain dividends (except as described below) will be treated as dividends of ordinary income to the extent that they are made out of our current or accumulated earnings and profits. Such distributions ordinarily will be subject to withholding of U.S. federal income tax at a 30% rate or such lower rate as may be specified by an applicable income tax treaty, unless the distributions are treated as effectively connected with the conduct by the non-U.S. holder of a trade or business within the United States (and, if required by an applicable income tax treaty, the non-U.S. holder maintains a permanent establishment in the United States to which such dividends are attributable). Under certain treaties, however, lower withholding rates generally applicable to dividends do not apply to dividends from a REIT. Certain certification and disclosure requirements must be satisfied for a non-U.S. holder to be exempt from withholding under the effectively connected income exemption. Dividends that are treated as effectively connected with a U.S. trade or business generally will not be subject to withholding but will be subject to U.S. federal income tax on a net basis at the regular graduated rates, in the same manner as dividends paid to U.S. holders are subject to U.S. federal income tax. Any such dividends received by a non-U.S. holder that is a corporation may also be subject to an additional branch profits tax at a 30% rate (applicable after deducting U.S. federal income taxes paid on such effectively connected income) or such lower rate as may be specified by an applicable income tax treaty.

Except as otherwise provided below, we expect to withhold U.S. federal income tax at the rate of 30% on any distributions made to a non-U.S. holder unless:

(1) a lower treaty rate applies and the non-U.S. holder furnishes an IRS Form W-8BEN or W-8BEN-E (or other applicable documentation) evidencing eligibility for that reduced treaty rate; or

(2) the non-U.S. holder furnishes an IRS Form W-8ECI (or other applicable documentation) claiming that the distribution is income effectively connected with the

non-U.S. holder's trade or business.

Distributions in excess of our current and accumulated earnings and profits will not be taxable to a non-U.S. holder to the extent that such distributions do not exceed the adjusted tax basis of the holder's capital stock, but rather will reduce the adjusted tax basis of such stock. To the extent that such distributions exceed the non-U.S. holder's adjusted tax basis in such capital stock, they generally will give rise to gain from the sale or exchange of such stock, the tax treatment of which is described below. However, such excess distributions to be treated as dividend income for certain non-U.S.

holders. For withholding purposes, we expect to treat all distributions as made out of our current or accumulated earnings and profits. However, amounts withheld may be refundable if it is subsequently determined that the distribution was, in fact, in excess of our current and accumulated earnings and profits, provided that certain conditions are met.

Capital Gain Dividends and Distributions Attributable to a Sale or Exchange of United States Real Property Interests

Distributions to a non-U.S. holder that we properly designate as capital gain dividends, other than those arising from the disposition of a USRPI, generally should not be subject to U.S. federal income taxation, unless:

(1) the investment in our capital stock is treated as effectively connected with the conduct by the non-U.S. holder of a trade or business within the United States (and, if required by an applicable income tax treaty, the non-U.S. holder maintains a permanent establishment in the United States to which such dividends are attributable), in which case the non-U.S. holder will be subject to the same treatment as U.S. holders with respect to such gain, except that a non-U.S. holder that is a corporation may also be subject to a branch profits tax of up to 30%, as discussed above; or

(2) the non-U.S. holder is a nonresident alien individual who is present in the United States for 183 days or more during the taxable year and certain other conditions are met, in which case the non-U.S. holder will be subject to U.S. federal income tax at a rate of 30% on the non-U.S. holder's capital gains (or such lower rate specified by an applicable income tax treaty), which may be offset by U.S. source capital losses of such non-U.S. holder (even though the individual is not considered a resident of the United States), provided the non-U.S. holder has timely filed U.S. federal income tax returns with respect to such losses.

Pursuant to the Foreign Investment in Real Property Tax Act, which is referred to as "FIRPTA," distributions to a non-U.S. holder that are attributable to gain from sales or exchanges by us of USRPIs, whether or not designated as capital gain dividends, will cause the non-U.S. holder to be treated as recognizing such gain as income effectively connected with a U.S. trade or business. Non-U.S. holders generally would be taxed at the regular graduated rates applicable to U.S. holders, subject to any applicable alternative minimum tax and a special alternative minimum tax in the case of nonresident alien individuals. We also will be required to withhold and to remit to the IRS 21% of any distribution to non-U.S. holders attributable to gain from sales or exchanges by us of USRPIs. Distributions subject to FIRPTA may also be subject to a 30% branch profits tax in the hands of a non-U.S. holder that is a corporation. The amount withheld is creditable against the non-U.S. holder's U.S. federal income tax liability. However, any distribution with respect to any class of stock that is "regularly traded," as defined by applicable Treasury Regulations, on an established securities market located in the United States is not subject to FIRPTA, and therefore, not subject to the

21% U.S. withholding tax described above, if the non-U.S. holder did not own more than 10% of such class of stock at any time during the one-year period ending on the date of the distribution. Instead, such distributions generally will be treated as ordinary dividend distributions and subject to withholding in the manner described above with respect to ordinary dividends. In addition, distributions to certain non-U.S. publicly traded shareholders that meet certain record-keeping and other requirements ("qualified shareholders") are exempt from FIRPTA, except to the extent owners of such qualified shareholders that are not also qualified shareholders own, actually or constructively, more than 10% of our capital stock. Furthermore, distributions to "qualified foreign pension funds" or entities all of the interests of which are held by "qualified foreign pension funds" are exempt from FIRPTA. Non-U.S. holders should consult their tax advisors regarding the application of these rules.

Retention of Net Capital Gains

Although the law is not clear on the matter, it appears that amounts we designate as retained net capital gains in respect of our capital stock should be treated with respect to non-U.S. holders as actual distributions of capital gain dividends. Under this approach, the non-U.S. holders may be able to offset as a credit against their U.S. federal income tax liability their proportionate share of the tax paid by us on such retained net capital gains and to receive from the IRS a refund to the extent their proportionate share of such tax paid by us exceeds their actual U.S. federal income tax liability. If we were to designate any portion of our net capital gain as retained net capital gain, non-U.S. holders should consult their tax advisors regarding the taxation of such retained net capital gain.

Sale of Our Capital Stock

Except as described below under " Redemption or Repurchase by Us," gain realized by a non-U.S. holder upon the sale, exchange or other taxable disposition of our capital stock generally will not be subject to U.S. federal income tax unless such stock constitutes a USRPI. In general, stock of a domestic corporation that constitutes a "United States real property holding corporation," or USRPHC, will constitute a USRPI. We believe that we are a USRPHC. Our capital stock will not, however, constitute a USRPI so long as we are a "domestically controlled qualified investment entity." A "domestically controlled qualified investment entity" includes a REIT in which at all times during a five-year testing period less than 50% in value of its stock is held directly or indirectly by non-United States persons, subject to certain rules. For purposes of determining whether a REIT is a "domestically controlled qualified investment entity," a person who at all applicable times holds less than 5% of a class of stock that is "regularly traded" is treated as a United States person unless the REIT has actual knowledge that such person is not a United States person. We believe, but cannot guarantee, that we are a "domestically controlled qualified investment entity." Because our common stock is (and, we anticipate, will continue to be) publicly traded, no assurance can be given that we will continue to be a "domestically controlled qualified investment entity."

Even if we do not qualify as a "domestically controlled qualified investment entity" at the time a non-U.S. holder sells our capital stock, gain realized from the sale or other taxable disposition by a non-U.S. holder of such capital stock would not be subject to U.S. federal income tax under FIRPTA as a sale of a USRPI if:

(1) such class of capital stock is "regularly traded," as defined by applicable Treasury Regulations, on an established securities market such as the New York Stock Exchange; and

(2) such non-U.S. holder owned, actually and constructively, 10% or less of such class of capital stock throughout the shorter of the five-year period ending on the date of the sale or other taxable disposition or the non-U.S. holder's holding period.

In addition, dispositions of our capital stock by qualified shareholders are exempt from FIRPTA, except to the extent owners of such qualified shareholders that are not also qualified shareholders own, actually or constructively, more than 10% of our capital stock. Furthermore, dispositions of our capital stock by "qualified foreign pension funds" or entities all of the interests of which are held by "qualified foreign pension funds" are exempt from FIRPTA. Non-U.S. holders should consult their tax advisors regarding the application of these rules.

Notwithstanding the foregoing, gain from the sale, exchange or other taxable disposition of our capital stock not otherwise subject to FIRPTA will be taxable to a non-U.S. holder if either (a) the investment in our capital stock is treated as effectively connected with the conduct by the non-U.S. holder of a trade or business within the United States (and, if required by an applicable income tax treaty, the non-U.S. holder maintains a permanent establishment in the United States to which such gain is attributable), in which case the non-U.S. holder will be subject to the same treatment as U.S.

holders with respect to such gain, except that a non-U.S. holder that is a corporation may also be subject to the 30% branch profits tax (or such lower rate as may be specified by an applicable income tax treaty) on such gain, as adjusted for certain items, or (b) the non-U.S. holder is a nonresident alien individual who is present in the United States for 183 days or more during the taxable year and certain other conditions are met, in which case the non-U.S. holder will be subject to a 30% tax on the non-U.S. holder's capital gains (or such lower rate specified by an applicable income tax treaty), which may be offset by U.S. source capital losses of the non-U.S. holder (even though the individual is not considered a resident of the United States), provided the non-U.S. holder has timely filed U.S. federal income tax returns with respect to such losses. In addition, even if we are a domestically controlled qualified investment entity, upon disposition of our capital stock, a non-U.S. holder may be treated as having gain from the sale or other taxable disposition of a USRPI if the non-U.S. holder (1) disposes of such stock within a 30-day period preceding the ex-dividend date of a distribution, any portion of which, but for the disposition, would have been treated as gain from the sale or exchange of a USRPI and (2) acquires, or enters into a contract or option to acquire, or is deemed to acquire, other shares of that stock during the 61-day period beginning with the first day of the 30-day period described in clause (1), unless such stock is "regularly traded" and the non-U.S. holder did not own more than 10% of the stock at any time during the one-year period ending on the date of the distribution described in clause (1).

If gain on the sale, exchange or other taxable disposition of our capital stock were subject to taxation under FIRPTA, the non-U.S. holder would be required to file a U.S. federal income tax return and would be subject to regular U.S. federal income tax with respect to such gain in the same manner as a taxable U.S. holder (subject to any applicable alternative minimum tax and a special alternative minimum tax in the case of nonresident alien individuals). In addition, if the sale, exchange or other taxable disposition of our capital stock were subject to taxation under FIRPTA, and if shares of the applicable class of our capital stock were not "regularly traded" on an established securities market, the purchaser of such capital stock generally would be required to withhold and remit to the IRS 15% of the purchase price.

Redemption or Repurchase by Us

A redemption or repurchase of shares of our capital stock will be treated under Section 302 of the Code as a distribution (and taxable as a dividend to the extent of our current and accumulated earnings and profits) unless the redemption or repurchase satisfies one of the tests set forth in Section 302(b) of the Code and is therefore treated as a sale or exchange of the redeemed or repurchased shares. See " Taxation of Taxable U.S. Holders of Our Capital Stock Redemption or Repurchase by Us." Qualified shareholders and their owners may be subject to different rules, and should consult their tax advisors regarding the application of such rules. If the redemption or repurchase of shares is treated as a distribution, the amount of the distribution will be measured by the amount of cash and the fair market value of any property received. See " Taxation of Non-U.S. Holders of Our Capital Stock Distributions Generally." If the redemption or repurchase of shares is not treated as a distribution, it will be treated as a taxable sale or exchange in the manner described under " Taxation of Non-U.S. Holders of Our Capital Stock Sale of Our Capital Stock."

Taxation of Holders of Our Debt Securities

The following summary describes the material U.S. federal income tax consequences of acquiring, owning and disposing of our debt securities. This discussion assumes the debt securities will be issued with less than a statutory *de minimis* amount of original issue discount for U.S. federal income tax purposes. In addition, this discussion is limited to persons purchasing the debt securities for cash at original issue and at their original "issue price" within the meaning of Section 1273 of the Code (i.e., the first price at which a substantial amount of the debt securities is sold to the public for cash).

U.S. Holders

Payments of Interest. Interest on a debt security generally will be taxable to a U.S. holder as ordinary income at the time such interest is received or accrued, in accordance with such U.S. holder's method of tax accounting for U.S. federal income tax purposes.

Sale or Other Taxable Disposition. A U.S. holder will recognize gain or loss on the sale, exchange, redemption, retirement or other taxable disposition of a debt security. The amount of such gain or loss generally will equal the difference between the amount received for the debt security in cash or other property valued at fair market value (less amounts attributable to any accrued but unpaid interest, which will be taxable as interest to the extent not previously included in income) and the U.S. holder's adjusted tax basis in the debt security. A U.S. holder's adjusted tax basis in a debt security generally will be equal to the amount the U.S. holder paid for the debt security. Any gain or loss will be capital gain or loss, and will be long-term capital gain or loss if the U.S. holder has held the debt security for more than one year at the time of such sale or other taxable disposition. Otherwise, such gain or loss will be short-term capital gain or loss. Long-term capital gains recognized by certain non-corporate U.S. holders, including individuals, generally will be taxable at a reduced rate. The deductibility of capital losses is subject to limitations.

Non-U.S. Holders

Payments of Interest. Interest paid on a debt security to a non-U.S. holder that is not effectively connected with the non-U.S. holder's conduct of a trade or business within the United States generally will not be subject to U.S. federal income tax or withholding, provided that:

- the non-U.S. holder does not, actually or constructively, own 10% or more of the total combined voting power of all classes of our voting stock;

- the non-U.S. holder is not a controlled foreign corporation related to us through actual or constructive stock ownership; and

- either (1) the non-U.S. holder certifies in a statement provided to the applicable withholding agent under penalties of perjury that it is not a United States person and provides its name and address; (2) a securities clearing organization, bank or other financial institution that holds customers' securities in the ordinary course of its trade or business and holds the debt security on behalf of the non-U.S. holder certifies to the applicable withholding agent under penalties of perjury that it, or the financial institution between it and the non-U.S. holder, has received from the non-U.S. holder a statement under penalties of perjury that such holder is not a United States person and provides a copy of such statement to the applicable withholding agent; or (3) the non-U.S. holder holds its debt security directly through a "qualified intermediary" (within the meaning of applicable Treasury Regulations) and certain conditions are satisfied.

If a non-U.S. holder does not satisfy the requirements above, such non-U.S. holder will be subject to withholding tax of 30%, subject to a reduction in or an exemption from withholding on such interest as a result of an applicable tax treaty. To claim such entitlement, the non-U.S. holder must provide the applicable withholding agent with a properly executed IRS Form W-8BEN or W-8BEN-E (or other applicable documentation) claiming a reduction in or exemption from withholding tax under the benefit of an income tax treaty between the United States and the country in which the non-U.S. holder resides or is established.

If interest paid to a non-U.S. holder is effectively connected with the non-U.S. holder's conduct of a trade or business within the United States (and, if required by an applicable income tax treaty, the non-U.S. holder maintains a permanent establishment in the United States to which such interest is attributable), the non-U.S. holder will be exempt from the U.S. federal withholding tax described above. To claim the exemption, the non-U.S. holder must furnish to the applicable withholding agent a valid IRS Form W-8ECI, certifying that interest paid on a debt security is not subject to withholding tax because it is effectively connected with the conduct by the non-U.S. holder of a trade or business within the United States.

Any such effectively connected interest generally will be subject to U.S. federal income tax at the regular graduated rates. A non-U.S. holder that is a corporation also may be subject to a branch profits tax at a rate of 30% (or such lower rate specified by an applicable income tax treaty) on such effectively connected interest, as adjusted for certain items.

The certifications described above must be provided to the applicable withholding agent prior to the payment of interest and must be updated periodically. Non-U.S. holders that do not timely provide the applicable withholding agent with the required certification, but that qualify for a reduced rate under an applicable income tax treaty, may obtain a refund of any excess amounts withheld by timely filing an appropriate claim for refund with the IRS. Non-U.S. holders should consult their tax advisors regarding their entitlement to benefits under any applicable income tax treaty.

Sale or Other Taxable Disposition. A non-U.S. holder will not be subject to U.S. federal income tax on any gain realized upon the sale, exchange, redemption, retirement or other taxable disposition of a debt security (such amount excludes any amount allocable to accrued and unpaid interest, which generally will be treated as interest and may be subject to the rules discussed above in " Taxation of Holders of Our Debt Securities Non-U.S. Holders Payments of Interest") unless:

- the gain is effectively connected with the non-U.S. holder's conduct of a trade or business within the United States (and, if required by an applicable income tax treaty, the non-U.S. holder maintains a permanent establishment in the United States to which such gain is attributable); or

- the non-U.S. holder is a nonresident alien individual present in the United States for 183 days or more during the taxable year of the disposition and certain other requirements are met.

Gain described in the first bullet point above generally will be subject to U.S. federal income tax on a net income basis at the regular graduated rates. A non-U.S. holder that is a corporation also may be subject to a branch profits tax at a rate of 30% (or such lower rate specified by an applicable income tax treaty) on such effectively connected gain, as adjusted for certain items.

Gain described in the second bullet point above will be subject to U.S. federal income tax at a rate of 30% (or such lower rate specified by an applicable income tax treaty), which may be offset by U.S. source capital losses of the non-U.S. holder (even though the individual is not considered a resident of the United States), provided the non-U.S. holder has timely filed U.S. federal income tax returns with respect to such losses.

Non-U.S. holders should consult their tax advisors regarding any applicable income tax treaties that may provide for different rules.

Information Reporting and Backup Withholding

U.S. Holders

A U.S. holder may be subject to information reporting and backup withholding when such holder receives payments on our capital stock or debt securities or proceeds from the sale or other taxable disposition of such stock or debt securities (including a redemption or retirement of a debt security). Certain U.S. holders are exempt from backup withholding, including corporations and certain tax-exempt organizations. A U.S. holder will be subject to backup withholding if such holder is not otherwise exempt and:

- the holder fails to furnish the holder's taxpayer identification number, which for an individual is ordinarily his or her social security number;

- the holder furnishes an incorrect taxpayer identification number;

- the applicable withholding agent is notified by the IRS that the holder previously failed to properly report payments of interest or dividends; or

- the holder fails to certify under penalties of perjury that the holder has furnished a correct taxpayer identification number and that the IRS has not notified the holder that the holder is subject to backup withholding.

Backup withholding is not an additional tax. Any amounts withheld under the backup withholding rules may be allowed as a refund or a credit against a U.S. holder's U.S. federal income tax liability, provided the required information is timely furnished to the IRS. U.S. holders should consult their tax advisors regarding their qualification for an exemption from backup withholding and the procedures for obtaining such an exemption.

Non-U.S. Holders

Payments of dividends on our capital stock or interest on our debt securities generally will not be subject to backup withholding, provided the applicable withholding agent does not have actual knowledge or reason to know the holder is a United States person and the holder either certifies its non-U.S. status, such as by furnishing a valid IRS Form W-8BEN, W-8BEN-E or W-8ECI, or otherwise establishes an exemption. However, information returns are required to be filed with the IRS in connection with any dividends on our capital stock or interest on our debt securities paid to the non-U.S. holder, regardless of whether any tax was actually withheld. In addition, proceeds of the sale or other taxable disposition of such stock or debt securities (including a retirement or redemption of a debt security) within the United States or conducted through certain U.S.-related brokers generally will not be subject to backup withholding or information reporting, if the applicable withholding agent receives the certification described above and does not have actual knowledge or reason to know that such holder is a United States person, or the holder otherwise establishes an exemption. Proceeds of a disposition of such stock or debt securities conducted through a non-U.S. office of a non-U.S. broker generally will not be subject to backup withholding or information reporting.

Copies of information returns that are filed with the IRS may also be made available under the provisions of an applicable treaty or agreement to the tax authorities of the country in which the non-U.S. holder resides or is established.

Backup withholding is not an additional tax. Any amounts withheld under the backup withholding rules may be allowed as a refund or a credit against a non-U.S. holder's U.S. federal income tax liability, provided the required information is timely furnished to the IRS.

Medicare Contribution Tax on Unearned Income

Certain U.S. holders that are individuals, estates or trusts are required to pay an additional 3.8% tax on, among other things, dividends on stock, interest on debt obligations, and capital gains from the sale or other disposition of stock or debt obligations. U.S. holders should consult their tax advisors regarding the effect, if any, of these rules on their ownership and disposition of our capital stock or debt securities.

Additional Withholding Tax on Payments Made to Foreign Accounts

Withholding taxes may be imposed under Sections 1471 to 1474 of the Code (such sections commonly referred to as the Foreign Account Tax Compliance Act, or FATCA) on certain types of payments made to non-U.S. financial institutions and certain other non-U.S. entities. Specifically, a 30% withholding tax may be imposed on dividends on our capital stock, interest on our debt securities, or gross proceeds from the sale or other disposition of our capital stock or debt securities, in each case paid to a "foreign financial institution" or a "non-financial foreign entity" (each as defined in the Code), unless (1) the foreign financial institution undertakes certain diligence and reporting obligations, (2) the non-financial foreign entity either certifies it does not have any "substantial United States owners" (as defined in the Code) or furnishes identifying information regarding each substantial United States owner, or (3) the foreign financial institution or non-financial foreign entity otherwise qualifies for an exemption from these rules. If the payee is a foreign financial institution and is subject to the diligence and reporting requirements in clause (1) above, it must enter into an agreement with the U.S. Department of the Treasury requiring, among other things, that it undertake to identify accounts held by certain "specified United States persons" or "United States owned foreign entities" (each as defined in the Code), annually report certain information about such accounts, and withhold 30% on certain payments to non-compliant foreign financial institutions and certain other account holders. Foreign financial institutions located in jurisdictions that have an intergovernmental agreement with the United States governing FATCA may be subject to different rules.

Under the applicable Treasury Regulations and administrative guidance, withholding under FATCA generally applies to payments of dividends on our capital stock or interest on our debt securities, and will apply to payments of gross proceeds from the sale or other disposition of such stock or debt securities on or after January 1, 2019.

Prospective investors should consult their tax advisors regarding the potential application of withholding under FATCA to their investment in our capital stock or debt securities.

Other Tax Consequences

State, local and non-U.S. income tax laws may differ substantially from the corresponding U.S. federal income tax laws, and this discussion does not purport to describe any aspect of the tax laws of any state, local or non-U.S. jurisdiction, or any U.S. federal tax other than the income tax. You should consult your tax advisor regarding the effect of state, local and non-U.S. tax laws with respect to our tax treatment as a REIT and on an investment in our capital stock or debt securities.

PLAN OF DISTRIBUTION

We may sell the offered securities in and outside the United States (1) through underwriters or dealers, (2) directly to purchasers, including to a limited number of institutional purchasers, to a single purchaser or to our affiliates and stockholders, (3) through agents or (4) through a combination of any of these methods. The prospectus supplement relating to any offering will set forth the following information:

- the terms of the offering;
- the names of any underwriters, dealers or agents;
- the name or names of any managing underwriter or underwriters;
- the purchase price or initial public offering price of the securities;
- the net proceeds from the sale of the securities;
- any delayed delivery arrangements;
- any underwriting discounts, commissions and other items constituting underwriters' compensation;
- any discounts or concessions allowed or reallowed or paid to dealers; and
- any commissions paid to agents.

Sale through Underwriters or Dealers

If any securities are offered through underwriters, the underwriters will acquire the securities for their own account and may resell them from time to time in one or more transactions, including negotiated transactions, at a fixed public offering price or at varying prices determined at the time of sale. Underwriters may offer and sell securities to the public either through underwriting syndicates represented by one or more managing underwriters or directly by one or more firms acting as underwriters. Unless otherwise provided in the applicable prospectus supplement, the obligations of the underwriters to purchase the securities will be subject to certain conditions, and the underwriters will be obligated to purchase all of the offered securities if they purchase any of them. In connection with the sale of securities, underwriters may be deemed to have received compensation from us in the form of underwriting discounts or commissions and dealers may receive compensation from the underwriters in the form of discounts or concessions. The underwriters may change from time to time any initial public offering price and any discounts or concessions allowed or reallowed or paid to dealers.

In order to facilitate the offering of securities, the underwriters may engage in transactions that stabilize, maintain or otherwise affect the price of the securities. Specifically, the underwriters may overallot in connection with the offering, creating a short position in the securities for their account. In addition, to cover overallotments or to stabilize the price of the securities, the underwriters may bid for, and purchase, securities in the open market. Finally, an underwriting syndicate may reclaim selling concessions allowed to an underwriter or a dealer for distributing the securities in the offering if the syndicate repurchases previously distributed securities in transactions to cover syndicate short positions, in stabilization transactions, or otherwise. Any of these activities may stabilize or maintain the market price of the offered securities above independent market levels. The underwriters are not required to engage in these activities and may discontinue any of these activities at any time.

Some or all of the securities that we offer through this prospectus may be new issues of securities with no established trading market. Any underwriters to whom we sell securities for public offering and sale may make a market in those securities, but they will not be obligated to do so and they may discontinue any market making at any time without notice. Accordingly, we cannot assure you of the liquidity of, or continued trading markets for, any securities offered pursuant to this prospectus.

If any securities are offered through dealers, we will sell the securities to them as principals. They may then resell those securities to the public at varying prices determined by the dealers at the time of resale.

Direct Sales and Sales through Agents

We may sell the securities directly to purchasers. If the securities are sold directly to institutional investors or others who may be deemed to be underwriters within the meaning of the Securities Act with respect to any sale of those securities, we will describe the terms of any such sales in the applicable prospectus supplement. We may also sell the securities through agents designated from time to time. Sales may be made by means of ordinary brokers' transactions on the New York Stock Exchange at market prices, in block transactions and such other transactions as agreed by us and any agent. In the applicable prospectus supplement, we will name any agent involved in the offer or sale of the offered securities and we will describe any commissions payable to the agent. Unless otherwise provided in the applicable prospectus supplement, any agent will agree to use its reasonable best efforts to solicit purchases for the period of its appointment.

Remarketing Arrangements

Offered securities may also be offered and sold, if we so indicate in the applicable prospectus supplement, in connection with a remarketing upon their purchase, in accordance with a redemption or repayment pursuant to their terms, or otherwise, by one or more remarketing firms, acting as principals for their own accounts or as our agents. Any remarketing firm will be identified and the terms of its agreements, if any, with us and its compensation will be described in the applicable prospectus supplement. Remarketing firms may be deemed to be underwriters of the offered securities under the Securities Act.

Delayed Delivery Contracts

If we so indicate in the applicable prospectus supplement, we may authorize agents, underwriters or dealers to solicit offers by certain institutions to purchase securities from us pursuant to contracts providing for payment and delivery on a specified future date. The applicable prospectus supplement will describe the conditions to those contracts and the commission payable for solicitation of those contracts.

General Information

We may have agreements with the agents, dealers, underwriters and remarketing firms to indemnify them against certain civil liabilities, including liabilities under the Securities Act, or to contribute with respect to payments that the agents, dealers or underwriters may be required to make. Agents, dealers, underwriters and remarketing firms may be customers of, engage in transactions with or perform services for us in the ordinary course of their businesses.

VALIDITY OF THE OFFERED SECURITIES

Latham & Watkins LLP, Chicago, Illinois, will issue an opinion for Ventas and Ventas Realty regarding the legality of certain of the offered securities. In addition, Latham & Watkins LLP has issued an opinion to us regarding certain tax matters described herein under "Certain U.S. Federal Income Tax Considerations." Any underwriters, dealers or agents will be advised about other issues relating to any offering by their own legal counsel that will be named in the applicable prospectus supplement.

EXPERTS

Our consolidated financial statements and schedules as of December 31, 2017 and 2016 and for each of the years in the three-year period ended December 31, 2017 and management's assessment of the effectiveness of internal control over financial reporting as of December 31, 2017 have been incorporated by reference herein and in the registration statement in reliance upon the reports of KPMG LLP, independent registered public accounting firm, incorporated by reference herein, and upon the authority of said firm as experts in accounting and auditing.

WHERE YOU CAN FIND MORE INFORMATION AND INCORPORATION BY REFERENCE

We file annual, quarterly and current reports, proxy statements and other information with the SEC. You may read and copy the reports, proxy statements and other information that we file with the SEC at the public reference room maintained by the SEC at 100 F Street, N.E., Washington, D.C. 20549. For more information about the public reference room, call the SEC at 1-800-SEC-0330. The SEC also maintains a website at www.sec.gov that contains reports, proxy and information statements and other information regarding us. Ventas, Inc. is a publicly held corporation and its common stock is traded on the New York Stock Exchange under the symbol "VTR." Reports, proxy statements and other information that we file with the SEC can be inspected at the offices of the New York Stock Exchange at 20 Broad Street, New York, New York 10005. Information about us is also available on our website at www.ventasreit.com. Information on our website is not incorporated by reference herein and our web address is included herein as an inactive textual reference only.

We are incorporating by reference in this prospectus certain information that we file with the SEC. This means that we can disclose important information to you by referring you to other documents that we file with the SEC. The information incorporated by reference is an important part of this prospectus, and information that we subsequently file with the SEC will automatically update and supersede this information. We are incorporating by reference herein the documents listed below and any future filings we make with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act after the date hereof until all of the securities offered hereby are sold:

- our Annual Report on Form 10-K for the fiscal year ended December 31, 2017, filed with the SEC on February 9, 2018;

our Proxy Statement on Schedule 14A for our 2017 Annual Meeting of Stockholders, filed with the SEC on April 4, 2017 (with respect to the information contained therein that is incorporated by reference in Part III of our Annual Report on Form 10-K for the fiscal year ended December 31, 2016); and

the description of our common stock set forth in our Registration Statement on Form 8-A (File No. 001-10989), filed with the SEC on January 23, 1992, as amended.

We do not incorporate by reference any information under Items 2.02 or 7.01 of any Current Report on Form 8-K, including the related exhibits, or in any document or other information that is deemed to have been "furnished" to and not "filed" with the SEC. You may request a copy of these filings at no cost, by writing or telephoning us at the following address:

Ventas, Inc.
Attention: Corporate Secretary
353 North Clark Street, Suite 3300
Chicago, Illinois 60654
(877) 483-6827

No separate financial statements of Ventas Realty have been included herein. It is not expected that Ventas Realty will file reports, proxy statements or other information under the Exchange Act with the SEC.

We have not authorized anyone to give any information or make any representation about us that is different from, or in addition to, that included or incorporated by reference herein or in a prospectus supplement. If anyone gives you information of this sort, you should not rely on it. If you are in a jurisdiction where offers to sell, or solicitations of offers to purchase, the securities offered hereby are unlawful, or if you are a person to whom it is unlawful to direct these types of activities, then the offer presented herein does not extend to you. The information contained herein speaks only as of the date hereof unless the information specifically indicates that another date applies.

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Ventas Realty, Limited Partnership

$750,000,000 4.400% Senior Notes due 2029

PROSPECTUS SUPPLEMENT

August 6, 2018

Joint Book-Running Managers

Wells Fargo Securities **Mizuho Securities**

Morgan Stanley **TD Securities**

Senior Co-Managers

BMO Capital Markets **Citigroup**

Credit Agricole CIB **Credit Suisse** **J.P. Morgan**

MUFG **RBC Capital Markets**

Co-Managers

Barclays **BB&T Capital Markets** **BBVA**

BofA Merrill Lynch **Capital One Securities** **PNC Capital Markets LLC**

Scotiabank **SMBC Nikko** **UBS Investment Bank**

Junior Co-Managers

BNP PARIBAS **Fifth Third Securities**

BNY Mellon Capital Markets, LLC **Loop Capital Markets**