

ENTERTAINMENT PROPERTIES TRUST

Form 10-K

February 24, 2009

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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549  
FORM 10-K**

**ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**  
For the fiscal year ended **December 31, 2008**

or

**TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES ACT OF 1934**  
For the transition period from \_\_\_\_\_ to \_\_\_\_\_  
**Commission file number: 1-13561**  
**ENTERTAINMENT PROPERTIES TRUST**  
(Exact name of registrant as specified in its charter)

**Maryland**

(State or other jurisdiction  
of incorporation or organization)

**43-1790877**

(I.R.S. Employer Identification No.)

**30 West Pershing Road, Suite 201**

**Kansas City, Missouri**

(Address of principal executive offices)

**64108**

(Zip Code)

Registrant's telephone number, including area code: **(816) 472-1700**

Securities registered pursuant to Section 12(b) of the Act:

Title of each class

Name of each exchange on which registered

Common shares of beneficial interest,  
par value \$.01 per share

New York Stock Exchange

7.75% Series B cumulative redeemable preferred  
shares of beneficial interest, par value \$.01 per share

New York Stock Exchange

5.75% Series C cumulative convertible preferred  
shares of beneficial interest, par value \$.01 per share

New York Stock Exchange

7.375% Series D cumulative redeemable preferred  
shares of beneficial interest, par value \$.01 per share

New York Stock Exchange

9.00% Series E cumulative convertible preferred  
shares of beneficial interest, par value \$.01 per share

New York Stock Exchange

Securities registered pursuant to Section 12(g) of the Act:

None.

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.

Yes  No

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Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or 15(d) of the Act.

Yes  No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes  No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

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

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

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act).

Yes  No

The aggregate market value of the common shares of beneficial interest (common shares) of the registrant held by non-affiliates, based on the closing price on the last business day of the registrant's most recently completed second fiscal quarter, as reported on the New York Stock Exchange, was \$1,716,987,818

At February 23, 2009, there were 34,728,718 common shares outstanding.

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DOCUMENTS INCORPORATED BY REFERENCE

Portions of the registrant's definitive Proxy Statement for the 2009 Annual Meeting of Shareholders to be filed with the Commission pursuant to Regulation 14A are incorporated by reference in Part III of this Annual Report on Form 10-K.

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**CAUTIONARY STATEMENT CONCERNING FORWARD LOOKING STATEMENTS**

With the exception of historical information, certain statements contained or incorporated by reference herein constitute forward-looking statements as such term is defined in Section 27A of the Securities Act of 1933, as amended (the Securities Act ), and Section 21E of the Securities Exchange Act of 1934, as amended (the Exchange Act ). The forward-looking statements may refer to our financial condition, results of operations, plans, objectives, acquisition or disposition of properties, future expenditures for development projects, capital resources, future financial performance and business. Forward-looking statements are not guarantees of performance. They involve numerous risks, uncertainties and assumptions. Our future results, financial condition and business may differ materially from those expressed in these forward-looking statements. You can find many of these statements by looking for words such as will be, continue, hope, goal, forecast, approximates, believes, expects, anticipate, estimates, intends, plans would, may or other similar expressions in this Annual Report on Form 10-K. In addition, references to our budgeted amounts are forward looking statements. Factors that could materially and adversely affect us include, but are not limited to, the factors listed below:

General international, national, regional and local business and economic conditions;

Current levels of market volatility are unprecedented;

Failure of current governmental efforts to stimulate the economy;

The recent downturn in the credit markets;

The failure of a bank to fund a request by us to borrow money;

Failure of banks in which we have deposited funds;

Defaults in the performance of lease terms by our tenants;

Defaults by our customers and counterparties on their obligations owed to us;

A mortgagor's bankruptcy or default;

A significant loan commitment for a development project that may not be completed as planned;

The obsolescence of older multiplex theaters owned by some of our tenants;

Risks of operating in the entertainment industry;

Our ability to compete effectively;

The majority of our megaplex theater properties are leased by a single tenant;

A single tenant leases or is the mortgagor of all our ski area investments;

A single tenant leases all of our charter schools;

Risks associated with use of leverage to acquire properties;

Financing arrangements that require lump-sum payments;

Our ability to sustain the rate of growth we have had in recent years;

Our ability to raise capital;

Covenants in our debt instrument that limit our ability to take certain actions;

Risks of acquiring and developing properties and real estate companies;

The lack of diversification of our investment portfolio;

Our continued qualification as a REIT;

The ability of our subsidiaries to satisfy their obligations;

Financing arrangements that expose us to funding or purchase risks;

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We have a limited number of employees and the loss of personnel could harm operations;

Fluctuations in the value of real estate income and investments;

Risks relating to real estate ownership, leasing and development, for example local conditions such as an oversupply of space or a reduction in demand for real estate in the area, competition from other available space, whether tenants and users such as customers of our tenants consider a property attractive, changes in real estate taxes and other expenses, changes in market rental rates, the timing and costs associated with property improvements and rentals, changes in taxation or zoning laws or other governmental regulation, whether we are able to pass some or all of any increased operating costs through to tenants, and how well we manage our properties;

Our ability to secure adequate insurance and risk of potential uninsured losses, including from natural disasters;

Risks involved in joint ventures;

Risks in leasing multi-tenant properties;

A failure to comply with the Americans with Disabilities Act or other laws;

Risks of environmental liability

Our real estate investments are relatively illiquid;

We own assets in foreign countries;

Risks associated with owning or financing properties for which the tenant's or mortgagor's operations may be impacted by weather conditions

Risks associated with the ownership of vineyards;

Our ability to pay dividends in cash or at current rates;

Fluctuations in interest rates;

Fluctuations in the market prices for our shares;

Certain limits on change in control imposed under law and by our Declaration of Trust and Bylaws;

Policy changes obtained without the approval of our shareholders;

Equity issuances could dilute the value of our shares;

Risks associated with changes in the Canadian exchange rate; and

Changes in laws and regulations, including tax laws and regulations

These forward-looking statements represent our intentions, plans, expectations and beliefs and are subject to numerous assumptions, risks and uncertainties. Many of the factors that will determine these items are beyond our ability to control or predict. For further discussion of these factors see Item 1A. Risk Factors in this Annual Report on Form 10-K.

For these statements, we claim the protection of the safe harbor for forward-looking statements contained in the Private Securities Litigation Reform Act of 1995. You are cautioned not to place undue reliance on our forward-looking statements, which speak only as of the date of this Annual Report on Form 10-K or the date of any document incorporated by reference herein. All subsequent written and oral forward-looking statements attributable to us or any person acting on our behalf are expressly qualified in their entirety by the cautionary statements contained or referred to in this section. We do not undertake any obligation to release publicly any revisions to our forward-looking statements to reflect events or circumstances after the date of this Annual Report on Form 10-K.



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**PART I**

**Item 1. Business**

**General**

Entertainment Properties Trust ( we, us, EPR or the Company ) was formed on August 22, 1997 as a Maryland real estate investment trust ( REIT ), and an initial public offering of common shares of beneficial interest ( common shares ) was completed on November 18, 1997. EPR develops, owns, leases and finances properties for consumer preferred high-quality businesses. As further explained under Growth Strategies below, our investments are guided by a focus on inflection opportunities that are associated with or support enduring uses, excellent executions, attractive economics and an advantageous market position.

We are a self-administered REIT. As of December 31, 2008, our real estate portfolio was comprised of approximately \$2.0 billion in assets (before accumulated depreciation). This portfolio includes 80 megaplex theatre properties (including four joint venture properties) located in 29 states, the District of Columbia and Ontario, Canada, eight theatre anchored entertainment retail centers (including two joint venture properties) located in Westminster, Colorado, New Rochelle, New York, White Plains, New York, Burbank, California and Ontario, Canada, one additional entertainment retail center under development and land parcels leased to restaurant and retail operators or available for development adjacent to several of our theatre properties. We also own a metropolitan ski area located in Bellefontaine, Ohio, ten wineries and eight vineyards located in California and Washington and 22 public charter schools located in eight states and the District of Columbia.

As of December 31, 2008, our real estate portfolio of megaplex theatre properties consisted of 6.6 million square feet and was 100% occupied, and our remaining real estate portfolio consisted of 3.9 million square feet and was 95% occupied. The combined real estate portfolio consisted of 10.5 million square feet and was 98% occupied. Our theatre properties are leased to eleven different leading theatre operators. At December 31, 2008, approximately 51% of our megaplex theatre properties were leased to American Multi-Cinema, Inc. ( AMC ), a subsidiary of AMC Entertainment, Inc. ( AMCE ).

As further described in Note 4 to the consolidated financial statements in this Annual Report on Form 10-K, as of December 31, 2008, our real estate mortgage loan portfolio consisted of nine notes receivable with a carrying value of \$508.5 million, including related accrued interest. Our real estate mortgage loan portfolio at December 31, 2008 includes a mortgage note receivable for the development of a water-park anchored entertainment village located in Kansas with a carrying value of \$134.9 million, including accrued interest, and a mortgage note receivable for a planned resort development in Sullivan County, New York with a carrying value of \$134.2 million, including accrued interest. We also have a mortgage note receivable denominated in Canadian dollars that had a carrying value of US \$103.3 million at December 31, 2008, including accrued interest. This mortgage note bears interest at 15%, and has been provided to a partnership for the purpose of developing a 13 level entertainment retail center in downtown Toronto in Ontario, Canada. The development of this center was completed in May 2008 at a total cost of approximately \$330 million Canadian, and contains approximately 354,000 square feet of net rentable area (excluding signage). See Item 7 Management Discussion and Analysis of Financial Condition and Results of Operations Recent Developments for more information regarding these three mortgage notes receivable. Additionally, we have five mortgage notes

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receivable with a combined total carrying value of \$132.5 million, including accrued interest, secured by ten metropolitan ski areas and related development land covering approximately 6,063 acres located in New Hampshire, Vermont, Missouri, Indiana, Ohio and Pennsylvania.

Our total investments were \$2.7 billion at December 31, 2008. Total investments as defined herein include the sum of the carrying values of rental properties (before accumulated depreciation), property under development, mortgage notes receivable (including related accrued interest receivable), investment in joint ventures, intangible assets (before accumulated amortization) and notes receivable less minority interests. Below is a reconciliation of the carrying value of total investments to the consolidated balance sheet at December 31, 2008 (in thousands):

|  |                  |
|--|------------------|
| Rental properties, net of accumulated depreciation     | \$ 1,735,617     |
| Add back accumulated depreciation on rental properties | 214,078          |
| Property under development                             | 30,835           |
| Mortgage notes and related accrued interest receivable | 508,506          |
| Investment in joint ventures                           | 2,493            |
| Investment in a direct financing lease, net            | 166,089          |
| Intangible assets, net of accumulated amortization     | 12,400           |
| Add back accumulated amortization on intangible assets | 7,077            |
| Accounts and notes receivable                          | 73,312           |
| Less accounts receivable                               | (33,406)         |
| Less minority interests                                | (15,217)         |
| <br>Total investments                                  | <br>\$ 2,701,784 |

Of our total investments of \$2.7 billion at December 31, 2008, \$1.9 billion or 71% related to megaplex theatres, entertainment retail centers and other retail parcels, and \$791.9 million or 29% related to recreational and specialty properties. Furthermore, of the \$791.9 million related to recreational and specialty properties, \$145.5 million related to metropolitan ski areas, \$207.5 million related to vineyards and wineries, \$169.8 million related to public charter schools, \$134.9 million related to the water-park anchored entertainment village development and \$134.2 related to the planned resort development discussed above. At December 31, 2008, Peak Resorts, Inc. ( Peak ) is the lessee of our metropolitan ski area in Bellefontaine, Ohio and is the mortgagor on five notes receivable secured by ten metropolitan ski areas and related development land. Similarly, affiliates of Schools, Inc. ( Imagine ) are the lessees of all of our charter schools.

As further described in Note 2 to the consolidated financial statements included in this Annual Report on Form 10-K, during the year ended December 31, 2008, \$54.4 million, or approximately 19% of our total revenue was derived from our four entertainment retail centers in Ontario, Canada and the mortgage note receivable secured by property in Canada described above. The Company's wholly-owned subsidiaries that hold the Canadian entertainment retail centers, third party debt and mortgage note receivable represent approximately \$219.5 million or 17% of the Company's net assets as of December 31, 2008.

We aggregate the financial information of all our investments into one reportable segment because our investments have similar economic characteristics and because we do not internally report and we are not internally organized by investment or transaction type.

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We believe destination entertainment, entertainment-related, recreational and specialty properties are important sectors of the real estate industry and that, as a result of our focus on properties in these sectors and the industry relationships of our management, we have a competitive advantage in providing capital to operators of these types of properties. Our principal business objective is to be the nation's leading destination entertainment, entertainment-related, recreation and specialty real estate company by continuing to develop, acquire or finance high-quality properties. Our investments are generally structured as long-term triple-net leases that require the tenants to pay substantially all expenses associated with the operation and maintenance of the property, or as long-term mortgages with economics similar to our triple-net lease structure.

As discussed below, we believe attractive investment opportunities are available to us that will enable us to continue to grow our asset base; however, depending on the state of the equity and debt capital markets, we may be unable to obtain sufficient capital necessary to take advantage of such opportunities or we may deem the relative cost of such capital to be too high. Due to the recent downturn in the economy and distress in the capital markets, we have been primarily focused on our liquidity and funding our existing commitments. As a result, we may slow the pace of or stop committing to new investments in the short-term. For more information regarding our business, including our investments and capital formation, see Item 7 Management's Discussion and Analysis of Financial Condition and Results of Operations including the sections therein titled Recent Developments and Liquidity and Capital Resources.

***Megaplex Theatres***

A significant portion of our assets consist of megaplex theatres. Megaplex theatres typically have at least 10 screens with stadium-style seating (seating with elevation between rows to provide unobstructed viewing) and are equipped with amenities that significantly enhance the audio and visual experience of the patron. We believe the development of new generation megaplex theatres, including the introduction of digital cinema technology, has accelerated the obsolescence of many of the previous generation of multiplex movie theatres by setting new standards for moviegoers, who, in our experience, have demonstrated their preference for the more attractive surroundings, wider variety of films, enhanced quality of visual presentation and superior customer service typical of megaplex theatres.

We expect the development of megaplex theatres to continue in the United States and abroad over the long-term. With the development of the stadium style megaplex theatre as the preeminent format for cinema exhibition, the older generation of smaller sloped theatres has generally experienced a significant downturn in attendance and performance. As a result of the significant capital commitment involved in building megaplex theatres and the experience and industry relationships of our management, we believe we will continue to have opportunities to provide capital to businesses within the United States and abroad that seek to develop and/or operate these properties. In addition, the recent distress in the credit markets has also created opportunities to buy existing megaplex theatres at higher yields than in the past as many current owners seek to generate cash.

***Entertainment Retail Centers***

We continue to seek opportunities for the development of additional restaurant, retail and other entertainment venues around our existing portfolio. The opportunity to capitalize on the traffic generation of our market-dominant theatres to create entertainment retail centers (ERCs) not

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only strengthens the execution of the megaplex movie theatre but adds diversity to our tenant and asset base. We have and will continue to evaluate our existing portfolio for additional development of retail and entertainment density, and we will also continue to evaluate the purchase or financing of existing ERC s that have demonstrated strong financial performance and meet our quality standards. The leasing and property management requirements of our ERC s are generally met through the use of third-party professional service providers.

***Recreational and Specialty Properties***

The venue replacement cycle in theatrical exhibition represents what we consider an inflection opportunity, a demand for new capital stimulated by a need to upgrade to new technologies and related amenities. We expect other destination retail, recreational and specialty properties to undergo similar transformations stimulated by growth, renewal and/or restructuring. We have begun and expect to continue to pursue opportunities to provide capital for such new generations of attractive and successful properties in selected niche markets.

***Business Objectives and Strategies***

Our long-term primary business objective is to continue to enhance shareholder value by achieving predictable and increasing Funds From Operations ( FFO ) per Share (See Item 7 Management s Discussion and Analysis of Financial Condition and Results of Operations Funds From Operations for a discussion of FFO), through the acquisition, development and financing of high-quality properties while maintaining adequate liquidity to meet financial obligations as they come due. We intend to achieve this objective by continuing to execute the Growth Strategies, Operating Strategies and Capitalization Strategies described below:

***Growth Strategies***

As a part of our growth strategy, we will consider developing or acquiring additional megaplex theatre properties, and developing or acquiring single-tenant entertainment, entertainment-related, recreational or specialty properties. We will also consider developing or acquiring additional ERC s. We may also pursue opportunities to provide mortgage financing for these same property types in certain situations where this structure is more advantageous than owning the underlying real estate.

Our investing strategy centers on five guiding principles:

***Inflection Opportunity***

We look for a new generation of facilities emerging as a result of age, technology, or change in the lifestyle of consumers which create development, renewal or restructuring opportunities requiring significant capital.

***Enduring Value***

We look for real estate that supports activities that are commercially successful and have a reasonable basis for continued and sustainable customer demand in the future. Further, we seek circumstances where the magnitude of change in the new generation of facilities adds substantially to the customer experience.

***Excellent Execution***

We seek attractive locations and best-of-class executions that create market-dominant properties which we believe create a competitive advantage and enhance sustainable customer demand

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within the category despite a potential change in tenant. We minimize the potential for turnover by seeking quality tenants with a reliable track record of customer service and satisfaction.

*Attractive Economics*

We seek investments that provide accretive returns initially and increasing returns over time with rent escalators and percentage rent features that allow participation in the financial performance of the property. Further, we are interested in investments that provide a depth of opportunity to invest sufficient capital to be meaningful to our total financial results and also provide a diversity by market, geography or tenant operator.

*Advantageous Position*

In combination with the preceding principles, when investing we look for a competitive advantage such as unique knowledge of the category, access to industry information, a preferred tenant relationship, or other relationships that provide access to sites and development projects.

***Operating Strategies***

*Lease Risk Minimization*

To avoid initial lease-up risks and produce a predictable income stream, we typically acquire single-tenant properties that are leased under long-term leases. We believe our willingness to make long-term investments in properties offers our tenants financial flexibility and allows tenants to allocate capital to their core businesses. Although we will continue to emphasize single-tenant properties, we have acquired and may continue to acquire multi-tenant properties we believe add value to our shareholders.

*Lease Structure*

We have structured our property acquisitions and leasing arrangements to achieve a positive spread between our cost of capital and the rentals paid by our tenants. We typically structure leases on a triple-net basis under which the tenants bear the principal portion of the financial and operational responsibility for the properties. During each lease term and any renewal periods, the leases typically provide for periodic increases in rent and/or percentage rent based upon a percentage of the tenant's gross sales over a pre-determined level. In our multi-tenant property leases and some of our theatre leases, we generally require the tenant to pay a common area maintenance ( CAM ) charge to defray its pro rata share of insurance, taxes and maintenance costs.

*Mortgage Structure*

We have structured our mortgages to achieve economics similar to our triple-net lease structure with a positive spread between our cost of capital and the interest paid by our tenants. During each mortgage term and any renewal periods, the notes typically provide for periodic increases in interest and/or participating features based upon a percentage of the tenant's gross sales over a pre-determined level.

*Tenant and Customer Relationships*

We intend to continue developing and maintaining long-term working relationships with theatre, restaurant, retail, entertainment, recreation and specialty business operators and developers by providing capital for multiple properties on an international, national or regional basis, thereby creating efficiency and value for both the operators and the Company.

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*Portfolio Diversification*

We will endeavor to further diversify our asset base by property type, geographic location and tenant or customer. In pursuing this diversification strategy, we will target theatre, restaurant, retail, recreation and specialty business operators that we view as leaders in their market segments and have the ability to compete effectively and perform under their agreements with the Company.

*Development*

We intend to continue developing properties that meet our guiding principles. We generally do not begin development of a single tenant property without a signed lease providing for rental payments during the development period that are commensurate with our level of capital investment. In the case of a multi-tenant development, we generally require a significant amount of the development to be pre-leased prior to construction to minimize lease-up risk. In addition, to minimize overhead costs and to provide the greatest amount of flexibility, we generally outsource construction management to third party firms.

***Capitalization Strategies***

*Debt and Equity Financing*

In 2008 we deleveraged our balance sheet primarily by issuing equity in excess of debt during the year. Our debt to total capitalization ratio (i.e. long-term debt of the Company as a percentage of shareholders' equity plus total liabilities) was reduced from 50% at December 31, 2007 to 48% at December 31, 2008. Also, in January and early February 2009, we further deleveraged our balance sheet through the issuance of additional equity, and we expect to maintain a debt to total capitalization ratio of between 45% and 50% throughout the remainder of 2009. While additional equity issuances mitigate the growth in per share results, we believe reduced leverage and an emphasis on liquidity are prudent during the current economic downturn.

Our sources of equity financing consist of the issuance of common shares as well as the issuance of preferred shares (including convertible preferred shares). In addition to larger underwritten registered public offerings of both common and preferred shares, we have also offered shares pursuant to registered public offerings through the direct share purchase component of our Dividend Reinvestment and Direct Share Purchase Plan. While such offerings are generally smaller than a typical underwritten public offering, issuing common shares under the direct share purchase component of our Dividend Reinvestment and Direct Share Purchase Plan allows us to access capital on a monthly basis in a cost-effective manner. We expect to opportunistically access the equity markets in the future and, depending primarily on the size and timing of our equity capital needs, may continue to issue shares under the direct share purchase component of our Dividend Reinvestment and Direct Share Purchase Plan.

*Joint Ventures*

We will examine and may pursue potential additional joint venture opportunities with institutional investors or developers if the investments to which they relate meet our guiding principles discussed above. We may employ higher leverage in joint ventures.

*Payment of Regular Distributions*

We have paid and expect to continue to pay quarterly dividend distributions to our common and preferred shareholders. Our Series B cumulative redeemable preferred shares ( Series B preferred shares ) have a dividend rate of 7.75%, our Series C cumulative convertible preferred shares ( Series C preferred shares ) have a dividend rate of 5.75%, our Series D cumulative redeemable

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preferred shares ( Series D preferred shares ) have a dividend rate of 7.375%, and our Series E cumulative convertible preferred shares ( Series E preferred shares ) have a dividend rate of 9.00%. Among the factors the Company's board of trustees ( Board of Trustees ) considers in setting the common share distribution rate are the applicable REIT tax rules and regulations that apply to distributions, the Company's results of operations, including FFO per share, and the Company's Cash Available for Distribution (defined as net cash flow available for distribution after payment of operating expenses, debt service, and other obligations).

**Competition**

We compete for real estate financing opportunities with other companies that invest in real estate, as well as traditional financial sources such as banks and insurance companies. REITs have financed and may continue to seek to finance destination entertainment, entertainment-related, recreational or specialty properties as new properties are developed or become available for acquisition. The current economic crisis may impact the competitive landscape in which we operate in a manner that is not currently foreseeable, thus reducing our ability to react to competitive challenges.

**Employees**

As of December 31, 2008, we had 22 full time employees.

**Principal Executive Offices**

The Company's principal executive offices are located at 30 W. Pershing Road, Suite 201, Kansas City, Missouri 64108; telephone (816) 472-1700.

**Materials Available on Our Website**

Our internet website address is [www.eprkc.com](http://www.eprkc.com). We make available, free of charge, through our website copies of our Annual Report on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, and amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (the Exchange Act ) as soon as reasonably practicable after we electronically file such material with, or furnish it to the Securities and Exchange Commission (the Commission or SEC ). You may also view our Code of Business Conduct and Ethics, Company Governance Guidelines, Independence Standards for Trustees and the charters of our audit, nominating/company governance, finance and compensation committees on our website. Copies of these documents are also available in print to any person who requests them.

**Item 1A. Risk Factors**

There are many risks and uncertainties that can affect our current or future business, operating results, financial performance or share price. Here is a brief description of some of the important factors which could adversely affect our current or future business, operating results, financial condition or share price. This discussion includes a number of forward-looking statements. See Forward Looking Statements.



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**Risks That May Impact Our Financial Condition or Performance**

***There can be no assurance as to the impact of the U.S. government's economic stimulus plan on the banking system, financial markets, real estate markets and economy as a whole.***

In response to the continued economic crises affecting the banking system, financial markets, real estate markets and our economy as a whole, President Obama signed the American Recovery and Reinvestment Act of 2009 (ARRA) into law on February 17, 2009. There can be no assurance what impact the ARRA will have on the banking system, financial markets, real estate markets or the general economy. Although we are not one of the institutions that will be directly affected by the ARRA, the ultimate effects of ARRA on the financial markets and the economy in general could materially and adversely affect our business, financial condition and results of operations, or the trading price of our common stock.

***Current levels of market volatility are unprecedented.***

The capital and credit markets have been experiencing extreme volatility and disruption for more than 12 months. In recent months, the volatility and disruption have reached unprecedented levels. In many cases, the markets have exerted downward pressure on stock prices and credit capacity for certain issuers. Our plans for growth require regular access to the capital and credit markets. If current levels of market disruption and volatility continue or worsen, access to capital and credit markets could be disrupted making growth through acquisitions and development projects difficult or impractical to pursue until such time as markets stabilize.

***The recent downturn in the credit markets has increased the cost of borrowing and has made financing difficult to obtain, each of which may have a material adverse effect on our results of operations and business.***

Recent events in the financial markets have had an adverse impact on the credit markets and, as a result, credit has become more expensive and difficult to obtain. Some lenders are imposing more stringent restrictions on the terms of credit and there has been a general reduction in the amount of credit available in the markets in which we conduct business. The negative impact on the tightening of the credit markets may have a material adverse effect on us resulting from, but not limited to, an inability to finance the acquisition or development of properties on favorable terms, if at all, increased financing costs or financing with increasingly restrictive covenants.

The negative impact of the recent adverse changes in the credit markets on the real estate sector generally or our inability to obtain financing on favorable terms, if at all, may have a material adverse effect on our results of operations, business, financial condition or performance.

***The failure of a bank to fund a request (or any portion of such request) by us to borrow money under one of our existing credit facilities could reduce our ability to make additional investments and pay distributions.***

We have existing credit facilities with several banking institutions. If any of these banking institutions which are a party to such credit facilities fails to fund a request (or any portion of such request) by us to borrow money under one of these existing credit facilities, our ability to make investments in our business, fund our operations and pay debt service and dividends could be reduced, each of which could result in a decline in the value of your investment.

***The failure of any bank in which we deposit our funds could reduce the amount of cash we have available to pay distributions and make additional investments.***

We have diversified our cash and cash equivalents between several banking institutions in an attempt to minimize exposure to any one of these entities. However, the Federal Deposit

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Insurance Corporation, or FDIC, only insures interest-bearing accounts in amounts up to \$250,000 per depositor per insured bank. We currently have cash and cash equivalents and restricted cash deposited in certain financial institutions in excess of federally insured levels. If any of the banking institutions in which we have deposited funds ultimately fails, we may lose our deposits over \$250,000. The loss of our deposits may have a material adverse effect on our financial condition.

***We depend on leasing space to tenants on economically favorable terms and collecting rent from our tenants, who may not be able to pay***

At any time, a tenant may experience a downturn in its business that may weaken its financial condition. Similarly, a general decline in the economy may result in a decline in demand for space at our commercial properties. Our financial results depend significantly on leasing space at our properties to tenants on economically favorable terms. In addition, because a majority of our income comes from leasing real property, our income, funds available to pay indebtedness and funds available for distribution to our shareholders will decrease if a significant number of our tenants cannot pay their rent or if we are not able to maintain our levels of occupancy on favorable terms. If a tenant does not pay its rent, we might not be able to enforce our rights as landlord without delays and might incur substantial legal costs.

If a tenant becomes bankrupt or insolvent, that could diminish or eliminate the income we expect from that tenant's leases. If a tenant becomes insolvent or bankrupt, we cannot be sure that we could recover the premises from the tenant promptly or from a trustee or debtor-in-possession in a bankruptcy proceeding relating to the tenant. On the other hand, a bankruptcy court might authorize the tenant to terminate its leases with us. If that happens, our claim against the bankrupt tenant for unpaid future rent would be subject to statutory limitations that might be substantially less than the remaining rent owed under the leases. In addition, any claim we have for unpaid past rent would likely not be paid in full and we would also have to take a charge against earnings for any accrued straight-line rent receivable related to the leases.

***We are exposed to the credit risk of our customers and counterparties and their failure to meet their financial obligations could adversely affect our business.***

Our business is subject to credit risk. There is a risk that a customer or counterparty will fail to meet its obligations when due, particularly given the current state of the economy. Customers and counterparties that owe us money may default on their obligations to us due to bankruptcy, lack of liquidity, operational failure or other reasons. Although we have procedures for reviewing credit exposures to specific customers and counterparties to address present credit concerns, default risk may arise from events or circumstances that are difficult to detect or foresee. Some of our risk management methods depend upon the evaluation of information regarding markets, clients or other matters that are publicly available or otherwise accessible by us. That information may not, in all cases, be accurate, complete, up-to-date or properly evaluated. In addition, concerns about, or a default by, one customer or counterparty could lead to significant liquidity problems, losses or defaults by other customers or counterparties, which in turn could adversely affect us. We may be materially and adversely affected in the event of a significant default by our customers and counterparties.

***We could be adversely affected by a mortgagor's bankruptcy or default***

If a mortgagor becomes bankrupt or insolvent or defaults under its mortgage, that could force us to declare a default and foreclose on the underlying property. As a result, future interest income recognition related to the applicable mortgage note receivable could be significantly reduced or eliminated. There is also a risk that the fair value of the property will be less than the carrying

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value of the note and accrued interest receivable at the time of the foreclosure and we may have to take a charge against earnings. We may experience costs and delays in recovering a property in foreclosure or finding a substitute operator for the property. If the mortgage we hold is subordinated to senior financing secured by the property, our recovery would be limited to any amount remaining after satisfaction of all amounts due to the holder of the senior financing. In addition, to protect our subordinated investment, we may desire to refinance any senior financing. However, there is no assurance that such refinancing would be available or, if it were to be available, that the terms would be attractive. We have agreed to subordinate our Canadian mortgage financing to bank construction financing obtained by the borrower.

***We have made a significant loan commitment to a developer; however, there is no assurance that the project to which the commitment relates will be completed as planned***

During 2009, we expect to advance up to \$91.8 million to Concord Resorts, LLC (Concord Resorts), which is the remaining loan commitment under the \$225.0 million secured first mortgage loan commitment related to a planned resort development in Sullivan County, New York. Due to the economic downturn, certain other lenders on the development have either reduced their commitments or withdrawn from the project. Concord Resorts is attempting to restructure the development at a level requiring substantially less capital. As a result, the development project could be delayed, and there can be no assurance that Concord Resorts will successfully downsize the project and receive the financing necessary to complete it. Due to significance of this investment, the timing of our additional advances, if any, may materially impact our results of operations for 2009 (i.e., an earlier additional investment would permit us to recognize greater interest income in 2009, versus a later or no additional investment). If the development is cancelled or delayed indefinitely, there can be no assurance that our investment in Concord Resorts (the net carrying value of which was \$134.2 million at December 31, 2008) may not be subject to impairment, which could result in a material adverse impact on our financial condition and results of operations. In addition, Concord Resorts is controlled by Louis Cappelli, a real estate developer with whom we have several investments, including the entertainment retail centers in New Rochelle, New York and White Plains, New York and loans to Mr. Cappelli. There can be no assurance that the cancellation or indefinite delay of the Concord Resorts development would not have a material adverse effect on our other investments with Mr. Cappelli.

***Our theatre tenants may be adversely affected by the obsolescence of any older multiplex theatres they own or by any overbuilding of megaplex theatres in their markets***

The development of megaplex movie theatres has rendered many older multiplex theatres obsolete. To the extent our tenants own a substantial number of multiplexes, they have been, or may in the future be, required to take significant charges against their earnings resulting from the impairment of these assets. Megaplex theatre operators have also been and could in the future be adversely affected by any overbuilding of megaplex theatres in their markets and the cost of financing, building and leasing megaplex theatres.

***Operating risks in the entertainment industry may affect the ability of our tenants to perform under their leases***

The ability of our tenants to operate successfully in the entertainment industry and remain current on their lease obligations depends on a number of factors, including the availability and popularity of motion pictures, the performance of those pictures in tenants' markets, the allocation of popular pictures to tenants and the terms on which the pictures are licensed. Neither we nor our tenants control the operations of motion picture distributors. Megaplex theatres represent a greater capital investment, and generate higher rents, than the previous generation of

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multiplex theatres. For this reason, the ability of our tenants to operate profitably and perform under their leases could be dependent on their ability to generate higher revenues per screen than multiplex theatres typically produce. The success of out-of-home entertainment venues such as megaplex theatres, entertainment retail centers and recreational properties also depends on general economic conditions and the willingness of consumers to spend time and money on out-of-home entertainment.

***Real estate is a competitive business***

Our business operates in highly competitive environments. We compete with a large number of real estate property owners and developers, some of which may be willing to accept lower returns on their investments. Principal factors of competition are rent or interest charged, attractiveness of location, the quality of the property and breadth and quality of services provided. If our competitors offer space at rental rates below the rental rates we are currently charging our tenants, we may lose potential tenants, and we may be pressured to reduce our rental rates below those we currently charge in order to retain tenants when our tenants' leases expire. Our success depends upon, among other factors, trends of the national and local economies, financial condition and operating results of current and prospective tenants and customers, availability and cost of capital, construction and renovation costs, taxes, governmental regulations, legislation and population trends.

***A single tenant represents a substantial portion of our lease revenues***

Approximately 51% of our megaplex theatre properties are leased to AMC, one of the nation's largest movie exhibition companies. AMCE has guaranteed AMC's performance under substantially all of their leases. We have diversified and expect to continue to diversify our real estate portfolio by entering into lease transactions with a number of other leading operators. Nevertheless, our revenues and our continuing ability to pay shareholder dividends are currently substantially dependent on AMC's performance under its leases and AMCE's performance under its guarantee.

We believe AMC occupies a strong position in the industry and we intend to continue acquiring and leasing back or developing new AMC theatres. However, AMC and AMCE are susceptible to the same risks as our other tenants described herein. If for any reason AMC failed to perform under its lease obligations and AMCE did not perform under its guarantee, we could be required to reduce or suspend our shareholder dividends and may not have sufficient funds to support operations until substitute tenants are obtained. If that happened, we cannot predict when or whether we could obtain substitute quality tenants on acceptable terms.

***A single tenant leases or is the mortgagor of all our investments related to metropolitan ski areas and a single tenant leases all of our charter schools***

Peak is the lessee of our metropolitan ski area in Bellefontaine, Ohio and is the mortgagor on five notes receivable secured by ten metropolitan ski areas and related development land. Similarly, Imagine is the lessee of all of our charter schools. If Peak failed to perform under its lease and mortgage loan obligations, and/or Imagine failed to perform under its master lease, we may need to reduce our shareholder dividends and may not have sufficient funds to support operations until substitute operators are obtained. If that happened, we cannot predict when or whether we could obtain quality substitute tenants or mortgagors on acceptable terms.

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***There are risks inherent in having indebtedness and the use of such indebtedness to fund acquisitions***

We currently utilize debt to fund portions of our operations and acquisitions. In a rising interest rate environment, the cost of our variable rate debt and any new variable rate debt will increase. We have used leverage to acquire properties and expect to continue to do so in the future. Although the use of leverage is common in the real estate industry, our use of debt exposes us to some risks. If a significant number of our tenants fail to make their lease payments and we don't have sufficient cash to pay principal and interest on the debt, we could default on our debt obligations. A substantial amount of our debt financing is secured by mortgages on our properties. If we fail to meet our mortgage payments, the lenders could declare a default and foreclose on those properties. In addition, if the tenants of properties in the borrowing bases of our unsecured revolving credit facility or term loans default on their leases or mortgage obligations, or if the properties otherwise fail to qualify for inclusion in the borrowing bases, that could trigger pay-down requirements and may limit the amounts we are able to borrow under the credit facility and the term loans in the future.

***Most of our debt instruments contain balloon payments which may adversely impact our financial performance and our ability to pay distributions***

Some of our financing arrangements may require us to make a lump-sum or "balloon" payment at maturity. There can be no assurance that we will be able to refinance such debt on favorable terms or at all. To the extent we cannot refinance such debt on favorable terms or at all, we may be forced to dispose of properties on disadvantageous terms or pay higher interest rates, either of which would have an adverse impact on our financial performance and ability to make distributions to our shareholders.

***We have grown rapidly through acquisitions and other investments. We may not be able to maintain this rapid growth and our failure to do so could adversely affect our share price***

We have experienced rapid growth in recent years. We may not be able to maintain a similar rate of growth in the future or manage our growth effectively. Our failure to do so may have a material adverse effect on our financial condition and results of operations and ability to pay dividends to our shareholders.

***We must obtain new financing in order to grow***

As a REIT, we are required to distribute at least 90% of our taxable net income to shareholders in the form of dividends. Other than deciding to make these distributions in our common shares, we are limited in our ability to use internal capital to acquire properties and must continually raise new capital in order to continue to grow and diversify our investment portfolio. Our ability to raise new capital depends in part on factors beyond our control, including conditions in equity and credit markets, conditions in the industries in which our tenants are engaged and the performance of real estate investment trusts generally. We continually consider and evaluate a variety of potential transactions to raise additional capital, but we cannot assure that attractive alternatives will always be available to us, nor that our share price will increase or remain at a level that will permit us to continue to raise equity capital publicly or privately.

***Covenants in our debt instruments could adversely affect our financial condition and our acquisitions and development activities***

The mortgages on our properties contain customary covenants such as those that limit our ability, without the prior consent of the lender, to further mortgage the applicable property or to discontinue insurance coverage. Our unsecured revolving credit facility, our term loan and other loans that we may obtain in the future contain customary restrictions, requirements and other

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limitations on our ability to incur indebtedness, including covenants that limit our ability to incur debt based upon the level of our ratio of total debt to total assets, our ratio of secured debt to total assets, our ratio of EBITDA to interest expense, and fixed charges, and that require us to maintain a certain level of unencumbered assets to unsecured debt. Our ability to borrow under our credit facilities and our term loan is also subject to compliance with certain other covenants. In addition, failure to comply with our covenants could cause a default under the applicable debt instrument, and we may then be required to repay such debt with capital from other sources. Under those circumstances, other sources of capital may not be available to us, or be available only on unattractive terms. Additionally, our ability to satisfy current or prospective lenders' insurance requirements may be adversely affected if lenders generally insist upon greater insurance coverage against acts of terrorism than is available to us in the marketplace or on commercially reasonable terms.

We rely on debt financing, including borrowings under our unsecured revolving credit facility, our term loan and debt secured by individual properties, to finance our acquisition and development activities and for working capital. If we are unable to obtain financing from these or other sources, or to refinance existing indebtedness upon maturity, our financial condition and results of operations would likely be adversely affected.

***We may acquire or develop properties or acquire other real estate related companies and this may create risks***

We may acquire or develop properties or acquire other real estate related companies when we believe that an acquisition or development is consistent with our business strategies. We may not, however, succeed in consummating desired acquisitions or in completing developments on time. In addition, we may face competition in pursuing acquisition or development opportunities that could increase our costs. Difficulties in integrating acquisitions may prove costly or time-consuming and could divert management's attention. Acquisitions or developments in new markets or industries where we do not have the same level of market knowledge may expose us to unanticipated risks in those markets and industries to which we are unable to effectively respond and, as a result, our performance in those new markets and industries and overall may be worse than anticipated. In addition, there is no assurance that planned third party financing related to acquisition and development opportunities will be provided on a timely basis or at all, thus increasing the risk that such opportunities are delayed or fail to be completed as originally contemplated. We may also abandon acquisition or development opportunities that we have begun pursuing and consequently fail to recover expenses already incurred and have devoted management time to a matter not consummated. Furthermore, our acquisitions of new properties or companies will expose us to the liabilities of those properties or companies, some of which we may not be aware at the time of acquisition. In addition, development of our existing properties presents similar risks.

***Our real estate investments are concentrated in entertainment, entertainment-related and recreational properties and a significant portion of those investments are in megaplex theatre properties, making us more vulnerable economically than if our investments were more diversified***

We acquire, develop or finance entertainment, entertainment-related and recreational properties. A significant portion of our investments are in megaplex theatre properties. Although we are subject to the general risks inherent in concentrating investments in real estate, the risks resulting from a lack of diversification become even greater as a result of investing primarily in entertainment, entertainment-related and recreational properties. These risks are further heightened by the fact that a significant portion of our investments are in megaplex theatre

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properties. Although a downturn in the real estate industry could significantly adversely affect the value of our properties, a downturn in the entertainment, entertainment-related and recreational industries could compound this adverse affect. These adverse effects could be more pronounced than if we diversified our investments to a greater degree outside of entertainment, entertainment-related and recreational properties or, more particularly, outside of megaplex theater properties.

***If we fail to qualify as a REIT, we would be taxed as a corporation, which would substantially reduce funds available for payment of dividends to our shareholders***

If we fail to qualify as a REIT for federal income tax purposes, we will be taxed as a corporation. We are organized and believe we qualify as a REIT, and intend to operate in a manner that will allow us to continue to qualify as a REIT. However, we cannot assure you that we will remain qualified in the future. This is because qualification as a REIT involves the application of highly technical and complex provisions of the Internal Revenue Code on which there are only limited judicial and administrative interpretations, and depends on facts and circumstances not entirely within our control. In addition, future legislation, new regulations, administrative interpretations or court decisions may significantly change the tax laws, the application of the tax laws to our qualification as a REIT or the federal income tax consequences of that qualification.

If we fail to qualify as a REIT we will face tax consequences that will substantially reduce the funds available for payment of dividends:

We would not be allowed a deduction for dividends paid to shareholders in computing our taxable income and would be subject to federal income tax at regular corporate rates

We could be subject to the federal alternative minimum tax and possibly increased state and local taxes

Unless we are entitled to relief under statutory provisions, we could not elect to be treated as a REIT for four taxable years following the year in which we were disqualified

We could be subject to tax penalties and interest

In addition, if we fail to qualify as a REIT, we will no longer be required to pay dividends. As a result of these factors, our failure to qualify as a REIT could adversely affect the market price for our shares.

***We depend on dividends and distributions from our direct and indirect subsidiaries. The creditors of these subsidiaries are entitled to amounts payable to them by the subsidiaries before the subsidiaries may pay any dividends or distributions to us***

Substantially all of our assets are held through our subsidiaries. We depend on these subsidiaries for substantially all of our cash flow. The creditors of each of our direct and indirect subsidiaries are entitled to payment of that subsidiary's obligations to them, when due and payable, before distributions may be made by that subsidiary to its equity holders. Thus, our ability to make distributions to holders of our common and preferred shares depends on our subsidiaries' ability first to satisfy their obligations to their creditors and then to make distributions to us.

***Our development financing arrangements expose us to funding and purchase risks***

Our ability to meet our construction financing obligations which we have undertaken or may enter into in the future depends on our ability to obtain equity or debt financing in the required amounts. There is no assurance we can obtain this financing or that the financing rates available

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will ensure a spread between our cost of capital and the rent or interest payable to us under the related leases or mortgage notes receivable. As a result, we could fail to meet our construction financing obligations which, in turn, could result in failed projects and related foreclosures and penalties, each of which could have a material adverse impact on our results of operations and business.

***We have a limited number of employees and loss of personnel could harm our operations and adversely affect the value of our common shares***

We had 22 full-time employees as of December 31, 2008 and, therefore, the impact we may feel from the loss of an employee may be greater than the impact such a loss would have on a larger organization. We are dependent on the efforts of the following individuals: David M. Brain, our President and Chief Executive Officer; Gregory K. Silvers, our Vice President, Chief Operating Officer, General Counsel and Secretary; Mark A. Peterson, our Vice President and Chief Financial Officer; and Michael L. Hirons, our Vice President Finance. While we believe that we could find replacements for our personnel, the loss of their services could harm our operations and adversely affect the value of our common shares.

**Risks That Apply to our Real Estate Business**

***Real estate income and the value of real estate investments fluctuate due to various factors***

The value of real estate fluctuates depending on conditions in the general economy and the real estate business. These conditions may also limit our revenues and available cash.

The factors that affect the value of our real estate include, among other things:

- international, national, regional and local economic conditions;
- consequences of any armed conflict involving, or terrorist attack against, the United States;
- our ability to secure adequate insurance;
- local conditions such as an oversupply of space or a reduction in demand for real estate in the area;
- competition from other available space;
- whether tenants and users such as customers of our tenants consider a property attractive;
- the financial condition of our tenants, including the extent of tenant bankruptcies or defaults;
- whether we are able to pass some or all of any increased operating costs through to tenants;
- how well we manage our properties;
- fluctuations in interest rates;
- changes in real estate taxes and other expenses;
- changes in market rental rates;
- the timing and costs associated with property improvements and rentals;
- changes in taxation or zoning laws;
- government regulation;
- our failure to continue to qualify as a real estate investment trust;



availability of financing on acceptable terms or at all;

potential liability under environmental or other laws or regulations; and general competitive factors.

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The rents and interest we receive and the occupancy levels at our properties may decline as a result of adverse changes in any of these factors. If our revenues decline, we generally would expect to have less cash available to pay our indebtedness and distribute to our shareholders. In addition, some of our unreimbursed costs of owning real estate may not decline when the related rents decline.

***There are risks associated with owning and leasing real estate***

Although our lease terms obligate the tenants to bear substantially all of the costs of operating the properties, investing in real estate involves a number of risks, including:

The risk that tenants will not perform under their leases, reducing our income from the leases or requiring us to assume the cost of performing obligations (such as taxes, insurance and maintenance) that are the tenant's responsibility under the lease

The risk that changes in economic conditions or real estate markets may adversely affect the value of our properties

The risk that local conditions could adversely affect the value of our properties

We may not always be able to lease properties at favorable rates

We may not always be able to sell a property when we desire to do so at a favorable price

Changes in tax, zoning or other laws could make properties less attractive or less profitable

If a tenant fails to perform on its lease covenants, that would not excuse us from meeting any debt obligation secured by the property and could require us to fund reserves in favor of our lenders, thereby reducing funds available for payment of dividends. We cannot be assured that tenants will elect to renew their leases when the terms expire. If a tenant does not renew its lease or if a tenant defaults on its lease obligations, there is no assurance we could obtain a substitute tenant on acceptable terms. If we cannot obtain another quality tenant, we may be required to modify the property for a different use, which may involve a significant capital expenditure and a delay in re-leasing the property.

***Some potential losses are not covered by insurance***

Our leases require the tenants to carry comprehensive liability, casualty, workers' compensation, extended coverage and rental loss insurance on our properties. We believe the required coverage is of the type, and amount, customarily obtained by an owner of similar properties. We believe all of our properties are adequately insured. However, there are some types of losses, such as catastrophic acts of nature, acts of war or riots, for which we or our tenants cannot obtain insurance at an acceptable cost. If there is an uninsured loss or a loss in excess of insurance limits, we could lose both the revenues generated by the affected property and the capital we have invested in the property. We would, however, remain obligated to repay any mortgage indebtedness or other obligations related to the property. Since September 11, 2001, the cost of insurance protection against terrorist acts has risen dramatically. There can be no assurance our tenants will be able to obtain terrorism insurance coverage, or that any coverage they do obtain will adequately protect our properties against loss from terrorist attack.

***Joint ventures may limit flexibility with jointly owned investments***

We may continue to acquire or develop properties in joint ventures with third parties when those transactions appear desirable. We would not own the entire interest in any property acquired by a joint venture. Major decisions regarding a joint venture property may require the consent of our

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partner. If we have a dispute with a joint venture partner, we may feel it necessary or become obligated to acquire the partner's interest in the venture. However, we cannot ensure that the price we would have to pay or the timing of the acquisition would be favorable to us. If we own less than a 50% interest in any joint venture, or if the venture is jointly controlled, the assets and financial results of the joint venture may not be reportable by us on a consolidated basis. To the extent we have commitments to, or on behalf of, or are dependent on, any such off-balance sheet arrangements, or if those arrangements or their properties or leases are subject to material contingencies, our liquidity, financial condition and operating results could be adversely affected by those commitments or off-balance sheet arrangements.

***Our multi-tenant properties expose us to additional risks***

Our entertainment retail centers in Westminster, Colorado, New Rochelle, New York, White Plains, New York, Burbank, California and Ontario, Canada, and similar properties we may seek to acquire or develop in the future, involve risks not typically encountered in the purchase and lease-back of megaplex theatres which are operated by a single tenant. The ownership or development of multi-tenant retail centers could expose us to the risk that a sufficient number of suitable tenants may not be found to enable the center to operate profitably and provide a return to us. This risk may be compounded by the failure of existing tenants to satisfy their obligations due to various factors, including the current economic crisis. These risks, in turn, could cause a material adverse impact to our results of operations and business.

Retail centers are also subject to tenant turnover and fluctuations in occupancy rates, which could affect our operating results. Multi-tenant retail centers also expose us to the risk of potential CAM slippage, which may occur when CAM fees paid by tenants are exceeded by the actual cost of taxes, insurance and maintenance at the property.

***Failure to comply with the Americans with Disabilities Act and other laws could result in substantial costs***

Our theatres must comply with the Americans with Disabilities Act (ADA). The ADA requires that public accommodations reasonably accommodate individuals with disabilities and that new construction or alterations be made to commercial facilities to conform to accessibility guidelines. Failure to comply with the ADA can result in injunctions, fines, damage awards to private parties and additional capital expenditures to remedy noncompliance. Our leases require the tenants to comply with the ADA.

Our properties are also subject to various other federal, state and local regulatory requirements. We do not know whether existing requirements will change or whether compliance with future requirements will involve significant unanticipated expenditures. Although these expenditures would be the responsibility of our tenants, if tenants fail to perform these obligations, we may be required to do so.

***Potential liability for environmental contamination could result in substantial costs***

Under federal, state and local environmental laws, we may be required to investigate and clean up any release of hazardous or toxic substances or petroleum products at our properties, regardless of our knowledge or actual responsibility, simply because of our current or past ownership of the real estate. If unidentified environmental problems arise, we may have to make substantial payments, which could adversely affect our cash flow and our ability to make distributions to our shareholders. This is because:

As owner we may have to pay for property damage and for investigation and clean-up costs incurred in connection with the contamination

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The law may impose clean-up responsibility and liability regardless of whether the owner or operator knew of or caused the contamination

Even if more than one person is responsible for the contamination, each person who shares legal liability under environmental laws may be held responsible for all of the clean-up costs

Governmental entities and third parties may sue the owner or operator of a contaminated site for damages and costs

These costs could be substantial and in extreme cases could exceed the value of the contaminated property. The presence of hazardous substances or petroleum products or the failure to properly remediate contamination may adversely affect our ability to borrow against, sell or lease an affected property. In addition, some environmental laws create liens on contaminated sites in favor of the government for damages and costs it incurs in connection with a contamination. Most of our loan agreements require the Company or a subsidiary to indemnify the lender against environmental liabilities. Our leases require the tenants to operate the properties in compliance with environmental laws and to indemnify us against environmental liability arising from the operation of the properties. We believe all of our properties are in material compliance with environmental laws. However, we could be subject to strict liability under environmental laws because we own the properties. There is also a risk that tenants may not satisfy their environmental compliance and indemnification obligations under the leases. Any of these events could substantially increase our cost of operations, require us to fund environmental indemnities in favor of our lenders, limit the amount we could borrow under our unsecured revolving credit facility and term loan, and reduce our ability to service our debt and pay dividends to shareholders.

***Real estate investments are relatively non-liquid***

We may desire to sell a property in the future because of changes in market conditions, poor tenant performance or default of any mortgage we hold, or to avail ourselves of other opportunities. We may also be required to sell a property in the future to meet debt obligations or avoid a default. Specialty real estate projects such as megaplex theatres cannot always be sold quickly, and we cannot assure you that we could always obtain a favorable price. In addition, the Internal Revenue Code limits our ability to sell our properties. We may be required to invest in the restoration or modification of a property before we can sell it. The inability to respond promptly to changes in the performance of our property portfolio could adversely affect our financial condition and ability to service debt and make distributions to our shareholders.

***There are risks in owning assets outside the United States***

Our properties in Canada and the property securing our Canadian mortgage financing are subject to the risks normally associated with international operations. The rentals under our Canadian leases, the debt service on our Canadian mortgage financing and the payments to be received on our Canadian mortgage receivable are payable or collectible (as applicable) in Canadian dollars, which could expose us to losses resulting from fluctuations in exchange rates to the extent we have not hedged our position. Canadian real estate and tax laws are complex and subject to change, and we cannot assure you we will always be in compliance with those laws or that compliance will not expose us to additional expense. We may also be subject to fluctuations in Canadian real estate values or markets or the Canadian economy as a whole, which may adversely affect our Canadian investments.

Additionally, we may enter other international markets which may have similar risks as described above as well as unique risks associated with a specific country.

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***There are risks in owning or financing properties for which the tenant s or mortgagor s operations may be impacted by weather conditions***

We have acquired and financed metropolitan ski areas as well as vineyards and wineries, and may continue to do so in the future. The operators of these properties, our tenants or mortgagors, are dependent upon the operations of the properties to pay their rents and service their loans. The ski area operator s ability to attract visitors is influenced by weather conditions and the amount of snowfall during the ski season. Adverse weather conditions may discourage visitors from participating in outdoor activities. In addition, unseasonably warm weather may result in inadequate natural snowfall, which increases the cost of snowmaking, and could render snowmaking wholly or partially ineffective in maintaining quality skiing conditions. Excessive natural snowfall may materially increase the costs incurred for grooming trails and may also make it difficult for visitors to obtain access to the ski resorts. Prolonged periods of adverse weather conditions, or the occurrence of such conditions during peak visitation periods, could have a material adverse effect on the operator s financial results and could impair the ability of the operator to make rental payments or service our loans.

The ability to grow quality wine grapes and a sufficient quantity of wine grapes is influenced by weather conditions. Droughts, freezes and other weather conditions or phenomena, such as El Nino, may adversely affect the timing, quality or quantity of wine grape harvests, and this can have a material adverse effect on the operating results of our vineyard and winery operators. In these circumstances, the ability of our tenants to make rental payments or service our loans could be impaired.

***Wineries and vineyards are subject to a number of risks associated with the agricultural industry***

Winemaking and wine grape growing are subject to a variety of agricultural risks. In addition to weather, various diseases, pests, fungi and viruses can affect the quality and quantity of wine grapes and negatively impact the profitability of our tenants. Furthermore, wine grape growing requires adequate water supplies. The water needs of our properties are generally supplied through wells and reservoirs located on the properties. Although we believe that there are adequate water supplies to meet the needs of all of our properties, a substantial reduction in water supplies could result in material losses of wine crops and vines. If our tenants suffer a downturn in their business due to any of the factors described above, they may be unable to make their lease or loan payments, which could adversely affect our results of operations and financial condition.

***Risks That May Affect the Market Price of our Shares***

***We cannot assure you we will continue paying cash dividends at current rates***

Our dividend policy is determined by our Board of Trustees. Our ability to continue paying dividends on our common shares, to pay dividends on our preferred shares at their stated rates or to increase our common share dividend rate will depend on a number of factors, including our liquidity, our financial condition and results of future operations, the performance of lease and mortgage terms by our tenants and customers, our ability to acquire, finance and lease additional properties at attractive rates, and provisions in our loan covenants. If we do not maintain or increase our common share dividend rate, that could have an adverse effect on the market price of our common shares and possibly our preferred shares. Furthermore, if the Board of Trustees decides to pay dividends on our common shares partially or substantially all in common shares, that could have an adverse effect on the market price of our common shares and possibly our preferred shares.

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***Market interest rates may have an effect on the value of our shares***

One of the factors that investors may consider in deciding whether to buy or sell our common shares or preferred shares is our dividend rate as a percentage of our share price, relative to market interest rates. If market interest rates increase, prospective investors may desire a higher dividend on our common shares or seek securities paying higher dividends or interest.

***Market prices for our shares may be affected by perceptions about the financial health or share value of our tenants and mortgagors or the performance of REIT stocks generally***

To the extent any of our tenants or customers, or their competition, report losses or slower earnings growth, take charges against earnings or enter bankruptcy proceedings, the market price for our shares could be adversely affected. The market price for our shares could also be affected by any weakness in the performance of REIT stocks generally or weakness in any of the sectors in which our tenants and customers operate.

***Limits on changes in control may discourage takeover attempts which may be beneficial to our shareholders***

There are a number of provisions in our Declaration of Trust, Bylaws, Maryland law and agreements we have with others which could make it more difficult for a party to make a tender offer for our shares or complete a takeover of the Company which is not approved by our Board of Trustees. These include:

A staggered Board of Trustees that can be increased in number without shareholder approval

A limit on beneficial ownership of our shares, which acts as a defense against a hostile takeover or acquisition of a significant or controlling interest, in addition to preserving our REIT status

The ability of the Board of Trustees to issue preferred or common shares, to reclassify preferred or common shares, and to increase the amount of our authorized preferred or common shares, without shareholder approval

Limits on the ability of shareholders to remove trustees without cause

Requirements for advance notice of shareholder proposals at shareholder meetings

Provisions of Maryland law restricting business combinations and control share acquisitions not approved by the Board of Trustees

Provisions of Maryland law protecting corporations (and by extension REITs) against unsolicited takeovers by limiting the duties of the trustees in unsolicited takeover situations

Provisions in Maryland law providing that the trustees are not subject to any higher duty or greater scrutiny than that applied to any other director under Maryland law in transactions relating to the acquisition or potential acquisition of control

Provisions of Maryland law creating a statutory presumption that an act of the trustees satisfies the applicable standards of conduct for trustees under Maryland law

Provisions in loan or joint venture agreements putting the Company in default upon a change in control

Provisions of employment agreements with our officers calling for share purchase loan forgiveness (under certain conditions), severance compensation and vesting of equity compensation upon a change in control  
Any or all of these provisions could delay or prevent a change in control of the Company, even if the change was in our shareholders' interest or offered a greater return to our shareholders.

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***We may change our policies without obtaining the approval of our shareholders***

Our operating and financial policies, including our policies with respect to acquiring or financing real estate or other companies, growth, operations, indebtedness, capitalization and dividends, are exclusively determined by our Board of Trustees. Accordingly, our shareholders do not control these policies.

***Dilution could affect the value of our shares***

Our future growth will depend in part on our ability to raise additional capital. If we raise additional capital through the issuance of equity securities, the interests of holders of our common shares could be diluted. Likewise, our Board of Trustees is authorized to cause us to issue preferred shares in one or more series, the holders of which would be entitled to dividends and voting and other rights as our Board of Trustees determines, and which could be senior to or convertible into our common shares. Accordingly, an issuance by us of preferred shares could be dilutive to or otherwise adversely affect the interests of holders of our common shares. As of December 31, 2008, our Series C preferred shares are convertible, at each of the holder's option, into our common shares at a conversion rate of 0.3572 common shares per \$25.00 liquidation preference, which is equivalent to a conversion price of approximately \$69.99 per common share (subject to adjustment in certain events). Additionally, as of December 31, 2008, our Series E preferred shares are convertible, at each of the holder's option, into our common shares at a conversion rate of 0.4512 common shares per \$25.00 liquidation preference, which is equivalent to a conversion price of approximately \$55.41 per common share (subject to adjustment in certain events). Depending upon the number of Series C and Series E preferred shares being converted at one time, a conversion of Series C and Series E preferred shares could be dilutive to or otherwise adversely affect the interests of holders of our common shares.

***Changes in foreign currency exchange rates may have an impact on the value of our shares***

The functional currency for our Canadian operations and mortgage note receivable is the Canadian dollar. As a result, our future earnings could be affected by fluctuations in the exchange rate between U.S. and Canadian dollars, which in turn could affect our share price. We have attempted to mitigate our exposure to Canadian currency exchange risk by having both our Canadian lease rentals and the debt service on our Canadian mortgage financing payable in the same currency. We have also entered into foreign currency exchange contracts to hedge in part our exposure to exchange rate fluctuations. Foreign currency derivatives are subject to future risk of loss. We do not engage in purchasing foreign exchange contracts for speculative purposes.

Additionally, we may enter other international markets which pose similar currency fluctuation risks as described above.

***Tax reform could adversely affect the value of our shares***

There have been a number of proposals in Congress for major revision of the federal income tax laws, including proposals to adopt a flat tax or replace the income tax system with a national sales tax or value-added tax. Any of these proposals, if enacted, could change the federal income tax laws applicable to REITS, subject us to federal tax or reduce or eliminate the current deduction for dividends paid to our shareholders, any of which could negatively affect the market for our shares.

**Item 1B. Unresolved Staff Comments**

There are no unresolved comments from the staff of the SEC required to be disclosed herein as of the date of this Annual Report on Form 10-K.

**Table of Contents****Item 2. Properties**

As of December 31, 2008, our real estate portfolio consisted of 80 megaplex theatre properties and various restaurant, retail and other properties located in 29 states, the District of Columbia and Ontario, Canada. Except as otherwise noted, all of the real estate investments listed below are owned or ground leased directly by us. The following table lists our properties, their locations, acquisition dates, number of theatre screens, number of seats, gross square footage, and the tenant.

| Property                     | Location             | Acquisition |         |       | Building<br>(gross sq.<br>ft) | Tenant           |
|------------------------------|----------------------|-------------|---------|-------|-------------------------------|------------------|
|                              |                      | date        | Screens | Seats |                               |                  |
| Megaplex Theatre Properties: |                      |             |         |       |                               |                  |
| Grand 24 (8)                 | Dallas, TX           | 11/97       | 24      | 5,067 | 98,175                        | AMC              |
| Mission Valley 20 (1) (8)    | San Diego, CA        | 11/97       | 20      | 4,361 | 84,352                        | AMC              |
| Promenade 16 (8)             | Los Angeles, CA      | 11/97       | 16      | 2,860 | 129,822                       | AMC              |
| Ontario Mills 30 (8)         | Ontario, CA          | 11/97       | 30      | 5,469 | 131,534                       | AMC              |
| Lennox 24 (1) (8)            | Columbus, OH         | 11/97       | 24      | 4,412 | 98,261                        | AMC              |
| West Olive 16 (8)            | Creve Coeur, MO      | 11/97       | 16      | 2,817 | 60,418                        | AMC              |
| Studio 30 (8)                | Houston, TX          | 11/97       | 30      | 6,032 | 136,154                       | AMC              |
| Huebner Oaks 24 (8)          | San Antonio, TX      | 11/97       | 24      | 4,400 | 96,004                        | AMC              |
| First Colony 24 (1) (29)     | Sugar Land, TX       | 11/97       | 24      | 5,098 | 107,690                       | AMC              |
| Oakview 24 (30)              | Omaha, NE            | 11/97       | 24      | 5,098 | 107,402                       | AMC              |
| Leawood Town Center 20 (31)  | Leawood, KS          | 2/98        | 20      | 2,995 | 75,224                        | AMC              |
| Gulf Pointe 30 (2) (34)      | Houston, TX          | 3/98        | 30      | 6,008 | 130,891                       | AMC              |
| South Barrington 30 (35)     | South Barrington, IL | 3/98        | 30      | 6,210 | 130,757                       | AMC              |
| Cantera 30 (2) (4)           | Warrenville, IL      | 4/98        | 30      | 6,210 | 130,757                       | AMC              |
| Mesquite 30 (2) (33)         | Mesquite, TX         | 6/98        | 30      | 6,008 | 130,891                       | AMC              |
| Hampton Town Center 24 (37)  | Hampton, VA          | 8/98        | 24      | 5,098 | 107,396                       | AMC              |
| Raleigh Grand 16 (3)         | Raleigh, NC          | 8/98        | 16      | 2,596 | 51,450                        | Carolina Cinemas |
| Pompano 18 (3)               | Pompano Beach, FL    | 11/98       | 18      | 3,424 | 73,637                        | Muvico           |
| Paradise 24 (22)             | Davie, FL            | 12/98       | 24      | 4,180 | 96,497                        | Muvico           |
| Boise Stadium 21 (1) (3)     | Boise, ID            | 12/98       | 21      | 4,734 | 140,300                       | Regal            |
| Aliso Viejo Stadium 20 (21)  | Aliso Viejo, CA      | 12/98       | 20      | 4,352 | 98,557                        | Regal            |
| Westminster 24 (6)           | Westminster, CO      | 6/99        | 24      | 4,812 | 89,260                        | AMC              |
| Woodridge 18 (2) (9)         | Woodridge, IL        | 6/99        | 18      | 4,384 | 82,000                        | AMC              |
| Tampa Starlight 20 (9)       | Tampa, FL            | 1/00        | 20      | 3,928 | 84,000                        | Muvico           |
| Palm Promenade 24 (9)        | San Diego, CA        | 1/00        | 24      | 4,586 | 88,610                        | AMC              |
| Cary Crossroads 20 (9)       | Cary, NC             | 3/02        | 20      | 3,936 | 77,475                        | Regal            |
| Elmwood Palace 20 (9)        | Harahan, LA          | 3/02        | 20      | 4,357 | 90,391                        | AMC              |
| Hammond Palace 10 (9)        | Hammond, LA          | 3/02        | 10      | 1,531 | 39,850                        | AMC              |
| Houma Palace 10 (9)          | Houma, LA            | 3/02        | 10      | 1,871 | 44,450                        | AMC              |
| Westbank Palace 16 (9)       | Harvey, LA           | 3/02        | 16      | 3,176 | 71,607                        | AMC              |
| Clearview Palace 12 (1) (9)  | Metairie, LA         | 3/02        | 12      | 2,495 | 70,000                        | AMC              |
| Olathe Studio 30 (9)         | Olathe, KS           | 6/02        | 30      | 5,731 | 100,000                       | AMC              |
| Forum 30 (9)                 | Sterling Heights, MI | 6/02        | 30      | 5,041 | 107,712                       | AMC              |



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|                                   |                 |       |    |       |         |          |
|-----------------------------------|-----------------|-------|----|-------|---------|----------|
| Cherrydale 16 (9)                 | Greenville, SC  | 6/02  | 16 | 2,744 | 52,800  | Regal    |
| Livonia 20 (9)                    | Livonia, MI     | 8/02  | 20 | 3,808 | 76,106  | AMC      |
| Hoffman Town Centre 22<br>(1) (9) | Alexandria, VA  | 10/02 | 22 | 4,150 | 132,903 | AMC      |
| Colonel Glenn 18 (3)              | Little Rock, AR | 12/02 | 18 | 4,122 | 79,330  | Rave     |
| AmStar Cinema 16 (16)             | Macon, GA       | 3/03  | 16 | 2,950 | 66,400  | Southern |

Subtotal Megaplex

Theatres, carried over to  
next page

821 161,051 3,569,063

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| Property                              | Location              | Acquisition |         |         | Building<br>(gross sq.<br>ft) | Tenant              |
|---------------------------------------|-----------------------|-------------|---------|---------|-------------------------------|---------------------|
|                                       |                       | date        | Screens | Seats   |                               |                     |
| Megaplex Theatre Properties:          |                       |             |         |         |                               |                     |
| Subtotal from previous page           | n/a                   | n/a         | 821     | 161,051 | 3,569,063                     | n/a                 |
| Star Southfield 20 (8)                | Southfield, MI        | 5/03        | 20      | 7,000   | 112,119                       | AMC                 |
| Southwind 12 (27)                     | Lawrence, KS          | 6/03        | 12      | 2,481   | 42,497                        | Wallace             |
| Veterans 24 (10)                      | Tampa, FL             | 6/03        | 24      | 4,580   | 94,774                        | AMC                 |
| New Roc City 18 and IMAX (11)         | New Rochelle, NY      | 10/03       | 18      | 3,400   | 103,000                       | Regal               |
| Harbour View Grande 16 (8)            | Suffolk, VA           | 11/03       | 16      | 3,036   | 61,500                        | Regal               |
| Columbiana Grande 14 (13)             | Columbia, SC          | 11/03       | 14      | 3,000   | 56,705                        | Regal               |
| The Grande 18 (8)                     | Hialeah, FL           | 12/03       | 18      | 4,900   | 77,400                        | Cobb                |
| Mississauga 16 (7) (49)               | Mississauga, ON       | 3/04        | 16      | 3,856   | 92,971                        | AMC                 |
| Oakville 24 (7) (49)                  | Oakville, ON          | 3/04        | 24      | 4,772   | 89,290                        | AMC                 |
| Whitby 24 (7) (49)                    | Whitby, ON            | 3/04        | 24      | 4,688   | 89,290                        | AMC                 |
| Kanata 24 (7) (49)                    | Kanata, ON            | 3/04        | 24      | 4,764   | 89,290                        | AMC                 |
| Mesa Grand 24 (20)                    | Mesa, AZ              | 3/04        | 24      | 4,530   | 94,774                        | AMC                 |
| Deer Valley 30 (3)                    | Phoenix, AZ           | 3/04        | 30      | 5,877   | 113,768                       | AMC                 |
| Hamilton 24 (3)                       | Hamilton, NJ          | 3/04        | 24      | 4,268   | 95,466                        | AMC                 |
| Grand Prairie 18 (8)                  | Peoria, IL            | 7/04        | 18      | 4,063   | 82,330                        | Rave                |
| Lafayette Grand 16 (1) (17)           | Lafayette, LA         | 7/04        | 16      | 2,744   | 61,579                        | Southern            |
| Northeast Mall 18 (19)                | Hurst, TX             | 11/04       | 18      | 3,886   | 94,000                        | Rave                |
| The Grand 18 (24)                     | D Iberville, MS       | 12/04       | 18      | 2,984   | 48,000                        | Southern            |
| Avenue 16 (8)                         | Melbourne, FL         | 12/04       | 16      | 3,600   | 75,850                        | Rave                |
| Mayfaire Cinema 16 (14)               | Wilmington, NC        | 2/05        | 16      | 3,050   | 57,338                        | Regal               |
| East Ridge 18 (32)                    | Chattanooga, TN       | 3/05        | 18      | 4,133   | 82,330                        | Rave                |
| Burbank 16 (12)                       | Burbank, CA           | 3/05        | 16      | 4,232   | 86,551                        | AMC                 |
| ShowPlace 12 (26)                     | Indianapolis, IN      | 6/05        | 12      | 2,200   | 45,270                        | Kerasotes           |
| The Grand 14 (8)                      | Conroe, TX            | 6/05        | 14      | 2,400   | 45,000                        | Southern            |
| The Grand 18 (28)                     | Hattiesburg, MS       | 9/05        | 18      | 2,675   | 57,367                        | Southern            |
| Auburn Stadium 10 (5)                 | Auburn, CA            | 12/05       | 10      | 1,573   | 32,185                        | Regal               |
| Arroyo Grande Stadium 10 (2) (18)     | Arroyo Grande, CA     | 12/05       | 10      | 1,714   | 34,500                        | Regal               |
| Modesto Stadium 10 (15)               | Modesto, CA           | 12/05       | 10      | 1,885   | 38,873                        | Regal               |
| Manchester Stadium 16 (25)            | Fresno, CA            | 12/05       | 16      | 3,860   | 80,600                        | Regal               |
| Firewheel 18 (36)                     | Garland, TX           | 3/06        | 18      | 3,156   | 72,252                        | AMC                 |
| Columbia 14 (1) (8)                   | Columbia, MD          | 3/06        | 14      | 2,512   | 77,731                        | AMC                 |
| White Oak Village Cinema 14 (8)       | Garner, NC            | 4/06        | 14      | 2,626   | 50,810                        | Regal               |
| Valley Bend 18 (8)                    | Huntsville, AL        | 8/06        | 18      | 4,150   | 90,200                        | Rave                |
| The Grand 18 (1) (8)                  | Winston Salem, NC     | 7/06        | 18      | 3,496   | 75,605                        | Southern            |
| Cityplace 14 (8)                      | Kalamazoo, MI         | 11/06       | 14      | 2,770   | 70,000                        | Rave                |
| Bayou 15 (8)                          | Pensacola, FL         | 12/06       | 15      | 3,361   | 74,400                        | Rave                |
| The Grand 16 (1) (39)                 | Slidell, LA           | 12/06       | 16      | 2,750   | 62,300                        | Southern            |
| City Center 15: Cinema de Lux (23)    | White Plains, NY      | 5/07        | 15      | 3,500   | 80,000                        | National Amusements |
| Pier Park Grand 16 (8)                | Panama City Beach, FL | 5/07        | 16      | 3,496   | 75,605                        | Southern            |
| Kalispell Stadium 14 (8)              | Kalispell, MT         | 8/07        | 14      | 2,000   | 44,650                        | Signature           |
| Four Seasons Station Grand 18 (1) (8) | Greensboro, NC        | 11/07       | 18      | 3,343   | 74,517                        | Southern            |
| Glendora 12 (1)                       | Glendora, CA          | 10/08       | 12      | 2,264   | 50,710                        | AMC                 |

Subtotal Megaplex Theatres

1,537 306,626 6,602,460

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| <b>Property</b>                               | <b>Location</b>                  | <b>Acquisition date</b> | <b>Screens</b> | <b>Seats</b> | <b>Building (gross sq. ft)</b> | <b>Tenant</b>                   |
|---|----------------------------------|-------------------------|----------------|--------------|--------------------------------|---------------------------------|
| Retail, Restaurant and Other Properties:      |                                  |                         |                |              |                                |                                 |
| On The Border (8)                             | Mesquite, TX                     | 1/99                    |                |              | 6,683                          | Brinker International           |
| Texas Roadhouse (8)                           | Mesquite, TX                     | 1/99                    |                |              | 6,400                          | Texas Roadhouse                 |
| Westminster Promenade (8)                     | Westminster,<br>CO               | 6/99                    |                |              | 135,226                        | Multi-Tenant                    |
| Texas Land & Cattle (8)                       | Houston, TX                      | 5/00                    |                |              | 7,733                          | Tx.C.C., Inc.                   |
| Vacant (formerly Bennigan s) (8)              | Houston, TX                      | 5/00                    |                |              | 6,575                          | S & A                           |
| Vacant (formerly Bennigan s) (8)              | Mesquite, TX                     | 5/00                    |                |              | 6,575                          | S & A                           |
| Cherrydale Shops (9)                          | Greenville,<br>SC                | 6/02                    |                |              | 10,000                         | Multi-Tenant                    |
| Johnny Carino s (8)                           | Mesquite, TX                     | 3/03                    |                |              | 6,200                          | Kona Rest. Group,<br>Inc.       |
| Star Southfield Center(8)                     | Southfield,<br>MI                | 5/03                    |                |              | 48,478                         | Multi-Tenant                    |
| New Roc City (11)                             | New<br>Rochelle, NY              | 10/03                   |                |              | 343,809                        | Multi-Tenant                    |
| Harbour View Station(8)                       | Suffolk, SC                      | 11/03                   |                |              | 21,416                         | Multi-Tenant                    |
| Kanata Entertainment Centrum (7) (49)         | Kanata, ON                       | 3/04                    |                |              | 308,089                        | Multi-Tenant                    |
| Mississauga Entertainment Centrum<br>(7) (49) | Mississauga,<br>ON               | 3/04                    |                |              | 89,777                         | Multi-Tenant                    |
| Oakville Entertainment Centrum (7)<br>(49)    | Oakville, ON                     | 3/04                    |                |              | 134,222                        | Multi-Tenant                    |
| Whitby Entertainment Centrum (7) (49)         | Whitby, ON                       | 3/04                    |                |              | 124,620                        | Multi-Tenant                    |
| V-Land (8)                                    | Warrenville,<br>IL               | 7/04                    |                |              | 11,755                         | V-Land Warrenville              |
| Stir Crazy (8)                                | Warrenville,<br>IL               | 9/04                    |                |              | 7,500                          | Stir Crazy Café                 |
| Burbank Village (12)                          | Burbank, CA                      | 3/05                    |                |              | 34,713                         | Multi-Tenant                    |
| La Cantina (8)                                | Houston, TX                      | 8/05                    |                |              | 9,000                          | La Cantina Gulf<br>Fwy, Inc.    |
| Mad River Mountain (37)(40)                   | Bellefontaine,<br>OH             | 11/05                   |                |              | 48,427                         | Mad River Mountain              |
| Sizzler                                       | Arroyo<br>Grande, CA             | 12/05                   |                |              | 5,850                          | Arroyo Grande<br>Sizzler        |
| Havens Wine Cellars (41) (38)                 | Yountville,<br>CA                | 12/06                   |                |              | 11,960                         | Billington Imports              |
| Rack and Riddle Winery (38) (42)              | Hopland, CA                      | 4/07                    |                |              | 76,000                         | Rb Wine Associates              |
| City Center at White Plains (23)              | White Plains,<br>NY              | 5/07                    |                |              | 317,943                        | Multi-Tenant                    |
| Austell Promenade (8)                         | Austell, GA                      | 6/07                    |                |              | 18,410                         | East-West<br>Promenade          |
| Cosentino Wineries (44)                       | Pope Valley,<br>Lockeford<br>and | 8/07                    |                |              | 71,540                         | Cosentino Winery,<br>LLC, et al |

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|  |                     |       |           |                          |
|--|---------------------|-------|-----------|--------------------------|
|  | Clements,<br>CA     |       |           |                          |
| EOS Estate Winery (43)   | Pasa Robles,<br>CA  | 8/07  | 120,000   | Sapphire Wines           |
| Imagine College Prep   | St. Louis,<br>MO    | 10/07 | 103,000   | Imagine                  |
| East Mesa Charter Elementary   | Mesa, AZ            | 10/07 | 45,214    | Imagine                  |
| Rosefield Charter Elementary   | Surprise, AZ        | 10/07 | 45,578    | Imagine                  |
| Academy of Columbus  | Columbus,<br>OH     | 10/07 | 71,949    | Imagine                  |
| South Lake Charter Elementary  | Clermont, FL        | 10/07 | 39,956    | Imagine                  |
| Renaissance Public School Academy  | Mt. Pleasant,<br>MI | 10/07 | 36,278    | Imagine                  |
| 100 Academy of Excellence  | Las Vegas,<br>NV    | 10/07 | 59,060    | Imagine                  |
| Imagine Charter Elementary   | Phoenix, AZ         | 10/07 | 47,186    | Imagine                  |
| Groveport Community School   | Groveport,<br>OH    | 10/07 | 66,420    | Imagine                  |
| Harvard Avenue Charter School  | Cleveland,<br>OH    | 10/07 | 57,652    | Imagine                  |
| Hope Community Charter School  | Washington,<br>DC   | 10/07 | 34,962    | Imagine                  |
| Marietta Charter School  | Marietta, GA        | 10/07 | 24,503    | Imagine                  |
| Crotched Mountain  | Bennington,<br>NH   | 1/08  | 34,100    | Crotched Mountain        |
| Buena Vista Winery & Vineyards (38)<br>(45)                                    | Sonoma, CA          | 6/08  | 105,735   | Ascentia Wine<br>Estates |
| Columbia Winery (38) (46)  | Sunnyside,<br>WA    | 6/08  | 35,880    | Ascentia Wine<br>Estates |
| Gary Farrell Winery (38) (47)  | Healdsburg,<br>CA   | 6/08  | 21,001    | Ascentia Wine<br>Estates |
| Geyser Peak Winery & Vineyards (38)<br>(48)                                    | Geyserville,<br>CA  | 6/08  | 360,813   | Ascentia Wine<br>Estates |
| Academy of Academic Success  | St. Louis,<br>MO    | 6/08  | 66,644    | Imagine                  |
| Academy of Careers Elementary  | St. Louis,<br>MO    | 6/08  | 43,975    | Imagine                  |
| Subtotal Retail, Restaurant and Other<br>Properties, carried over to next page |                     |       | 3,288,807 |                          |

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| <b>Property</b>                                  | <b>Location</b> | <b>Acquisition date</b> | <b>Screens</b> | <b>Seats</b> | <b>Building (gross sq. ft)</b> | <b>Tenant</b> |
|--|-----------------|-------------------------|----------------|--------------|--------------------------------|---------------|
| Retail, Restaurant and Other Properties:         |                 |                         |                |              |                                |               |
| Subtotal from previous page                      | n/a             | n/a                     |                |              | 3,288,807                      | n/a           |
| Academy of Careers Middle School                 | St. Louis, MO   | 6/08                    |                |              | 56,213                         | Imagine       |
| Academy of Environmental Science & Math          | St. Louis, MO   | 6/08                    |                |              | 153,000                        | Imagine       |
| International Academy of Mableton                | Mableton, GA    | 6/08                    |                |              | 43,188                         | Imagine       |
| Master Academy                                   | Fort Wayne, IN  | 6/08                    |                |              | 161,500                        | Imagine       |
| Renaissance Academy (Kensington Campus)          | Kansas City, MO | 6/08                    |                |              | 53,763                         | Imagine       |
| Renaissance Academy (Wallace Campus)             | Kansas City, MO | 6/08                    |                |              | 79,940                         | Imagine       |
| Romig Road Community School                      | Akron, OH       | 6/08                    |                |              | 40,400                         | Imagine       |
| Wesley International Academy                     | Atlanta, GA     | 6/08                    |                |              | 40,358                         | Imagine       |
| Subtotal Retail, Restaurant and Other Properties |                 |                         |                |              | 3,917,169                      |               |
| Total  |                 |                         | 1,537          | 306,626      | 10,519,629                     |               |

- (1) Third party ground leased property. Although we are the tenant under the ground leases and have assumed responsibility for performing the obligations thereunder, pursuant to the leases, the theatre tenants are responsible for performing our obligations

under the  
ground leases.

- (2) In addition to the theatre property itself, we have acquired land parcels adjacent to the theatre property, which we have or intend to lease or sell to restaurant or other entertainment themed operators.
- (3) Property is included as security for \$79.0 million in mortgage notes payable.
- (4) Property is included in the Atlantic-EPR I joint venture.
- (5) Property is included as security for a \$6.6 million mortgage notes payable.
- (6) Property is included as security for a \$18.9 million mortgage note payable.
- (7) Property is included as security for a \$96.5 million mortgage note

payable.

- (8) Property is included in the borrowing base for a \$235.0 million unsecured revolving credit facility.
- (9) Property is included as security for \$155.5 million mortgage note payable.
- (10) Property is included in the Atlantic-EPR II joint venture.
- (11) Property is included as security for a \$66.0 million mortgage note payable and \$4.0 million credit facility.
- (12) Property is included as security for a \$36.0 million mortgage note payable.
- (13) Property is included as security for an \$8.3 million mortgage note payable.
- (14) Property is included as security for a \$7.9 million mortgage note



payable.

(15) Property is included as security for a \$4.9 million mortgage note payable.

(16) Property is included as security for a \$6.6 million mortgage note payable.

(17) Property is included as security for a \$9.3 million mortgage note payable.

(18) Property is included as security for a \$5.1 million mortgage note payable.

(19) Property is included as security for a \$15.0 million mortgage note payable.

(20) Property is included as security for a \$16.0 million mortgage note payable.

(21) Property is included as security for a \$22.0 million mortgage note payable.

- (22) Property is included as security for a \$22.0 million mortgage note payable.
- (23) Property is included as security for a \$115.0 million mortgage note payable and \$5.0 million credit facility.
- (24) Property is included as security for a \$11.6 million mortgage note payable.
- (25) Property is included as security for a \$11.9 million mortgage note payable.
- (26) Property is included as security for a \$5.1 million mortgage note payable.
- (27) Property is included as security for a \$4.8 million mortgage note payable.
- (28) Property is included as security for a \$10.4 million mortgage note payable.

- (29) Property is included as security for a \$18.6 million mortgage note payable.
- (30) Property is included as security for a \$16.1 million mortgage note payable.
- (31) Property is included as security for a \$15.4 million mortgage note payable.
- (32) Property is included as security for a \$12.7 million mortgage note payable.
- (33) Property is included as security for a \$22.2 million mortgage note payable.
- (34) Property is included as security for a \$26.2 million mortgage note payable.
- (35) Property is included as security for a \$27.0 million mortgage note payable.
- (36) Property is included as

security for a  
\$17.5 million  
mortgage note  
payable

(37) Property is  
included as  
security for a  
\$120.0 million  
term loan  
payable.

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(38) Property is included as security under the \$160.0 million credit facility.

(39) Property is included as security for \$10.6 million bond payable.

(40) Property includes approximately 324 acres of land.

(41) Property includes approximately 10 acres of land.

(42) Property includes approximately 35 acres of land.

(43) Property includes approximately 60 acres of land.

(44) Property includes approximately 225 acres of land.

(45) Property includes approximately 693 acres of land.

(46) Property includes approximately

17 acres of land.

(47) Property includes approximately 23 acres of land.

(48) Property includes approximately 207 acres of land.

(49) Property is located in Ontario, Canada

As of December 31, 2008, our portfolio of megaplex theatre properties consisted of 6.6 million square feet and was 100% occupied, and our portfolio of retail, restaurant and other properties consisted of 3.9 million square feet and was 95% occupied. The combined portfolio consisted of 10.5 million square feet and was 98% occupied. For the year ended December 31, 2008, approximately 75% of our rental revenue and 55% of total revenue was derived from theatre tenants. The following table sets forth information regarding EPR's megaplex theatre portfolio as of December 31, 2008 (dollars in thousands). This data does not include the two megaplex theatre properties held by our unconsolidated joint ventures.

| Year | Megaplex Theatre Portfolio      |                | Rental Revenue for the Year Ended December 31, 2008 | % of Rental Revenue |
|------|---------------------------------|----------------|---|---------------------|
|      | Total Number of Leases Expiring | Square Footage |   |                     |
| 2009 |                                 |                | \$  |                     |
| 2010 | 4                               | 443,883        | 11,271  | 7.3%                |
| 2011 | 4                               | 390,837        | 9,403   | 6.2%                |
| 2012 | 3                               | 290,316        | 6,546   | 4.3%                |
| 2013 | 4                               | 499,935        | 14,117  | 9.2%                |
| 2014 |                                 |                |   |                     |
| 2015 |                                 |                |   |                     |
| 2016 | 2                               | 187,400        | 3,200   | 2.1%                |
| 2017 | 3                               | 224,497        | 4,661   | 3.1%                |
| 2018 | 6                               | 542,584        | 12,839  | 8.4%                |
| 2019 | 7                               | 647,264        | 19,616  | 12.8%               |
| 2020 | 7                               | 416,183        | 8,027   | 5.3%                |
| 2021 | 3                               | 219,673        | 6,159   | 4.0%                |
| 2022 | 9                               | 636,822        | 15,829  | 10.4%               |
| 2023 | 1                               | 77,731         | 1,254   | 0.8%                |
| 2024 | 9                               | 754,421        | 15,823  | 10.4%               |
| 2025 | 7                               | 452,191        | 12,476  | 8.2%                |
| 2026 | 5                               | 347,710        | 7,328   | 4.8%                |
| 2027 | 3                               | 194,772        | 3,939   | 2.6%                |

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|      |    |           |    |         |        |
|------|----|-----------|----|---------|--------|
| 2028 | 1  | 50,710    |    | 194     | 0.1%   |
|      | 78 | 6,376,929 | \$ | 152,682 | 100.0% |
|      | 31 |           |    |         |        |

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Our properties are located in 29 states, the District of Columbia and in the Canadian province of Ontario. The following table sets forth certain state-by-state and Ontario, Canada information regarding our real estate portfolio as of December 31, 2008 (dollars in thousands). This data does not include the two theatre properties owned by our unconsolidated joint ventures.

| <b>Location</b> | <b>Building<br/>(gross sq. ft)</b> | <b>Rental Revenue<br/>for the<br/>year ended<br/>December 31,<br/>2008</b> | <b>% of<br/>Rental<br/>Revenue</b> |
|-----------------|------------------------------------|--|------------------------------------|
| California      | 1,663,906                          | 35,294   | 17.4%                              |
| Ontario, Canada | 1,017,549                          | 26,668   | 13.2%                              |
| Texas           | 960,223                            | 22,638   | 11.2%                              |
| New York        | 844,752                            | 20,726   | 10.2%                              |
| Florida         | 557,389                            | 12,603   | 6.2%                               |
| Louisiana       | 440,177                            | 9,676  | 4.8%                               |
| Michigan        | 414,415                            | 10,794   | 5.3%                               |
| North Carolina  | 387,195                            | 7,859  | 3.9%                               |
| Virginia        | 323,215                            | 7,820  | 3.9%                               |
| Illinois        | 314,342                            | 8,109  | 4.0%                               |
| Colorado        | 224,486                            | 5,415  | 2.7%                               |
| Kansas          | 217,721                            | 4,876  | 2.4%                               |
| Arizona         | 208,542                            | 3,993  | 2.0%                               |
| Ohio            | 146,688                            | 2,834  | 1.4%                               |
| Idaho           | 140,300                            | 1,892  | 0.9%                               |
| South Carolina  | 119,505                            | 2,100  | 1.0%                               |
| Nebraska        | 107,402                            | 2,744  | 1.4%                               |
| Mississippi     | 105,367                            | 2,580  | 1.3%                               |
| New Jersey      | 95,466                             | 2,185  | 1.1%                               |
| Alabama         | 90,200                             | 1,956  | 1.0%                               |
| Georgia         | 84,810                             | 1,259  | 0.6%                               |
| Tennessee       | 82,330                             | 1,633  | 0.8%                               |
| Arkansas        | 79,330                             | 1,616  | 0.8%                               |
| Maryland        | 77,731                             | 1,254  | 0.6%                               |
| Missouri        | 60,418                             | 2,262  | 1.1%                               |
| Indiana         | 45,270                             | 663  | 0.3%                               |
| Montana         | 44,650                             | 902  | 0.4%                               |
| Washington      | 35,880                             | 196  | 0.1%                               |
| New Hampshire   | 34,100                             | 34   | 0.0%                               |
|                 | 8,923,359                          | \$202,581  | 100.0%                             |



**Table of Contents****Office Location**

Our executive office is located in Kansas City, Missouri and is leased from a third party landlord. The office occupies approximately 19,513 square feet with annual rentals of \$322 thousand. The lease expires in December 2009. We can extend the lease, at our option, for two option periods of five years each, with annual rent increasing \$0.50 per square foot per year.

**Tenants and Leases**

Our existing leases on rental property (on a consolidated basis excluding unconsolidated joint venture properties) provide for aggregate annual rentals of approximately \$200 million (not including periodic rent escalations or percentage rent). The megaplex theatre leases have an average remaining base term lease life of approximately 12 years and may be extended for predetermined extension terms at the option of the tenant. The theatre leases are typically triple-net leases that require the tenant to pay substantially all expenses associated with the operation of the properties, including taxes, other governmental charges, insurance, utilities, service, maintenance and any ground lease payments.

**Property Acquisitions in 2008**

The following table lists the significant rental properties we acquired or developed during 2008:

| <b>Property</b>                  | <b>Location</b> | <b>Tenant</b>                       | <b>Development Cost/<br/>Purchase Price</b> |
|----------------------------------|-----------------|-------------------------------------|---|
| Charter Public School Properties | Various         | Affiliates of Imagine Schools, Inc. | \$39.5 million <sup>(1)</sup>               |
| Ascentia Wine Estates            | Various         | Ascentia Wine Estates               | \$116.5 million                             |
| Charter Public School Properties | Various         | Affiliates of Imagine Schools, Inc. | \$82.3. million <sup>(2)</sup>              |
| Glendora 12                      | Glendora, CA    | AMC                                 | \$10.9 million                              |

<sup>(1)</sup> On October 30, 2007, we acquired a 50% ownership in JERIT CS Fund I (CS Fund I) in exchange for \$39.5 million. On April 2, 2008, we acquired the remaining 50% ownership interest in CS Fund I for a total purchase price of \$39.5 million. Upon completion of this transaction, CS Fund I became a

wholly-owned subsidiary. At the time of the acquisition, CS Fund I owned 12 public charter school properties located in Nevada, Arizona, Ohio, Georgia, Missouri, Michigan, Florida and Washington D.C. These schools are leased under a long-term triple net master lease which has been classified as a direct financing lease.

- (2) On June 17, 2008, we acquired ten public charter school properties from Imagine and funded expansions at three of the public charter school properties previously acquired. The total investment in these properties was approximately \$82.3 million and the properties are leased under a long-term triple-net master

lease. The ten new properties are located in Georgia, Missouri, Ohio and Indiana and the three expansions are located in Arizona, Nevada and Georgia. The master lease is classified as a direct financing lease.

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**Item 3. Legal Proceedings**

Other than routine litigation and administrative proceedings arising in the ordinary course of business, we are not presently involved in any litigation nor, to our knowledge, is any litigation threatened against us or our properties, which is reasonably likely to have a material adverse effect on our liquidity or results of operations.

**Item 4. Submission of Matters to a Vote of Security Holders**

No matters were submitted to a vote of security holders during the fourth quarter of the year ended December 31, 2008.

**Table of Contents****PART II****Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities**

The following table sets forth, for the quarterly periods indicated, the high and low sales prices per share for our common shares on the New York Stock Exchange ( NYSE ) under the trading symbol EPR and the distributions declared.

|                | Share price |         | Declared<br>Distribution |
|----------------|-------------|---------|--------------------------|
|                | High        | Low     |                          |
| 2008:          |             |         |                          |
| Fourth quarter | \$54.62     | \$18.81 | \$0.8400                 |
| Third quarter  | 59.02       | 48.03   | 0.8400                   |
| Second quarter | 56.31       | 48.23   | 0.8400                   |
| First quarter  | 55.54       | 42.76   | 0.8400                   |
| 2007:          |             |         |                          |
| Fourth quarter | \$56.17     | \$46.15 | \$0.7600                 |
| Third quarter  | 55.74       | 42.30   | 0.7600                   |
| Second quarter | 63.50       | 51.49   | 0.7600                   |
| First quarter  | 68.60       | 58.04   | 0.7600                   |

The closing price for our common shares on the NYSE on February 23, 2009 was \$17.81 per share.

We declared quarterly distributions to common shareholders aggregating \$3.36 per common share in 2008 and \$3.04 per common share in 2007.

While we intend to continue paying regular quarterly dividends, future dividend declarations will be at the discretion of the Board of Trustees and will depend on our actual cash flow, our financial condition, capital requirements, the annual distribution requirements under the REIT provisions of the Code, debt covenants and other factors the Board of Trustees deems relevant. The actual cash flow available to pay dividends may be affected by a number of factors, including the revenues received from rental properties and mortgage notes, our operating expenses, debt service on our borrowings, the ability of tenants and customers to meet their obligations to us and any unanticipated capital expenditures. Our Series B preferred shares have a fixed dividend rate of 7.75%, our Series C preferred shares have a fixed dividend rate of 5.75%, our Series D preferred shares have a fixed dividend rate of 7.375% and our Series E preferred shares have a fixed dividend rate of 9.00%.

During the year ended December 31, 2008, the Company did not sell any unregistered securities.

On February 23, 2009, there were approximately 590 holders of record of our outstanding common shares.

During the quarter ended December 31, 2008, the Company did not repurchase any of its equity securities.

**Table of Contents*****Stock Performance Chart***  
**Total Return Analysis**

|                           | 12/31/2003      | 12/31/2004      | 12/31/2005      | 12/31/2006      | 12/31/2007      | 12/31/2008      |
|---------------------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|
| <b>Entertainment</b>      |                 |                 |                 |                 |                 |                 |
| <b>Properties Trust</b>   | <b>\$100.00</b> | <b>\$135.82</b> | <b>\$131.59</b> | <b>\$199.92</b> | <b>\$170.30</b> | <b>\$116.61</b> |
| <b>MSCI US REIT Index</b> | <b>\$100.00</b> | <b>\$131.49</b> | <b>\$143.13</b> | <b>\$186.35</b> | <b>\$148.76</b> | <b>\$ 87.01</b> |
| <b>Russell 2000 Index</b> | <b>\$100.00</b> | <b>\$117.00</b> | <b>\$120.88</b> | <b>\$141.43</b> | <b>\$137.55</b> | <b>\$ 89.68</b> |

Source: Zacks Investment Research, Inc.

As a company with shares listed on the NYSE, we are required to comply with the corporate governance rules of the NYSE. Our CEO is required to certify to the NYSE that we are in compliance with the governance rules not later than 30 days after the date of each annual shareholder meeting. Our CEO complied with this requirement in 2008. We also filed with the SEC as exhibits to our annual report on Form 10-K for the year ended December 31, 2008 the certifications of our CEO and CFO required under Sections 302 and 906 of the Sarbanes-Oxley Act. With respect to this Annual Report on Form 10-K for the year ended December 31, 2008, we have filed as exhibits hereto the certification of our CEO and CFO required under Sections 302 and 906 of the Sarbanes-Oxley Act.

**Table of Contents****Item 6. Selected Financial Data****Operating statement data****(Unaudited, dollars in thousands except per share data)**

|  | <b>Years Ended December 31,</b> |             |             |             |             |
|--|---------------------------------|-------------|-------------|-------------|-------------|
|  | <b>2008</b>                     | <b>2007</b> | <b>2006</b> | <b>2005</b> | <b>2004</b> |
| Rental revenue   | \$ 202,581                      | 185,873     | 167,168     | 144,838     | 123,989     |
| Other income   | 2,241                           | 2,402       | 3,274       | 3,517       | 557         |
| Mortgage and other financing income  | 60,435                          | 28,841      | 10,968      | 4,882       | 1,957       |
| Property operating expense, net of tenant reimbursements   | 5,892                           | 4,511       | 4,314       | 3,593       | 2,292       |
| Other expense  | 2,103                           | 4,205       | 3,486       | 2,985       |             |
| General and administrative expense   | 16,914                          | 12,970      | 12,515      | 7,249       | 6,093       |
| Costs associated with loan refinancing   |                                 |             | 673         |             | 1,134       |
| Interest expense, net  | 70,951                          | 60,505      | 48,866      | 43,749      | 40,011      |
| Depreciation and amortization  | 43,829                          | 37,422      | 31,021      | 27,473      | 23,241      |
| Income before gain on sale of land, equity in income from joint ventures, minority interests and discontinued operations | 125,568                         | 97,503      | 80,535      | 68,188      | 53,732      |
| Gain on sale of land   |                                 | 129         | 345         |             |             |
| Equity in income from joint ventures   | 1,962                           | 1,583       | 759         | 728         | 654         |
| Minority interests   | 2,353                           | 1,370       |             | (34)        | (953)       |
| Income from continuing operations  | \$ 129,883                      | 100,585     | 81,639      | 68,882      | 53,433      |
| Discontinued operations:   |                                 |             |             |             |             |
| Income (loss) from discontinued operations   | (26)                            | 839         | 650         | 178         | 280         |
| Gain on sale of real estate  | 119                             | 3,240       |             |             |             |
| Net income   | 129,976                         | 104,664     | 82,289      | 69,060      | 53,713      |
| Preferred dividend requirements  | (28,266)                        | (21,312)    | (11,857)    | (11,353)    | (5,463)     |
| Series A preferred share redemption costs  |                                 | (2,101)     |             |             |             |
| Net income available to common shareholders  | \$ 101,710                      | 81,251      | 70,432      | 57,707      | 48,250      |
| Per share data:  |                                 |             |             |             |             |
| Basic earnings per share data:   |                                 |             |             |             |             |
| Income from continuing operations available to common shareholders   | \$ 3.32                         | 2.89        | 2.67        | 2.30        | 2.11        |

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|  |         |        |        |        |        |
|--|---------|--------|--------|--------|--------|
| Income from discontinued operations                                |         | 0.15   | 0.02   | 0.01   | 0.01   |
| Net income available to common shareholders                        | \$ 3.32 | 3.04   | 2.69   | 2.31   | 2.12   |
| Diluted earnings per share data:                                   |         |        |        |        |        |
| Income from continuing operations available to common shareholders | \$ 3.28 | 2.84   | 2.62   | 2.25   | 2.06   |
| Income from discontinued operations                                |         | 0.15   | 0.03   | 0.01   | 0.01   |
| Net income available to common shareholders                        | \$ 3.28 | 2.99   | 2.65   | 2.26   | 2.07   |
| Shares used for computation (in thousands):                        |         |        |        |        |        |
| Basic  | 30,628  | 26,690 | 26,147 | 25,019 | 22,721 |
| Diluted  | 31,006  | 27,171 | 26,627 | 25,504 | 23,664 |
| Cash dividends declared per common share                           | \$ 3.36 | 3.04   | 2.75   | 2.50   | 2.25   |



**Table of Contents****Balance sheet data  
(Unaudited, dollars in thousands)**

|   | <b>Years Ended December 31,</b> |             |             |             |             |
|---|---------------------------------|-------------|-------------|-------------|-------------|
|   | <b>2008</b>                     | <b>2007</b> | <b>2006</b> | <b>2005</b> | <b>2004</b> |
| Net real estate investments                               | \$ 1,766,452                    | 1,671,622   | 1,413,484   | 1,302,067   | 1,144,553   |
| Mortgage notes and related<br>accrued interest receivable | 508,506                         | 325,442     | 76,093      | 44,067      |             |
| Total assets  | 2,633,925                       | 2,171,633   | 1,571,279   | 1,414,165   | 1,213,448   |
| Common dividends payable                                  | 27,377                          | 21,344      | 18,204      | 15,770      | 14,097      |
| Preferred dividends payable                               | 7,552                           | 5,611       | 3,110       | 2,916       | 1,366       |
| Long-term debt  | 1,262,368                       | 1,081,264   | 675,305     | 714,591     | 592,892     |
| Total liabilities   | 1,341,274                       | 1,145,533   | 714,123     | 742,509     | 620,059     |
| Minority interests  | 15,217                          | 18,207      | 4,474       | 5,235       | 6,049       |
| Shareholders' equity                                      | 1,277,434                       | 1,007,893   | 852,682     | 666,421     | 587,340     |

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**Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations**

The following discussion should be read in conjunction with the Consolidated Financial Statements and Notes thereto included in this Annual Report on Form 10-K. The forward-looking statements included in this discussion and elsewhere in this Annual Report on Form 10-K involve risks and uncertainties, including anticipated financial performance, business prospects, industry trends, shareholder returns, performance of leases by tenants, performance on loans to customers and other matters, which reflect management's best judgment based on factors currently known. See Forward Looking Statements. Actual results and experience could differ materially from the anticipated results and other expectations expressed in our forward-looking statements as a result of a number of factors, including but not limited to those discussed in this Item and in Item 1A, Risk Factors.

**Outlook**

Recent developments in the credit and equity markets and the economic downturn in general, are having a significant impact on our business outlook and strategies. In the past, we have obtained capital to grow our investments by regularly accessing credit and equity markets. In the current environment, access to these markets has been disrupted and it is impossible to predict when and if access to the capital markets will return to prior levels. As a result, during this economic downturn, we have tempered our focus on FFO growth, with a greater concern for maintaining adequate liquidity and a stronger balance sheet. We deleveraged our balance sheet in 2008 and again in early 2009 primarily through issuing equity and we expect to maintain a debt to total capitalization ratio of between 45% and 50% throughout the remainder of 2009. Depending on our capital needs, we may also opportunistically access the equity markets again in 2009, and may continue to issue shares under the direct share purchase component of our Dividend Reinvestment and Direct Share Purchase Plan. While additional equity issuances mitigate the growth of per share results, we believe reduced leverage and an emphasis on liquidity is prudent during these challenging times. Developments in the credit and equity markets and the economic downturn are also having a significant impact on the ability of our development partners to fully finance developments in process. As a result, two significant developments in which we have an interest, the water-park anchored entertainment village and the planned resort development in Sullivan County, New York, are being downsized and could be delayed if the necessary financing cannot be secured. Furthermore, certain of our customers, particularly our non-theatre retail tenants, are also experiencing the effects of the economic downturn, which has generally resulted in a reduction in sales and profitability. As a result, we have seen more credit issues with these tenants than in the past, and this trend may continue in 2009.

**Overview**

Our principal business objective is to be the nation's leading destination entertainment, entertainment-related, recreation and specialty real estate company by continuing to develop, acquire or finance high-quality properties. As of December 31, 2008, our total assets exceeded \$2.6 billion, and included investments in 80 megaplex theatre properties (including four joint venture properties) and various restaurant, retail, entertainment, destination recreational and specialty properties located in 29 states, the District of Columbia and Ontario, Canada. As of December 31, 2008, we had invested approximately \$30.8 million in development land and

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construction in progress and approximately \$508.5 million (including accrued interest) in mortgage financing for entertainment, recreational and specialty properties, including certain such properties under development. As of December 31, 2008, our real estate portfolio of megaplex theatre properties consisted of 6.6 million square feet and was 100% occupied, and our remaining real estate portfolio consisted of 3.9 million square feet and was 95% occupied. The combined real estate portfolio consisted of 10.5 million square feet and was 98% occupied. Our theatre properties are leased to ten different leading theatre operators. At December 31, 2008, approximately 51% of our megaplex theatre properties were leased to AMC.

Substantially all of our single-tenant properties are leased pursuant to long-term, triple-net leases, under which the tenants typically pay all operating expenses of a property, including, but not limited to, all real estate taxes, assessments and other governmental charges, insurance, utilities, repairs and maintenance. A majority of our revenues are derived from rents received or accrued under long-term, triple-net leases. Tenants at our multi-tenant properties are typically required to pay common area maintenance charges to reimburse us for their pro rata portion of these costs. Our real estate mortgage portfolio consists of nine notes. Of the outstanding balance of \$508.5 million at December 31, 2008, three notes comprise \$372.4 million of the balance and the remainder relates primarily to our ski properties (see Note 4 to the consolidated financial statements included in this Annual Report on Form 10-K for more details of mortgage notes receivable). The three mortgage notes relate to development of Toronto Life Square, an entertainment retail center in Ontario, Canada that was completed in May 2008, and two projects under development at December 31, 2008; a water-park anchored entertainment village in Kansas City, Kansas and a planned resort in Sullivan County, New York. Each of these three investments is discussed in more detail under Recent Developments below.

We incur general and administrative expenses including compensation expense for our executive officers and other employees, professional fees and various expenses incurred in the process of identifying, evaluating, acquiring and financing additional properties and mortgage notes. We are self-administered and managed by our Board of Trustees and executive officers. Our primary non-cash expense is the depreciation of our properties. We depreciate buildings and improvements on our properties over a three-year to 40-year period for tax purposes and financial reporting purposes.

Our property acquisitions and financing commitments are financed by cash from operations, borrowings under our revolving credit facilities, term loan facilities and long-term mortgage debt, and the sale of equity securities. It has been our strategy to structure leases and financings to ensure a positive spread between our cost of capital and the rentals paid by our tenants. We have primarily acquired or developed new properties that are pre-leased to a single tenant or multi-tenant properties that have a high occupancy rate. We do not typically develop or acquire properties on a speculative basis or that are not significantly pre-leased. We have also entered into certain joint ventures and we have provided mortgage note financing as described above. We intend to continue entering into some or all of these types of arrangements in the foreseeable future, subject to our ability to do so in light of the current financial and economic environment.

Historically, our primary challenges have been locating suitable properties, negotiating favorable lease or financing terms, and managing our portfolio as we have continued to grow. Because of the knowledge and industry relationships of our management, we have enjoyed favorable

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opportunities to acquire, finance and lease properties. While these opportunities are expected to continue to be available in 2009, the current economic downturn and related challenges in the credit market have increased our cost of capital and have caused us to focus more on liquidity and further strengthening our balance sheet. As a result, we expect our capital spending for 2009 to be much lower than in 2008 with a focus primarily on funding existing commitments (see Liquidity and Capital Resources-Commitments for more discussion regarding outstanding commitments at December 31, 2008).

The economic downturn in 2008 has primarily impacted our projects under development and our non-theatre retail tenants at our entertainment retail centers. During 2009, we expect to advance up to \$91.8 million to Concord Resorts, LLC (Concord Resorts), which is the remaining amount under our \$225.0 million secured first mortgage loan commitment related to a planned resort development in Sullivan County, New York. Due to the economic downturn, certain other lenders on this development have either reduced their commitments or withdrawn from the project. We expect Concord Resorts to successfully restructure the development at a level requiring substantially less capital. However, there can be no assurance that Concord Resorts will be successful in achieving this restructure or in receiving the financing necessary to complete it, and, as a result, the development project could be delayed. The water-park anchored entertainment village under development has also been downsized and has risks similar to the planned resort development.

With respect to our entertainment retail centers, we currently have one lease with Circuit City and one lease with Bally's, and had leases with two corporately owned Bennigan's. Each of these tenants has either liquidated or filed bankruptcy proceedings. Revenue from these tenants totaled approximately \$2.7 million for the year ended December 31, 2008, and \$546 thousand of outstanding receivables at December 31, 2008 related to these tenants has been fully reserved. Other smaller tenants at our entertainment retail centers have also experienced difficulty during the economic downturn. If consumer spending continues to decline, there could be additional pressure on retailers financial performance which could in turn affect their performance under our leases. Income from entertainment retail centers, excluding megaplex theaters, was approximately \$51.0 million or 18.0 % of our total revenue for the year ended December 31, 2008; however, excluding megaplex movie theatres, no one retail tenant in aggregate represented more than \$2.1 million or 0.7 % of total Company revenues for the year ended December 31, 2008.

Our business is subject to a number of risks and uncertainties, including those described in Risk Factors in Item 1A of this report.

**Critical Accounting Policies**

The preparation of financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions in certain circumstances that affect amounts reported in the accompanying consolidated financial statements and related notes. In preparing these financial statements, management has made its best estimates and assumptions that affect the reported assets and liabilities. The most significant assumptions and estimates relate to consolidation, revenue recognition, depreciable lives of the real estate, the valuation of real estate, accounting for real estate acquisitions and estimating reserves for uncollectible receivables and mortgage notes receivable. Application of these assumptions requires the exercise of judgment as to future uncertainties and, as a result, actual results could differ from these estimates.

**Table of Contents*****Consolidation***

We consolidate certain entities if we are deemed to be the primary beneficiary in a variable interest entity (VIE), as defined in FIN No. 46(R), Consolidation of Variable Interest Entities (FIN46R). The equity method of accounting is applied to entities in which we are not the primary beneficiary as defined in FIN46R, or do not have effective control, but can exercise influence over the entity with respect to its operations and major decisions.

***Revenue Recognition***

Rents that are fixed and determinable are recognized on a straight-line basis over the minimum terms of the leases. Base rent escalation in other leases is dependent upon increases in the Consumer Price Index (CPI) and accordingly, management does not include any future base rent escalation amounts on these leases in current revenue. Most of our leases provide for percentage rents based upon the level of sales achieved by the tenant. These percentage rents are recognized once the required sales level is achieved. Lease termination fees are recognized when the related leases are canceled and we have no continuing obligation to provide services to such former tenants.

Direct financing lease income is recognized on the effective interest method to produce a level yield on funds not yet recovered. Estimated unguaranteed residual values at the date of lease inception represent management's initial estimates of fair value of the leased assets at the expiration of the lease, not to exceed original cost. Significant assumptions used in estimating residual values include estimated net cash flows over the remaining lease term and expected future real estate values. The estimated unguaranteed residual value is reviewed on an annual basis. The Company evaluates the collectibility of its direct financing lease receivable to determine whether it is impaired. A receivable is considered to be impaired when, based on current information and events, it is probable that the Company will be unable to collect all amounts due according to the existing contractual terms. When a receivable is considered to be impaired, the amount of loss is calculated by comparing the recorded investment to the value determined by discounting the expected future cash flows at the receivable's effective interest rate or to the value of the underlying collateral if the receivable is collateralized.

***Real Estate Useful Lives***

We are required to make subjective assessments as to the useful lives of our properties for the purpose of determining the amount of depreciation to reflect on an annual basis with respect to those properties. These assessments have a direct impact on our net income. Depreciation and amortization are provided on the straight-line method over the useful lives of the assets, as follows:

|                                   |  |
|-----------------------------------|--|
| Buildings                         | 40 years   |
| Tenant improvements               | Base term of<br>lease or useful<br>life, whichever<br>is shorter |
| Furniture, fixtures and equipment | 3 to 25 years  |

***Impairment of Real Estate Values***

We are required to make subjective assessments as to whether there are impairments in the value of our rental properties. These estimates of impairment may have a direct impact on our consolidated financial statements.

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We apply the provisions of Statement of Financial Accounting Standards (SFAS) No. 144, *Accounting for the Impairment or Disposal of Long-Lived Assets*. We assess the carrying value of our rental properties whenever events or changes in circumstances indicate that the carrying amount of a property may not be recoverable. Certain factors that may occur and indicate that impairments may exist include, but are not limited to: underperformance relative to projected future operating results, tenant difficulties and significant adverse industry or market economic trends. If an indicator of possible impairment exists, a property is evaluated for impairment by comparing the carrying amount of the property to the estimated undiscounted future cash flows expected to be generated by the property. If the carrying amount of a property exceeds its estimated future cash flows on an undiscounted basis, an impairment charge is recognized in the amount by which the carrying amount of the property exceeds the fair value of the property. Management estimates fair value of our rental properties based on projected discounted cash flows using a discount rate determined by management to be commensurate with the risk inherent in the Company. We did not record any impairment charges for 2008.

***Real Estate Acquisitions***

Upon acquisitions of real estate properties, we make subjective estimates of the fair value of acquired tangible assets (consisting of land, building, tenant improvements, and furniture, fixtures and equipment) and identified intangible assets and liabilities (consisting of above and below market leases, in-place leases, tenant relationships and assumed financing that is determined to be above or below market terms) in accordance with SFAS No.141, *Business Combinations*. We utilize methods similar to those used by independent appraisers in making these estimates. Based on these estimates, we allocate the purchase price to the applicable assets and liabilities. These estimates have a direct impact on our net income.

***Allowance for Doubtful Accounts***

Management makes quarterly estimates of the collectibility of its accounts receivable related to base rents, tenant escalations (straight-line rents), reimbursements and other revenue or income. Management specifically analyzes trends in accounts receivable, historical bad debts, customer credit worthiness, current economic trends and changes in customer payment terms when evaluating the adequacy of its allowance for doubtful accounts. In addition, when customers are in bankruptcy, management makes estimates of the expected recovery of pre-petition administrative and damage claims. These estimates have a direct impact on our net income.

***Mortgage Notes and Other Notes Receivable***

Mortgage notes and other notes receivable, including related accrued interest receivable, consist of loans that we originated and the related accrued and unpaid interest income as of the balance sheet date. Mortgage notes and other notes receivable are initially recorded at the amount advanced to the borrower and we defer certain loan origination and commitment fees, net of certain origination costs, and amortize them over the term of the related loan. We evaluate the collectibility of both interest and principal for each loan to determine whether it is impaired. A loan is considered to be impaired when, based on current information and events, it is probable that we will be unable to collect all amounts due according to the existing contractual terms. When a loan is considered to be impaired, the amount of loss is calculated by comparing the recorded investment to the value determined by discounting the expected future cash flows at the loan's effective interest rate or to the value of the underlying collateral if the loan is collateralized. Interest income on performing loans is accrued as earned. Interest income on impaired loans is recognized on a cash basis. We did not record any impairment charges for 2008.

**Table of Contents****Recent Developments*****Debt Financing***

On January 11, 2008, we obtained a non-recourse mortgage loan of \$17.5 million. This mortgage is secured by a theatre property located in Garland, Texas. The mortgage loan bears interest at 6.19%, matures on February 1, 2018, and requires monthly principal and interest payments of \$127 thousand with a final principal payment at maturity of \$11.6 million.

On March 13, 2008, VinREIT, LLC (VinREIT), a subsidiary that holds our vineyard and winery assets, entered into a \$65.0 million term loan and revolving credit facility that is non-recourse to us. This credit facility provided for interest at LIBOR plus 1.5% on loans secured by real property and LIBOR plus 1.75% on loans secured by fixtures and equipment. This credit facility also provided for an aggregate advance rate of 65% based on the lesser of cost or appraised value. Term loans secured by real property under this credit facility were amortized over a 25-year period and matured on the earlier of ten years after disbursement or the end of the related real property's lease term. The equipment and fixture loans had a maturity date that is the earlier of ten years or the end of the related lease term and required full principal amortization over the term of the loan. This credit facility also contained an accordion feature whereby, subject to lender approval, we may obtain additional revolving credit and term loan commitments in an aggregate principal amount not to exceed \$35.0 million.

On September 26, 2008, we amended the original credit facility described above. The overall size of the credit facility was increased from \$65.0 million to \$129.5 million and is now 30% recourse to us. Loans drawn under the amended credit facility bear interest at LIBOR plus 1.75% on loans secured by real property and LIBOR plus 2.00% on loans secured by fixtures and equipment. Term loans can be drawn through September 26, 2010 under the amended credit facility and the accordion feature was increased to \$170.5 million. The revolving feature of the facility was eliminated. The amended credit facility still provides for an aggregate advance rate of 65% based on the lesser of cost or appraised value and the other terms of the original credit facility remain the same. On November 19, 2008, we again amended the credit facility to increase the overall size of the facility from \$129.5 million to \$160.0 million. As a result of this amendment, the accordion feature was reduced from \$170.5 million to \$140.0 million. All other terms of the facility remain the same.

The initial disbursement under the credit facility consisted of two term loans secured by real property with an aggregate principal amount of \$9.5 million that mature on December 1, 2017 and March 5, 2018. We simultaneously entered into two interest rate swap agreements that fixed the interest rates at a weighted average of 5.77% on these loans through their maturity. On March 24, 2008 and August 20, 2008, we obtained \$3.2 million and \$5.1 million, respectively, of term loans secured by fixtures and equipment under the facility. These term loans mature on December 1, 2017 and will be fully amortized at maturity. On September 15, 2008, we entered into an interest rate swap agreement that fixed the interest rate on these loans at 5.63% on the outstanding principal through their maturity. Additionally, on September 26, 2008, we obtained four term loans secured by real property with an aggregate principal amount of \$74.9 million under the facility that mature on June 5, 2018. We simultaneously entered into four interest rate swap agreements on these loans that fix the interest rate at 5.11% through October 7, 2013. Subsequent to the closing of these loans, approximately \$67.3 million of the facility remains available. The net proceeds from the above loans were used to pay down outstanding indebtedness under our unsecured revolving credit facility.

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On July 11, 2008, we paid in full our mortgage note payable which had an outstanding balance of principal and interest totaling \$90.6 million. This mortgage note payable was secured by eight theatre properties and required monthly principal and interest payments of \$689 thousand. The maturity date of the mortgage note payable was July 11, 2028. The mortgage agreement contained a hyper-amortization feature, in which the principal payment schedule was rapidly accelerated, and our principal and interest payments were substantially increased, if the balance was not paid in full on the anticipated prepayment date of July 11, 2008.

On August 20, 2008, we obtained a secured mortgage loan commitment of \$112.5 million, of which \$56.25 million was advanced during the year ended December 31, 2008. The mortgage is secured by the mortgage note receivable entered into with Concord Resorts, LLC in conjunction with the planned resort development as discussed below. The mortgage loan bears interest at LIBOR plus 3.5%, and in the event LIBOR is less than 2.5%, LIBOR shall be deemed to be 2.5% for purposes of calculating the applicable interest rate for the period. The loan matures on September 10, 2010, the same date the related mortgage note receivable is due, and requires monthly interest only payments. The remaining \$56.25 million is expected to be advanced to us when we advance the remaining \$91.8 million under our mortgage note receivable related to this project.

On November 4, 2008, we exercised our option to extend the maturity date of our \$235.0 million unsecured revolving credit facility by one additional year to January 31, 2010. In accordance with the credit agreement, we paid an extension fee of \$470 thousand and all of the other terms remain the same.

***Issuance of Series E Preferred Shares***

On April 2, 2008, we issued 3,450,000 (including exercise of over-allotment option of 450,000 shares) 9.00% Series E cumulative convertible preferred shares ( Series E preferred shares ) at \$25.00 per share in a registered public offering for net proceeds of approximately \$83.4 million, after underwriting discounts and expenses. We will pay cumulative dividends on the Series E preferred shares from the date of original issuance in the amount of \$2.25 per share each year, which is equivalent to 9.00% of the \$25 liquidation preference per share. We do not have the right to redeem the Series E preferred shares except in limited circumstances to preserve our REIT status. The Series E preferred shares have no stated maturity and will not be subject to any sinking fund or mandatory redemption. The Series E preferred shares are convertible, at the holder's option, into our common shares at an initial conversion rate of 0.4512 common shares per Series E preferred share, which is equivalent to an initial conversion price of \$55.41 per common share. This conversion ratio may increase over time upon certain specified triggering events including if our common share dividend exceeds a certain quarterly threshold which was initially set at \$0.84 per common share.

***Issuance of Common Shares***

On April 2, 2008, we issued 2,415,000 common shares (including exercise of over-allotment option of 315,000 shares) at \$48.18 per share in a registered public offering. Total net proceeds after underwriting discounts and expenses were approximately \$111.2 million.

On August 5, 2008, we issued pursuant to a registered public offering 1,900,000 of common shares at a purchase price of \$50.96 per share. Total net proceeds to the Company after underwriting discounts and expenses were approximately \$96.5 million.



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The proceeds from the above offerings were used to pay down our unsecured revolving credit facility, to fund the April 2, 2008 CS Fund I membership interest purchase, and the remaining net proceeds were invested in interest-bearing accounts and short-term interest-bearing securities which are consistent with our qualification as a REIT under the Internal Revenue Code.

***Dividend Reinvestment and Direct Share Purchase Plan***

On June 26, 2008, we filed an automatic shelf registration statement on Form S-3 (File No. 333-151978) covering our revised Dividend Reinvestment and Direct Share Purchase Plan (the Plan). The Plan supersedes and replaces our prior dividend reinvestment and direct share purchase plan. Pursuant to the Plan we may issue from time to time on the terms and conditions set forth in the Plan up to 6,000,000 common shares at prices to be determined as described in the Plan. While each capital raise is generally smaller than a typical underwritten public offering, issuing common shares under this plan allows us to access capital on a monthly basis in a cost-effective manner. We have used and intend to continue to use the proceeds from the common shares sold pursuant to the Plan for general corporate purposes.

During July 2008, we issued pursuant to a registered public offering 324,000 common shares under the direct share purchase component of the Plan. These shares were sold at an average price of \$50.61 per share and total net proceeds after expenses were approximately \$16.3 million.

During January 2009, we issued pursuant to a registered public offering 1,600,000 common shares under the direct share purchase component of the Plan. These shares were sold at an average price of \$23.86 per share and total net proceeds after expenses were approximately \$36.8 million.

During February 2009, we issued pursuant to a registered public offering 339,000 common shares under the direct share purchase component of the Plan. These shares were sold at an average price of \$22.12 per share and total net proceeds after expenses were approximately \$7.5 million.

***Investments***

On February 29, 2008, we loaned \$10.0 million to Louis Cappelli. Through his related interests, Louis Cappelli is the developer and minority interest partner of our New Roc and White Plains entertainment retail centers located in the New York metropolitan area. The note bears interest at 10% and matures on February 28, 2009. As part of this transaction, we also received an option to purchase 50% of Louis Cappelli's interests (or Louis Cappelli's related interests) in three other projects in the New York metropolitan area. These projects are expected to cost approximately \$300.0 million.

In addition, during the year ended December 31, 2008, we funded approximately \$39.3 million for development of Schlitterbahn Vacation Village, a water-park anchored entertainment village in Kansas City, Kansas, that was originally planned to have an overall cost of approximately \$600 million including a water-park and multiple shopping, dining, lodging and entertainment venues. We had committed \$175 million to the project and the remaining funding was planned to include \$225 million of sales tax revenue bonds (STAR bonds), and \$200 million of other bank financing and owners' equity. Because of the recent economic downturn and the dislocation of the municipal bond markets, the project is now expected to be built in phases, with the first phase including the water-park expected to open in the summer of 2009. Our commitment to the project is expected to be reduced to approximately \$163 million and we have funded \$134.3 million through December 31, 2008. The remaining approximately \$25.7 million of our commitment is expected to be funded in 2009. In addition to a first mortgage on the 368 acres on

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which the project is to be built, our mortgage receivable is guaranteed by a group that owns the Schlitterbahn Water Park Resort in New Braunfels, Texas.

On April 2, 2008, we acquired the remaining 50.0% ownership interest in CS Fund I for a total purchase price of approximately \$39.5 million from our partner, JERIT Fund I Member. Upon completion of this transaction, CS Fund I became a wholly-owned subsidiary of the Company. The member purchase agreement provides that we shall pay JERIT Fund I Member a monthly asset management fee of 1.875% of the monthly rent for the six month period following the closing which ended in October. The membership purchase agreement also contains an option pursuant to which JERIT Fund I Member may re-acquire its 50% interest in CS Fund I within six months after the acquisition of such interest by us. This option expired on October 2, 2008 without being exercised by JERIT Fund I Member. At the time of this acquisition, CS Fund I owned 12 public charter school properties located in Nevada, Arizona, Ohio, Georgia, Missouri, Michigan, Florida and Washington D.C. These schools are leased under a long-term triple net master lease with Imagine. The lease has been classified as a direct financing lease as described in Note 5 to the consolidated financial statements in this Annual Report on Form 10-K.

On June 9, 2008, we acquired, through VinREIT, four wineries and two vineyards and simultaneously leased these properties to Eight Estates Fine Wines, LLC (DBA Ascentia Wine Estates). The acquisition price for these properties was approximately \$116.5 million and the properties are leased under long-term triple-net leases. The properties total 936 acres including 565 acres of vineyards. Three wineries and two vineyards are located in California with an additional winery located in Washington.

We own 96% of the membership interests of VinREIT and accordingly, the financial statements of VinREIT have been consolidated into our financial statements. Our partner in VinREIT is Global Wine Partners (U.S.), LLC (GWP). GWP provides certain consulting services to VinREIT in connection with the acquisition, development, administration and marketing of vineyard properties and wineries. GWP is entitled to receive a 1% origination fee on winery and vineyard investments and 4% of the annual cash flow of VinREIT after a charge for debt service. GWP may receive additional amounts upon certain events and after certain hurdle rates of return are achieved by us. Accordingly, we paid \$1.4 million in origination fees and \$125 thousand in due diligence fees to GWP for the year ended December 31, 2008 and minority interest expense related to VinREIT was \$277 thousand for the year ended December 31, 2008, representing GWP's portion of the annual cash flow.

On June 17, 2008, we acquired ten public charter school properties from Imagine and funded expansions at two of the public charter school properties previously acquired. The total investment in the properties was approximately \$82.3 million and the properties are leased under a long-term triple-net master lease. The transaction was executed as part of a \$200 million option agreement with Imagine and leaves approximately \$40 million available for acquisitions prior to December 2009. The ten new properties are located in Georgia, Missouri, Ohio and Indiana and the two expansions are located in Arizona and Nevada. Also, during December 2008, we invested an additional \$2.3 million in charter schools for the expansions at three properties located in Ohio, Indiana and Georgia. The master lease is classified as a direct financing lease as described in Note 5 to the consolidated financial statements in this Annual Report on Form 10-K.

On May 30, 2008, we invested an additional \$5.0 million Canadian (\$5.1 million U.S.) in the mortgage note receivable from Metropolis Limited Partnership (the Partnership) related to the construction of Toronto Life Square, a 13 level entertainment retail center in downtown Toronto.

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Consistent with the previous advances on this project, this advance has a five year stated term and bears interest at 15%. As of December 31, 2008, we have also posted \$7.6 million U.S. irrevocable stand-by letters of credit related to the Toronto Life Square project. The letters of credit are expected to be cancelled or drawn upon during 2009. Interest accrues on these outstanding letters of credit at a rate of 12% (15% if drawn upon). The carrying value of this mortgage note receivable at December 31, 2008 was \$125.8 million Canadian (\$103.3 million U.S.), including related accrued interest receivable on the note and letter of credit of \$45.4 million Canadian (\$37.3 million U.S.). A group of banks (the bank syndicate) has provided first mortgage construction financing to the Partnership totaling \$119.5 million Canadian (\$98.1 million U.S.) as of December 31, 2008 and our mortgage is subordinate to the bank syndicate's first mortgage.

During May of 2008, the Partnership exercised its option to extend by six months the 25% principal payment and all accrued interest to date that was due on May 31, 2008 to November 30, 2008. Additionally, in conjunction with the extension of the first mortgage by the bank syndicate to February 27, 2009, we agreed to extend the 25% principal payment due plus all accrued interest to date to March 2, 2009. Management of the Partnership is actively seeking to refinance the first mortgage which is expected to total approximately \$119.5 million Canadian on its due date of February 27, 2009. A refinancing of the first mortgage triggers all amounts due under our mortgage as well as certain ownership conversion rights. We anticipate that the proceeds from the refinancing will be inadequate to take out both the existing first mortgage and our mortgage. As a result, we are negotiating a restructuring of the Partnership wherein we would become the sole owner of the general partnership interest. Under this scenario, we would expect our mortgage note receivable to remain in place and be further extended. Alternatively, if a restructuring of the Partnership or a refinancing cannot be successfully executed, the property will likely go into foreclosure and we could become the owner of the property or be paid in full. In either a restructuring as described above or a foreclosure in which we become the owner of the property, we would expect to consolidate the financial results of the property subsequent to the restructuring.

As indicated above, the carrying value of our mortgage note receivable including all accrued interest at December 31, 2008 was \$125.8 million Canadian and the balance of the first mortgage was \$119.5 million Canadian. We project our mortgage note receivable balance including accrued interest will be approximately \$128.9 million Canadian and the first mortgage balance will remain at approximately \$119.5 million Canadian at February 27, 2009, for a total of approximately \$248.4 million Canadian. All other debt and equity amounts are subordinate to the existing first and our second mortgage. The real estate component of the project was 87% leased and the signage component was 43% leased at January 31, 2009. Management determined the fair market value of the project to be \$277.0 million Canadian, taking into account an independent appraisal dated January 31, 2009. Furthermore, while there can be no assurance regarding the success of the first mortgage refinancing or its timing, based on preliminary negotiations, we currently project the new first mortgage will provide proceeds of \$100 million to \$130 million Canadian.

On August 20, 2008, we provided a secured first mortgage loan commitment of \$225.0 million to Concord Resorts, LLC related to a planned resort development in Sullivan County, New York. The total project is expected to consist of a casino complex and a 1,580 acre resort complex. The resort complex is expected to consist of a 125-room spa hotel, a 350-room waterpark style hotel, a convention center and support facilities, a waterpark, two golf courses, and a retail and residential development. Our investment is secured by a first mortgage on the resort complex real estate.

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We have certain rights to convert our mortgage interest into fee ownership as the project is further developed. The loan is guaranteed by Louis R. Cappelli and has a maturity date of September 10, 2010 with 105% of the outstanding principal balance due at payoff. This note requires a debt service reserve to be maintained that was initially funded during August of 2008 with \$4 million from the initial advances. An additional \$21 million is anticipated to be funded to the debt service reserve with the Company's next expected advance. Monthly interest only payments are transferred to us from the debt service reserve and the unpaid principal balance bears interest at 9.0% until the first anniversary of the loan, on which the interest rate increases to 11.0% for the remaining term. We charge a commitment fee equal to 3% of the amount advanced. During the year ended December 31, 2008, we advanced \$133.2 million under this agreement. The commitment fees, interest payments and 5% additional principal payment, net of direct cost incurred, are recognized as interest income using the effective interest method over the term of the loan (weighted average effective interest rate was 13.9% at December 31, 2008). Accordingly, the net carrying value of this mortgage note receivable at December 31, 2008 was \$134.2 million, including related accrued interest receivable of \$1.0 million. In conjunction with the investment in Concord Resorts, LLC, we obtained a secured mortgage loan commitment in the amount of \$112.5 million as described above.

During the year-ended December 31, 2008, we completed the development of one megaplex theater property. The Glendora 12 in Glendora, California is operated by AMC Theatres and was completed for a total development cost of approximately \$10.9 million. The theatre is leased under a long-term triple-net lease.

***Sale of Property***

On June 23, 2008, we sold a parcel of land in Powder Springs, Georgia for \$1.1 million. The land parcel was previously leased under a ground lease. Accordingly, we recognized a gain on sale of real estate of \$0.1 million for the year ended December 31, 2008. For further detail on this disposition, see Note 19 to the consolidated financial statements in this Annual Report on Form 10-K.

***Derivative Instruments***

As further discussed in Note 10 to the consolidated financial statements in this Annual Report on Form 10-K, on March 13, 2008, we entered into two interest rate swap agreements. These agreements fixed the interest rates of \$9.5 million in term loans at a weighted average of 5.77%. Additionally, in September 2008, we entered into five interest rate swap agreements. These agreements fixed the interest rates of \$83.1 million in term loans at a weighted average of 5.16%.

***Results of Operations******Year ended December 31, 2008 compared to year ended December 31, 2007***

Rental revenue was \$202.6 million for the year ended December 31, 2008 compared to \$185.9 million for the year ended December 31, 2007. The \$16.7 million increase resulted primarily from the acquisitions and developments completed in 2007 and 2008 and base rent increases on existing properties. Percentage rents of \$1.7 million and \$2.1 million were recognized during the year ended December 31, 2008 and 2007, respectively. The \$0.4 million decrease in percentage rents resulted primarily from minimum rent escalations for certain properties which in turn increased the break point in revenue after which percentage rent is due. Straight-line rents of \$3.9 million and \$4.5 million were recognized during the year ended December 31, 2008 and 2007, respectively.

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Tenant reimbursements totaled \$20.9 million for the year ended December 31, 2008 compared to \$18.5 million for the year ended December 31, 2007. These tenant reimbursements arise from the operations of our retail centers. Of the \$2.4 million increase, \$1.6 million is due to our May 8, 2007 acquisition of a 66.67% interest in the joint ventures that own an entertainment retail center in White Plains, New York. The remaining increase is due to increases in tenant reimbursements, primarily driven by the expansion and leasing of the gross leasable area at our retail centers in Ontario, Canada.

Other income was \$2.2 million for the year ended December 31, 2008 compared to \$2.4 million for the year ended December 31, 2007. The decrease of \$0.2 million is primarily due to a decrease in income from a family bowling center in Westminster, Colorado operated through a wholly-owned taxable REIT subsidiary.

Mortgage and other financing income for the year ended December 31, 2008 was \$60.4 million compared to \$28.8 million for the year ended December 31, 2007. The \$31.6 million increase relates to the increased real estate lending activities during 2008 compared to 2007 and our investment in a direct financing lease as discussed in Note 5 to the consolidated financial statements in this Annual Report on Form 10-K.

Our property operating expense totaled \$26.8 million for the year ended December 31, 2008 compared to \$23.0 million for the year ended December 31, 2007. These property operating expenses arise from the operations of our retail centers. The increase of \$3.8 million is primarily due to an increase of \$2.7 million in property operating expense related to our May 8, 2007 acquisition of a 66.67% interest in the joint ventures that own an entertainment retail center in White Plains, New York as well as increases in property operating expenses at other our retail centers, primarily those in Ontario, Canada. The provision for bad debts, included in property operating expense, increased by \$0.8 million to \$2.0 million for the year ended December 31, 2008.

Other expense totaled \$2.1 million for the year ended December 31, 2008 compared to \$4.2 million for the year ended December 31, 2007. Of the \$2.1 million decrease, \$1.7 million is due to less expense recognized upon settlement of foreign currency forward contracts during the year ended December 31, 2008 compared to the year ended December 31, 2007. The remaining decrease of \$0.4 is due to a decrease in expense from a family bowling center in Westminster, Colorado operated through a wholly-owned taxable REIT subsidiary.

Our general and administrative expense totaled \$16.9 million for the year ended December 31, 2008 compared to \$13.0 million for the year ended December 31, 2007. The increase of \$3.9 million is due primarily to increases in payroll and related expenses attributable to increases in base and incentive compensation, additional employees and amortization resulting from grants of nonvested shares to management, an increase in professional fees and an increase in costs associated with terminated transactions. Costs associated with terminated transactions increased \$1.4 million to a total of \$1.6 million for the year ended December 31, 2008.

Our net interest expense increased by \$10.5 million to \$71.0 million for the year ended December 31, 2008 from \$60.5 million for the year ended December 31, 2007. Approximately \$2.3 million of the increase resulted from the acquisition of a 66.67% interest in the joint ventures that own an entertainment retail center in White Plains, New York that had outstanding mortgage debt of \$119.7 million as of the May 8, 2007 acquisition date. The remainder of the increase resulted

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from increases in long-term debt used to finance our real estate acquisitions and fund our mortgage notes receivable. Depreciation and amortization expense totaled \$43.8 million for the year ended December 31, 2008 compared to \$37.4 million for the year ended December 31, 2007. The \$6.4 million increase resulted primarily from real estate acquisitions completed in 2007 and 2008.

Equity in income from joint ventures totaled \$2.0 million for the year ended December 31, 2008 compared to \$1.6 million for the year ended December 31, 2007. The \$0.4 million increase resulted from the Company's investment in a 50% ownership interest of CS Fund I on October 30, 2007. We acquired the remaining 50% ownership of CS Fund I on April 2, 2008 as discussed in Note 5 to the consolidated financial statements in this Annual Report on Form 10-K.

Minority interest totaled \$2.4 million for the year ended December 31, 2008 compared to \$1.4 million for the year ended December 31, 2007. Minority interest income resulted from the consolidation of a VIE in which our only variable interest is debt and the VIE has sufficient equity to cover its cumulative net losses incurred subsequent to our loan transaction. Additionally, there was \$0.3 million and \$0.1 million in minority interest expense for year ended December 31, 2008 and 2007, respectively, due to our VinREIT operations.

Loss from discontinued operations totaled \$0.03 million for the year ended December 31, 2008 compared to income from discontinued operations of \$0.84 million for the year ended December 31, 2007. The \$0.87 million decrease is due primarily to the recognition of \$0.7 million in development fees in 2007 related to a parcel adjacent to our megaplex theatre in Pompano, Florida. The development rights, along with two income-producing tenancies, were sold to a developer group in June of 2007.

The gain on sale of real estate from discontinued operations of \$0.1 million for the year ended December 31, 2008 was due to the sale of a land parcel in Powder Springs, Georgia in June of 2008. The gain on sale of real estate from discontinued operations of \$3.2 million for the year ended December 31, 2007 was due to the sale of a parcel that included two leased properties adjacent to our megaplex theatre in Pompano, Florida.

Preferred dividend requirements for the year ended December 31, 2008 were \$28.3 million compared to \$21.3 million for the same period in 2007. The \$7.0 million increase is due to the issuance of 3.5 million Series E convertible preferred shares in April of 2008 and the issuance of 4.6 million Series D preferred shares in May of 2007. This was partially offset by the redemption of 2.3 million Series A preferred shares in May of 2007. The Series A preferred share redemption costs of \$2.1 million for the year ended December 31, 2007 was due to the redemption of the Series A preferred shares on May 29, 2007 and primarily consists of a noncash charge for the excess of the redemption value over the carrying value of these shares. There was no such expense incurred during the year ended December 31, 2008.

***Year ended December 31, 2007 compared to year ended December 31, 2006***

Rental revenue was \$185.9 million for the year ended December 31, 2007 compared to \$167.2 million for the year ended December 31, 2006. The \$18.7 million increase resulted primarily from the acquisitions and developments completed in 2006 and 2007 and base rent increases on existing properties, partially offset by the recognition of a lease termination fee of \$4.0 million from our theatre in Hialeah, Florida during the year ended December 31, 2006. Percentage rents

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of \$2.1 million and \$1.6 million were recognized during the year ended December 31, 2007 and 2006, respectively. Straight-line rents of \$4.5 million and \$3.9 million were recognized during the year ended December 31, 2007 and 2006, respectively.

Tenant reimbursements totaled \$18.5 million for the year ended December 31, 2007 compared to \$14.5 million for the year ended December 31, 2006. These tenant reimbursements arise from the operations of our retail centers. Of the \$4.0 million increase, \$3.1 million is due to our May 8, 2007 acquisition of a 66.67% interest in the joint ventures that own an entertainment retail center in White Plains, New York. The remaining increase is due to increases in tenant reimbursements, primarily driven by the expansion and leasing of the gross leasable area at our retail centers in Ontario, Canada.

Other income was \$2.4 million for the year ended December 31, 2007 compared to \$3.3 million for the year ended December 31, 2006. The decrease of \$0.9 million is primarily due to a decrease in revenues from a restaurant in Southfield, Michigan opened in September 2005 and previously operated through a wholly-owned taxable REIT subsidiary. The restaurant in Southfield, Michigan was closed during the third quarter of 2006 and the space was leased to an unrelated restaurant tenant.

Mortgage and other financing income for the year ended December 31, 2007 was \$28.8 million compared to \$11.0 million for the year ended December 31, 2006. The \$17.8 million increase relates to the increased real estate lending activities during 2007 compared to 2006.

Our property operating expense totaled \$23.0 million for the year ended December 31, 2007 compared to \$18.8 million for the year ended December 31, 2006. These property operating expenses arise from the operations of our retail centers. The increase of \$4.2 million is primarily due to \$3.2 million in property operating expense related to our May 8, 2007 acquisition of a 66.67% interest in the joint ventures that own an entertainment retail center in White Plains, New York. Additionally, bad debt expense increased by \$0.4 million during 2007 and the property operating expenses at our Ontario, Canada retail centers increased by \$0.6 million during 2007 primarily due to increases in property taxes.

Other expense totaled \$4.2 million for the year ended December 31, 2007 compared to \$3.5 million for the year ended December 31, 2006. The \$0.7 million increase is due primarily to \$1.7 million in expense recognized upon settlement of foreign currency forward contracts during the year ended December 31, 2007. Partially offsetting this increase is a decrease in expenses from a restaurant in Southfield, Michigan opened in September 2005 and previously operated through a wholly-owned taxable REIT subsidiary. The restaurant in Southfield, Michigan was closed during the third quarter of 2006 and the space was leased to an unrelated restaurant tenant.

Our general and administrative expense totaled \$13.0 million for the year ended December 31, 2007 compared to \$12.5 million for the year ended December 31, 2006. The increase of \$0.5 million is due primarily increases in payroll and related expenses attributable to increases in base and incentive compensation, additional employees and amortization resulting from grants of nonvested shares to management, as well as increases in franchise taxes and professional fees. Partially offsetting this increase is \$1.7 million in expense during the year ended December 31, 2006 related to nonvested share awards from prior years. Additionally, during the year ended December 31, 2006, we recognized expense of \$1.4 million related to the retirement of one of our executives.

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Costs associated with loan refinancing for the year ended December 31, 2006 were \$0.7 million. These costs related to the amendment and restatement of our revolving credit facility and consisted of the write-off of \$0.7 million of certain unamortized financing costs. No such costs were incurred during the year ended December 31, 2007.

Our net interest expense increased by \$11.6 million to \$60.5 million for the year ended December 31, 2007 from \$48.9 million for the year ended December 31, 2006. Approximately \$4.4 million of the increase resulted from the acquisition of a 66.67% interest in the joint ventures that own an entertainment retail center in White Plains, New York that had outstanding mortgage debt of \$119.7 million as of the May 8, 2007 acquisition date. The remainder of the increase resulted from increases in long-term debt used to finance our real estate acquisitions and fund our new mortgage notes receivable.

Depreciation and amortization expense totaled \$37.4 million for the year ended December 31, 2007 compared to \$31.0 million for the year ended December 31, 2006. The \$6.4 million increase resulted primarily from real estate acquisitions completed in 2006 and 2007.

Equity in income from joint ventures totaled \$1.6 million for the year ended December 31, 2007 compared to \$0.8 million for the year ended December 31, 2006. The \$0.8 million increase resulted from the Company's investment in a 50% ownership interest of CS Fund I on October 30, 2007.

Minority interest totaled \$1.4 million for the year ended December 31, 2007 and resulted from the consolidation of a VIE in which our only variable interest is debt and the VIE has sufficient equity to cover its cumulative net losses incurred subsequent to our loan transaction. There was no such minority interest for the year ended December 31, 2006.

Income from discontinued operations totaled \$0.8 million for the year ended December 31, 2007 compared to \$0.7 million for the year ended December 31, 2006. The \$0.1 million increase is due to the recognition of \$0.7 million in development fees in 2007 related to a parcel adjacent to our megaplex theatre in Pompano, Florida. The development rights, along with two income-producing tenancies, were sold to a developer group in June of 2007. This increase was partially offset by a \$0.4 million gain for the year ended December 31, 2006 resulting from an insurance claim related to the sold property. As a result of the hurricane events of October 2005, one non triple-net retail property in Pompano Beach, Florida suffered significant damage to its roof. The insurance company reimbursed us for the replacement of the roof less our deductible in January 2006.

The gain on sale of real estate from discontinued operations of \$3.2 million for the year ended December 31, 2007 was due to the sale of a parcel that included two leased properties adjacent to our megaplex theatre in Pompano, Florida. There was no gain on sale of real estate from discontinued operations recognized for the year ended December 31, 2006.

Preferred dividend requirements for the year ended December 31, 2007 were \$21.3 million compared to \$11.9 million for the same period in 2006. The \$9.4 million increase is due to the issuance of 5.4 million Series C preferred shares in December of 2006 and 4.6 million Series D preferred shares in May of 2007, partially offset by the redemption of 2.3 million Series A preferred shares in May of 2007.



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The Series A preferred share redemption costs of \$2.1 million for the year ended December 31, 2007 was due to the redemption of the Series A preferred shares on May 29, 2007 and primarily consists of a noncash charge for the excess of the redemption value over the carrying value of these shares. There was no such expense incurred during the year ended December 31, 2006.

**Liquidity and Capital Resources**

Cash and cash equivalents were \$50.1 million at December 31, 2008. In addition, we had restricted cash of \$10.4 million at December 31, 2008. Of the restricted cash at December 31, 2008, \$3.9 million relates to cash held for our borrowers' debt service reserves for mortgage notes receivable and the balance represents deposits required in connection with debt service, payment of real estate taxes and capital improvements.

***Mortgage Debt and Credit Facilities***

As of December 31, 2008, we had total debt outstanding of \$1.3 billion. As of December 31, 2008, \$1.1 billion of debt outstanding was fixed rate mortgage debt secured by a substantial portion of our rental properties and mortgage notes receivable, with a weighted average interest rate of approximately 5.9%. This \$1.1 billion of fixed rate mortgage debt includes \$206.1 million of LIBOR based debt that has been converted to fixed rate with interest rate swaps as further described below. All of our debt is described in Note 9 to the consolidated financial statements in this Annual Report on Form 10-K.

At December 31, 2008, we had \$149.0 million in debt outstanding under our \$235.0 million unsecured revolving credit facility, with interest at a floating rate. The unsecured revolving credit facility has been extended for one year and now expires in January of 2010. The amount that we are able to borrow on our unsecured revolving credit facility is a function of the values and advance rates, as defined by the credit agreement, assigned to the assets included in the borrowing base less outstanding letters of credit and less other liabilities, excluding our \$118.8 million term loan, that are recourse obligations of the Company. As of December 31, 2008, our total availability under the unsecured revolving credit facility was \$78.4 million.

Through December 31, 2008, VinREIT, a subsidiary that holds our vineyard and winery assets, had drawn eight term loans aggregating \$92.7 million in initial principal under our \$160.0 million credit facility. These term loans have maturities ranging from December 1, 2017 to June 5, 2018, are 30% recourse to us and have stated interest rates of LIBOR plus 175 basis points on loans secured by real property and LIBOR plus 200 basis points on loans secured by fixtures and equipment. We entered into seven interest rate swaps during the year that fixed the interest rates on the outstanding loans at a weighted average rate of 5.2%. Term loans can be drawn through September 26, 2010 under the credit facility. The credit facility provides for an aggregate advance rate of 65% based on the lesser of cost or appraised value. At December 31, 2008, the term loans outstanding under the credit facility had an aggregate balance of \$92.1 million and approximately \$67.3 million of the facility remains available. The credit facility also contains an accordion feature, whereby, subject to lender approval, we may obtain additional term loan commitments in an aggregate principal amount not to exceed \$140.0 million.

Our principal investing activities are acquiring, developing and financing entertainment, entertainment-related, recreational and specialty properties. These investing activities have generally been financed with mortgage debt and the proceeds from equity offerings. Our unsecured revolving credit facility and our term loans are also used to finance the acquisition or

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development of properties, and to provide mortgage financing. Continued growth of our rental property and mortgage financing portfolios will depend in part on our continued ability to access funds through additional borrowings and securities offerings.

Certain of our long-term debt agreement contain customary restrictive covenants related to financial and operating performance. At December 31, 2008, we were in compliance with all restrictive covenants.

**Liquidity Requirements**

Short-term liquidity requirements consist primarily of normal recurring corporate operating expenses, debt service requirements and distributions to shareholders. We meet these requirements primarily through cash provided by operating activities. Net cash provided by operating activities was \$146.3 million, \$131.6 million and \$106.4 million for the years ended December 31, 2008, 2007 and 2006, respectively. Net cash used in investing activities was \$492.0 million, \$420.6 million and \$162.0 million for the years ended December 31, 2008, 2007 and 2006, respectively. Net cash provided by financing activities was \$381.2 million, \$294.3 million and \$58.6 million for the years ended December 31, 2008, 2007 and 2006, respectively.

Long-term liquidity requirements at December 31, 2008 consisted primarily of maturities of long-term debt.

Contractual obligations as of December 31, 2008 are as follows (in thousands):

| Contractual Obligations                | Year ended December 31, |                        |                        |         |         | Thereafter | Total     |
|--|-------------------------|------------------------|------------------------|---------|---------|------------|-----------|
|  | 2009                    | 2010                   | 2011                   | 2012    | 2013    |            |           |
| Long Term Debt Obligations             | \$24,630                | 344,060 <sup>(1)</sup> | 142,195 <sup>(2)</sup> | 92,080  | 127,151 | 532,252    | 1,262,368 |
| Interest on Long Term Debt Obligations | 68,795                  | 61,108                 | 51,494                 | 43,335  | 33,595  | 71,706     | 330,033   |
| Operating Lease Obligations            | 322                     |                        |                        |         |         |            | 322       |
| Total                                  | \$93,747                | 405,168                | 193,689                | 135,415 | 160,746 | 603,958    | 1,592,723 |

<sup>(1)</sup> In addition to the maturity of our unsecured revolving facility and recurring principal payments, this amount includes \$56.25 million in debt maturing in September 2010 related to the planned resort development in

Sullivan County, New York and \$113.5 million in debt maturing in October 2010 secured by our entertainment retail center in White Plains, New York. The \$113.5 million related to White Plains is extendable for two to four years based on meeting certain conditions including a minimum net operating income threshold.

- (2) In addition to recurring principal payments, this amount includes \$115.2 million of maturing debt secured by one theatre and one ski resort as well as five mortgage notes receivable. This debt is extendable at the company's option until October 26, 2012.

We have also posted \$7.6 million of irrevocable stand-by letters of credit related to the Toronto Life Square project as further described in Note 4 to the consolidated financial statements in this Annual Report on Form 10-K.

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Additionally, our unconsolidated joint ventures, Atlantic EPR-I and Atlantic EPR-II, have mortgage notes payable at December 31, 2008 of \$15.4 million and \$13.3 million which mature in May 2010 and September 2013, respectively.

***Commitments***

As of December 31, 2008, we had one winemaking and storage facility project under development for which we have agreed to finance the development costs. Through December 31, 2008, we have invested approximately \$3.7 million in this project for the purchase of land and development in Sonoma County, California, and have commitments to fund approximately \$4.8 million of additional improvements. Development costs are advanced by using periodic draws. If we determine that construction is not being completed in accordance with the terms of the development agreement, we can discontinue funding construction draws. We have agreed to lease the facility to the operator at pre-determined rates.

We held a 50% ownership interest in Suffolk Retail LLC (Suffolk) which is developing additional retail square footage adjacent to one of our megaplex theatres in Suffolk, Virginia. Our joint venture partner is the developer of the project and Suffolk has paid the developer a development fee of \$1.2 million and has no commitment to pay additional development fees. Additionally, as of December 31, 2008, Suffolk has commitments to fund approximately \$4.6 million in additional improvements for this development.

On October 31, 2007, we entered into a guarantee agreement for \$22.0 million. This guarantee is for economic development revenue bonds with a total principal amount of \$22.0 million, maturing on October 31, 2037. The bonds were issued by Southern Theatres for the purpose of financing the development and construction of three megaplex theatres in Louisiana. We earn an annual fee of 1.75% on the outstanding principal amount of the bonds and the fee is paid by Southern Theatres monthly. We evaluated this guarantee in connection with the provisions of FASB Interpretation No. 45, *Guarantor's Accounting and Disclosure Requirements, Including Indirect Guarantees of Indebtedness of Others* (FIN 45). Based on certain criteria, FIN 45 requires a guarantor to record an asset and a liability for a guarantee at inception. Accordingly, we have recorded approximately \$4.0 million as a deferred asset included in accounts receivable and approximately \$4.0 million in other liabilities in the accompanying consolidated balance sheets as of December 31, 2008 and 2007.

We have certain commitments related to our mortgage note investments that we may be required to fund in the future. We are generally obligated to fund these commitments at the request of the borrower or upon the occurrence of events outside of our direct control. As of December 31, 2008, we had four mortgage notes receivable with commitments totaling approximately \$140.3 million. If such commitments are funded in the future, interest will be charged at rates consistent with the existing investments.

***Liquidity Analysis***

In our analyzing our liquidity, we generally expect each year that our cash provided by operating activities will meet our normal recurring operating expenses, recurring debt service requirements and distributions to shareholders.

We have no debt maturities in 2009 and our cash commitments as of December 31, 2008 described above include additional amounts expected to be funded in 2009 for the winemaking

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and storage facility and Suffolk developments of \$4.8 million and \$4.6 million, respectively, and additional commitments under various mortgage notes receivable totaling \$140.3 million. Of the \$140.3 million related to mortgage commitments, approximately \$108.0 million is expected to be funded in 2009. In addition to these commitments, as discussed above we may fund the refinancing shortfall, if any, related to the Toronto Life Square project which is expected to be approximately \$0 to \$20 million Canadian (approximately \$0 to \$16 million U.S. using exchange rates at December 31, 2008).

Our sources of liquidity for 2009 to pay the above commitments and the refinancing shortfall for Toronto Life Square (if any) include the remaining amount available under our revolving credit facility of \$78.4 million at December 31, 2008, unrestricted cash on hand at December 31, 2008 of \$50.1 million and the remaining loan commitment of \$56.25 million expected to be funded on the resort development (our commitment is contingent on receiving these funds). In addition, in January and February 2009, we issued common shares for net proceeds of \$44.3 million. We also expect to obtain approximately \$4 million to \$30 million in additional loan proceeds in 2009 under our vineyard and winery facility related to previously acquired properties and equipment. Accordingly, it is expected that sources of cash will significantly exceed our expected uses of cash in 2009.

In looking at liquidity requirements beyond 2009, our first debt maturity is our revolving credit facility in January 2010. We have begun discussions to refinance this facility and expect to have a new facility in place in 2009. While we are planning to have significantly less than the maximum amount drawn on our current facility at the time of the refinancing, there is no assurance that we will be able maintain the same level of capacity as the current facility, or that we will be able to successfully refinance the amount then outstanding. If there is a shortfall in proceeds from the refinancing, we would need to have another source of capital in place to satisfy the difference. Other such sources of capital available to us primarily include further equity issuances, securing other debt (such as on unpledged assets), sales of properties, collection or sales of mortgage or other notes receivable, and reducing our dividends paid in cash (subject to maintaining our qualification as a REIT).

Similarly, we believe that we will be able to repay, extend or refinance our other debt obligations for 2010 and thereafter as the debt comes due, and that we will be able to fund our remaining commitments as necessary. However, there can be no assurance that additional financing or capital will be available, or that terms will be acceptable or advantageous to us.

Our primary use of cash after paying operating expenses, debt service, distributions to shareholders and funding existing commitments is in growing our investment portfolio through the acquisition, development and financing of additional properties. We expect to finance these investments with borrowings under our unsecured revolving credit facility, as well as long-term debt and equity financing alternatives. The availability and terms of any such financing will depend upon market and other conditions. If we borrow the maximum amount available under our unsecured revolving credit facility, there can be no assurance that we will be able to obtain additional investment financing (See Risk Factors ).

***Off Balance Sheet Arrangements***

At December 31, 2008, we had a 21.7% and 21.9% investment interest in two unconsolidated real estate joint ventures, Atlantic-EPR I and Atlantic-EPR II, respectively, which are accounted for under the equity method of accounting. We do not anticipate any material impact on our liquidity

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as a result of any commitments that may arise involving those joint ventures. We recognized income of \$538, \$491 and \$464 (in thousands) from our investment in the Atlantic-EPR I joint venture during 2008, 2007 and 2006, respectively. We recognized income of \$324, \$301 and \$295 (in thousands) from our investment in the Atlantic-EPR II joint venture during 2008, 2007 and 2006, respectively. The joint ventures have two mortgage notes payable each secured by a megaplex theatre. The notes held by Atlantic EPR-I and Atlantic EPR-II total \$15.4 million and \$13.3 million, respectively, at December 31, 2008, and mature in May 2010 and September 2013, respectively. Condensed financial information for Atlantic-EPR I and Atlantic-EPR II joint ventures is included in Note 6 to the consolidated financial statements included in this Annual Report on Form 10-K.

The joint venture agreements for Atlantic-EPR I and Atlantic-EPR II allow our partner, Atlantic of Hamburg, Germany (Atlantic), to exchange up to a maximum of 10% of its ownership interest per year in each of the joint ventures for common shares of the Company or, at our discretion, the cash value of those shares as defined in each of the joint venture agreements. Atlantic gave us notice during the years ended December 31, 2007 and 2008 that they wanted to exchange a portion of their ownership in Atlantic-EPR I and Atlantic-EPR II. During 2008, we paid Atlantic cash of \$133 and \$79 (in thousands) in exchange for additional ownership of 0.7%, for Atlantic-EPR I and Atlantic-EPR II, respectively. In January of 2009, we paid Atlantic cash of \$105 (in thousands) in exchange for additional ownership of 0.7% for Atlantic-EPR I. These exchanges did not impact total partners' equity in either Atlantic-EPR I or Atlantic-EPR II.

***Capital Structure and Coverage Ratios***

We believe that our shareholders are best served by a conservative capital structure. Therefore, we seek to maintain a conservative debt level on our balance sheet and solid interest, fixed charge and debt service coverage ratios. We expect to maintain our leverage ratio (i.e. total-long term debt of the Company as a percentage of shareholders' equity plus total liabilities) below 50%. However, the timing and size of our equity offerings may cause us to temporarily operate over this threshold. At December 31, 2008, our leverage ratio was 48%. Our long-term debt as a percentage of our total market capitalization at December 31, 2008 was also 48%; however, we do not manage to a ratio based on total market capitalization due to the inherent variability that is driven by changes in the market price of our common shares. We calculate our total market capitalization of \$2.7 billion by aggregating the following at December 31, 2008:

Common shares outstanding of 32,874,097 multiplied by the last reported sales price of our common shares on the NYSE of \$29.80 per share, or \$980 million;

Aggregate liquidation value of our Series B preferred shares of \$80 million;

Aggregate liquidation value of our Series C preferred shares of \$135 million;

Aggregate liquidation value of our Series D preferred shares of \$115 million;

Aggregate liquidation value of our Series E preferred shares of \$86 million and

Total long-term debt of \$1.3 billion

Our interest coverage ratio for the years ended December 31, 2008, 2007 and 2006 was 3.3 times, 3.2 times, and 3.3 times, respectively. Interest coverage is calculated as the interest coverage amount (as calculated in the following table) divided by interest expense, gross (as calculated in the following table). We consider the interest coverage ratio to be an appropriate supplemental measure of a company's ability to meet its interest expense obligations. Our calculation of the interest coverage ratio may be different from the calculation used by other companies, and

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therefore, comparability may be limited. This information should not be considered as an alternative to any Generally Accepted Accounting Principles (GAAP) liquidity measures. The following table shows the calculation of our interest coverage ratios (unaudited, dollars in thousands):

|   | <b>Year Ended December 31,</b> |             |             |
|---|--------------------------------|-------------|-------------|
|   | <b>2008</b>                    | <b>2007</b> | <b>2006</b> |
| Net income  | \$ 129,976                     | 104,664     | 82,289      |
| Interest expense, gross                                     | 72,658                         | 61,376      | 49,092      |
| Interest cost capitalized                                   | (797)                          | (494)       | (100)       |
| Minority interests  | (2,353)                        | (1,370)     |             |
| Depreciation and amortization                               | 43,829                         | 37,422      | 31,021      |
| Share-based compensation expense to management and trustees | 3,965                          | 3,249       | 4,869       |
| Gain on sale of land  |                                | (129)       | (345)       |
| Costs associated with loan refinancing                      |                                |             | 673         |
| Straight-line rental revenue                                | (3,851)                        | (4,497)     | (3,925)     |
| Gain on sale of real estate from discontinued operations    | (119)                          | (3,240)     |             |
| Depreciation and amortization of discontinued operations    |                                | 58          | 134         |
| <br>  |                                |             |             |
| Interest coverage amount                                    | \$ 243,308                     | 197,039     | 163,708     |
| <br>  |                                |             |             |
| Interest expense, net                                       | \$ 70,951                      | 60,505      | 48,866      |
| Interest income   | 910                            | 377         | 126         |
| Interest cost capitalized                                   | 797                            | 494         | 100         |
| <br>  |                                |             |             |
| Interest expense, gross                                     | \$ 72,658                      | 61,376      | 49,092      |
| <br>  |                                |             |             |
| Interest coverage ratio                                     | 3.3                            | 3.2         | 3.3         |

The interest coverage amount per the above table is a non-GAAP financial measure and should not be considered an alternative to any GAAP liquidity measures. It is most directly comparable to the GAAP liquidity measure, Net cash provided by operating activities, and is not directly comparable to the GAAP liquidity measures, Net cash used in investing activities and Net cash provided by financing activities. The interest coverage amount can be reconciled to Net cash provided by operating activities per the consolidated statements of cash flows included in this Annual Report on Form 10-K as follows (unaudited, dollars in thousands):

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|   | <b>Year Ended December 31,</b> |             |             |
|---|--------------------------------|-------------|-------------|
|   | <b>2008</b>                    | <b>2007</b> | <b>2006</b> |
| Net cash provided by operating activities                       | \$ 146,256                     | 131,590     | 106,436     |
| Equity in income from joint ventures                            | 1,962                          | 1,583       | 759         |
| Distributions from joint ventures                               | (2,262)                        | (1,239)     | (874)       |
| Amortization of deferred financing costs                        | (3,290)                        | (2,905)     | (2,713)     |
| Increase in mortgage notes accrued interest receivable          | 20,519                         | 14,921      | 8,861       |
| Increase in accounts and notes receivable                       | 3,832                          | 4,642       | 5,404       |
| Increase in direct financing lease receivable                   | 2,285                          |             |             |
| Increase in other assets  | 1,614                          | 2,366       | 3,122       |
| Decrease (increase) in accounts payable and accrued liabilities | 2,534                          | (5,923)     | (2,635)     |
| Decrease (increase) in unearned rents                           | 1,848                          | (4,381)     | 281         |
| Straight-line rental revenue                                    | (3,851)                        | (4,497)     | (3,925)     |
| Interest expense, gross   | 72,658                         | 61,376      | 49,092      |
| Interest cost capitalized                                       | (797)                          | (494)       | (100)       |
| Interest coverage amount  | \$ 243,308                     | 197,039     | 163,708     |

Our fixed charge coverage ratio for each of the years ended December 31, 2008 and 2007 was 2.4 times and for the year ended December 31, 2006 was 2.7 times. The fixed charge coverage ratio is calculated in exactly the same manner as the interest coverage ratio, except that preferred share dividends are also added to the denominator. We consider the fixed charge coverage ratio to be an appropriate supplemental measure of a company's ability to make its interest and preferred share dividend payments. Our calculation of the fixed charge coverage ratio may be different from the calculation used by other companies and, therefore, comparability may be limited. This information should not be considered as an alternative to any GAAP liquidity measures. The following table shows the calculation of our fixed charge coverage ratios (unaudited, dollars in thousands):

|                             | <b>Year Ended December 31,</b> |             |             |
|-----------------------------|--------------------------------|-------------|-------------|
|                             | <b>2008</b>                    | <b>2007</b> | <b>2006</b> |
| Interest coverage amount    | \$ 243,308                     | 197,039     | 163,708     |
| Interest expense, gross     | 72,658                         | 61,376      | 49,092      |
| Preferred share dividends   | 28,266                         | 21,312      | 11,857      |
| Fixed charges               | \$ 100,924                     | 82,688      | 60,949      |
| Fixed charge coverage ratio | 2.4                            | 2.4         | 2.7         |

Our debt service coverage ratio for each of the years ended December 31, 2008 and 2007 was 2.5 times and for the year ended December 31, 2006 was 2.6 times. The debt service coverage ratio is calculated in exactly the same manner as the interest coverage ratio, except that recurring principal payments are also added to the denominator. We consider the debt service coverage ratio to be an appropriate supplemental measure of a company's ability to make its debt service payments. Our calculation of the debt service coverage ratio may be different from the calculation used



by other companies and, therefore, comparability may be limited. This

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information should not be considered as an alternative to any GAAP liquidity measures. The following table shows the calculation of our debt service coverage ratios (unaudited, dollars in thousands):

|                              | <b>Year Ended December 31,</b> |             |             |
|------------------------------|--------------------------------|-------------|-------------|
|                              | <b>2008</b>                    | <b>2007</b> | <b>2006</b> |
| Interest coverage amount     | \$ 243,308                     | 197,039     | 163,708     |
| Interest expense, gross      | 72,658                         | 61,376      | 49,092      |
| Recurring principal payments | 23,331                         | 18,257      | 14,810      |
| Debt service                 | \$ 95,989                      | 79,633      | 63,902      |
| Debt service coverage ratio  | 2.5                            | 2.5         | 2.6         |

**Funds From Operations (FFO)**

The National Association of Real Estate Investment Trusts (NAREIT) developed FFO as a relative non-GAAP financial measure of performance of an equity REIT in order to recognize that income-producing real estate historically has not depreciated on the basis determined under GAAP. FFO is a widely used measure of the operating performance of real estate companies and is provided here as a supplemental measure to GAAP net income available to common shareholders and earnings per share. FFO, as defined under the revised NAREIT definition and presented by us, is net income available to common shareholders, computed in accordance with GAAP, excluding gains and losses from sales of depreciable operating properties, plus real estate related depreciation and amortization, and after adjustments for unconsolidated partnerships, joint ventures and other affiliates. Adjustments for unconsolidated partnerships, joint ventures and other affiliates are calculated to reflect FFO on the same basis. FFO is a non-GAAP financial measure. FFO does not represent cash flows from operations as defined by GAAP and is not indicative that cash flows are adequate to fund all cash needs and is not to be considered an alternative to net income or any other GAAP measure as a measurement of the results of our operations or our cash flows or liquidity as defined by GAAP. It should also be noted that not all REITs calculate FFO the same way so comparisons with other REITs may not be meaningful.

The additional 1.9 million common shares that would result from the conversion of our 5.75% Series C cumulative convertible preferred shares and the additional 1.6 million common shares that would result from the conversion of our 9.00% Series E cumulative convertible preferred shares and the corresponding add-back of the preferred dividends declared on those shares are not included in the calculation of diluted earnings per share for the years ended December 31, 2008 and 2007 because the effect is anti-dilutive. However, because a conversion of the 5.75% Series C cumulative convertible preferred shares would be dilutive to FFO per share for the years ended December 31, 2008 and 2007, these adjustments have been made in the calculation of diluted FFO per share for these periods.

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The following table summarizes our FFO, FFO per share and certain other financial information for the years ended December 31, 2008, 2007 and 2006 (in thousands, except per share information):

|  | <b>Year ended December 31,</b> |                |             |
|--|--------------------------------|----------------|-------------|
|  | <b>2008</b>                    | <b>2007</b>    | <b>2006</b> |
| Net income available to common shareholders                        | \$ 101,710                     | \$ 81,251      | 70,432      |
| Subtract: Gain on sale of real estate from discontinued operations |                                | (3,240)        |             |
| Subtract: Minority interest  | (2,630)                        | (1,436)        |             |
| Add: Real estate depreciation and amortization                     | 43,051                         | 36,758         | 30,349      |
| Add: Allocated share of joint venture depreciation                 | 510                            | 387            | 244         |
| <br>FFO available to common shareholders                           | <br>142,641                    | <br>113,720    | <br>101,025 |
| <br>FFO available to common shareholders                           | <br>\$ 142,641                 | <br>\$ 113,720 | <br>101,025 |
| Add: Preferred dividends for Series C                              | 7,763                          | 7,763          |             |
| <br>Diluted FFO available to common shareholders                   | <br>150,404                    | <br>121,483    | <br>101,025 |
| <br>FFO per common share:  |                                |                |             |
| Basic  | \$ 4.66                        | 4.26           | 3.86        |
| Diluted  | 4.57                           | 4.18           | 3.79        |
| <br>Shares used for computation (in thousands):                    |                                |                |             |
| Basic  | 30,628                         | 26,690         | 26,147      |
| Diluted  | 32,923                         | 29,069         | 26,627      |
| <br>Weighted average shares outstanding diluted EPS                | <br>31,006                     | <br>27,171     | <br>26,627  |
| Effect of dilutive Series C preferred shares                       | 1,917                          | 1,898          |             |
| <br>Adjusted weighted average shares outstanding diluted           | <br>32,923                     | <br>29,069     | <br>26,627  |
| <br>Other financial information:                                   |                                |                |             |
| Straight-lined rental revenue                                      | \$ 3,851                       | 4,497          | 3,925       |
| Dividends per common share   | \$ 3.36                        | 3.04           | 2.75        |
| FFO payout ratio*  | 74%                            | 73%            | 73%         |

\* FFO payout ratio is calculated by dividing dividends per common share by FFO per diluted common share.

**Impact of Recently Issued Accounting Standards**

In February 2007, the FASB issued Statement of Financial Accounting Standards No. 159, The Fair Value Option for Financial Assets and Financial Liabilities Including an Amendment of FASB Statement No. 115 (SFAS No. 159). SFAS No. 159 allows measurement at fair value of eligible financial assets and liabilities that are not otherwise measured at fair value. If the fair value option for an eligible item is elected, unrealized gains and losses for that item are to be reported in current earnings at each subsequent reporting date. SFAS No. 159 also establishes presentation and disclosure requirements designed to draw comparison between the different measurement attributes the Company elects for similar types of assets and liabilities. SFAS No. 159 is effective for financial statements issued for fiscal years beginning after November 15, 2007. We have elected not to use the fair value measurement provisions of Statement No. 159 for any additional financial assets and liabilities that were not otherwise measured at fair value.

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In December 2007, the FASB issued Statement of Financial Accounting Standards No. 160, *Noncontrolling Interests in Consolidated Financial Statements, An Amendment of ARB 51* (SFAS No. 160). SFAS No. 160 establishes accounting and reporting standards for noncontrolling interests. It requires that noncontrolling interests, sometimes referred to as minority interests, be reported as a separate component of equity in the consolidated financial statements. Additionally, it requires net income and comprehensive income to be displayed for both controlling and noncontrolling interests. SFAS No. 160 is effective for financial statements issued for fiscal years beginning on or after December 15, 2008 and earlier adoption is prohibited. SFAS No. 160 will be applied prospectively to all noncontrolling interests, even those that occurred prior to the effective date. The Company adopted SFAS No. 160 in the first quarter of 2009 and the adoption did not have a material impact on its financial position or results of operations.

Additionally, in December 2007, FASB Statement of Financial Accounting Standards No. 141, *Business Combinations* was revised by the FASB Statement No. 141R (SFAS No. 141R). SFAS No. 141R requires most identifiable assets, liabilities, noncontrolling interests and goodwill acquired in a business combination to be recorded at full fair value as of the acquisition date. SFAS 141R also establishes disclosure requirements designed to enable the users of the financial statements to assess the effect of a business combination. SFAS No. 141R is effective for financial statements issued for fiscal years beginning on or after December 15, 2008 and earlier adoption is prohibited. SFAS No. 141R will be applied to business combinations occurring after the effective date. The Company adopted SFAS No. 141R in the first quarter of 2009 and the initial adoption did not have a material impact on its financial position or results of operations.

In February 2008, the FASB adopted FSP FAS 157-2, *Effective Date of FASB Statement No. 157*, which allows for a one-year deferral of fair value measurement requirements for nonfinancial assets and liabilities that are not required or permitted to be measured at fair value on a recurring basis. The Company has adopted SFAS No. 157 for nonfinancial assets in the first quarter of 2009 and does not expect it to have a material impact on its financial position or results of operations.

In March 2008, the FASB issued Statement of Financial Accounting Standards No. 161, *Disclosures about Derivative Instruments and Hedging Activities* (SFAS No. 161). SFAS No. 161 amends and expands SFAS No. 133, *Accounting for Derivative Instruments and Hedging Activities*. SFAS No. 161 requires companies with derivative instruments to disclose their fair value and their gains and losses in tabular format and information about credit-risk related features in derivative agreements, counterparty credit risk and objectives and strategies for using derivative instruments. The new statement will be applied prospectively for periods beginning after November 15, 2008. The Company adopted SFAS No. 161 in the first quarter of 2009.

In June 2008, the FASB issued FASB Staff Position EITF 03-6-1, *Determining Whether Instruments Granted in Share-Based Payment Transactions Are Participating Securities*, (FSP EITF 03-6-1). FSP EITF 03-6-1 addresses whether instruments granted in share-based payment transactions are participating securities prior to vesting, and therefore need to be included in the computation of earnings per share under the two-class method as described in FASB Statement of Financial Accounting Standards No. 128, *Earnings per Share*. FSP EITF 03-6-1 is effective for financial statements issued for fiscal years beginning on or after December 15, 2008 and earlier adoption is prohibited. The Company is required to adopt FSP EITF 03-6-1 in the first quarter of

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2009. The Company does not expect the adoption of FST EITF 03-6-1 will have a material impact on our calculation of basic and diluted earnings per share.

**Inflation**

Investments by EPR are financed with a combination of equity and debt. During inflationary periods, which are generally accompanied by rising interest rates, our ability to grow may be adversely affected because the yield on new investments may increase at a slower rate than new borrowing costs.

All of our megaplex theatre leases provide for base and participating rent features. To the extent inflation causes tenant revenues at our properties to increase over baseline amounts, we would participate in those revenue increases through our right to receive annual percentage rent.

Our leases and mortgage notes receivable also generally provide for escalation in base rents or interest in the event of increases in the Consumer Price Index, with generally a limit of 2% per annum, or fixed periodic increases.

Alternatively, during deflationary periods, our leases and mortgage notes receivable with escalations in base rents or interest dependent on increases in the Consumer Price Index may be adversely affected.

Our leases are generally triple-net leases requiring the tenants to pay substantially all expenses associated with the operation of the properties, thereby minimizing our exposure to increases in costs and operating expenses resulting from inflation. A portion of our megaplex theatre, retail and restaurant leases are non-triple-net leases. These leases represent approximately 25% of our total real estate square footage. To the extent any of those leases contain fixed expense reimbursement provisions or limitations, we may be subject to increases in costs resulting from inflation that are not fully passed through to tenants.

**Table of Contents****Item 7A. Quantitative and Qualitative Disclosures About Market Risk**

We are exposed to market risks, primarily relating to potential losses due to changes in interest rates and foreign currency exchange rates. We seek to mitigate the effects of fluctuations in interest rates by matching the term of new investments with new long-term fixed rate borrowings whenever possible. We also have a \$235 million unsecured revolving credit facility with \$149 million outstanding as of December 31, 2008, a \$160.0 million term loan facility with \$92.1 million outstanding as of December 31, 2008, a \$10.7 million bond, a \$56.25 million term loan and a \$118.8 million term loan, all of which bear interest at a floating rate. As further described in Note 10 to the consolidated financial statements in this Annual Report on Form 10-K, the \$92.1 million of term loans are LIBOR based debt that has been converted to a fixed rate with seven interest rate swaps and the \$118.8 million term loan includes \$114.0 million of LIBOR based debt that has been converted to a fixed rate with two interest rate swaps. We are subject to risks associated with debt financing, including the risk that existing indebtedness may not be refinanced or that the terms of such refinancing may not be as favorable as the terms of current indebtedness. The majority of our borrowings are subject to mortgages or contractual agreements which limit the amount of indebtedness we may incur. Accordingly, if we are unable to raise additional equity or borrow money due to these limitations, our ability to make additional real estate investments may be limited.

The fair value of our debt as of December 31, 2008 and 2007 is estimated by discounting the future cash flows of each instrument using current market rates including current market spreads.

The following table presents the principal amounts, weighted average interest rates, and other terms required by year of expected maturity to evaluate the expected cash flows and sensitivity to interest rate changes as of December 31 (including the impact of the two interest rate swap agreements described below):

## Expected Maturities (in millions)

|   | 2009   | 2010  | 2011  | 2012 | 2013  | Thereafter | Total   | Estimated Fair Value |
|---|--------|-------|-------|------|-------|------------|---------|----------------------|
| December 31, 2008:                              |        |       |       |      |       |            |         |                      |
| Fixed rate debt                                 | \$23.4 | 137.6 | 139.8 | 92.1 | 127.2 | 521.6      | 1,041.7 | 1,044.0              |
| Average interest rate                           | 6.0%   | 5.7%  | 5.9%  | 6.5% | 5.7%  | 5.9%       | 5.9%    | 5.8%                 |
| Variable rate debt                              | \$ 1.2 | 206.5 | 2.4   |      |       | 10.6       | 220.7   | 210.8                |
| Average interest rate (as of December 31, 2008) | 4.7%   | 4.0%  | 4.7%  |      |       | 1.9%       | 3.9%    | 5.6%                 |

|   | 2008    | 2009 | 2010  | 2011  | 2012 | Thereafter | Total   | Estimated Fair Value |
|---|---------|------|-------|-------|------|------------|---------|----------------------|
| December 31, 2007:                              |         |      |       |       |      |            |         |                      |
| Fixed rate debt                                 | \$111.3 | 21.6 | 135.6 | 137.7 | 89.9 | 568.6      | 1,064.7 | 1,068.2              |
| Average interest rate                           | 6.7%    | 6.1% | 5.7%  | 5.9%  | 6.5% | 5.7%       | 6.0%    | 5.9%                 |
| Variable rate debt                              | \$ 1.2  | 1.2  | 1.2   | 2.4   |      | 10.6       | 16.6    | 16.6                 |
| Average interest rate (as of December 31, 2007) | 6.6%    | 6.6% | 6.6%  | 6.6%  |      | 3.4%       | 4.6%    | 4.6%                 |

On November 26, 2007, we entered into two interest rate swap agreements to fix the interest rate on \$114.0 million of the outstanding term loan. These agreements each have outstanding notional amounts of \$57.0 million, a termination

date of October 26, 2012 and a fixed rate of 5.81%.

On March 13, 2008, we entered into two interest rate swap agreements to fix the interest rates on the two initial outstanding term loans described in Note 9 to the consolidated financial statements



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in this Annual Report on Form 10-K with an aggregate notional amount of \$9.5 million. At December 31, 2008, these agreements have outstanding notional amounts of \$4.6 million and \$4.8 million, termination dates of December 1, 2017 and March 5, 2018 and fixed rates of 5.76% and 5.78%, respectively.

In September 2008, we entered into five interest rate swap agreements to fix the interest rates on the remaining outstanding term loans described in Note 9 to the consolidated financial statements in this Annual Report on Form 10-K with an aggregate notional amount of \$83.1 million. At December 31, 2008, four of these agreements have aggregate outstanding notional amounts of \$74.7 million, a termination date of October 7, 2013 and fixed rates of 5.11%. The remaining agreement has an outstanding notional amount of \$8.0 million at December 31, 2008, a termination date of December 1, 2017 and a fixed rate of 5.63%.

We financed the acquisition of our four Canadian properties with non-recourse fixed rate mortgage loans from a Canadian lender in the original aggregate principal amount of approximately U.S. \$97 million. The loans were made and are payable by us in Canadian dollars (CAD), and the rents received from tenants of the properties are payable in CAD. We have also provided a secured mortgage construction loan totaling CAD \$90.0 million. The loan and the related interest income is payable to us in CAD.

We have partially mitigated the impact of foreign currency exchange risk on our Canadian properties by matching Canadian dollar debt financing with Canadian dollar rents. To further mitigate our foreign currency risk in future periods on the four Canadian properties, during the second quarter of 2007, we entered into a cross currency swap with a notional value of \$76.0 million CAD and \$71.5 million U.S. The swap calls for monthly exchanges from January 2008 through February 2014 with us paying CAD based on an annual rate of 17.16% of the notional amount and receiving U.S. dollars based on an annual rate of 17.4% of the notional amount. There is no initial or final exchange of the notional amounts. The net effect of this swap is to lock in an exchange rate of \$1.05 CAD per U.S. dollar on approximately \$13 million of annual CAD denominated cash flows. These foreign currency derivatives should hedge a significant portion of our expected CAD denominated FFO of these four Canadian properties through February 2014 as their impact on our reported FFO when settled should move in the opposite direction of the exchange rates utilized to translate revenues and expenses of these properties.

In order to also hedge our net investment on the four Canadian properties, we entered into a forward contract with a notional amount of \$100 million CAD and a February 2014 settlement date which coincides with the maturity of our underlying mortgage on these four properties. The exchange rate of this forward contract is approximately \$1.04 CAD per U.S. dollar. This forward contract should hedge a significant portion of our CAD denominated net investment in these four centers through February 2014 as the impact on accumulated other comprehensive income from marking the derivative to market should move in the opposite direction of the translation adjustment on the net assets of our four Canadian properties.

We have not yet hedged any of our net investment in the CAD denominated mortgage receivable or its expected CAD denominated interest income due to the mortgage note's maturity in 2009 and our expectation to transfer into an ownership position at that time.

See Note 10 to the consolidated financial statements in this Annual Report on Form 10-K for additional information on our derivative financial instruments and hedging activities.

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**Item 8. Financial Statements and Supplementary Data**

Entertainment Properties Trust  
**Contents**

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**Report of Independent Registered Public Accounting Firm**

The Board of Trustees and Shareholders

Entertainment Properties Trust:

We have audited the accompanying consolidated balance sheets of Entertainment Properties Trust (the Company) as of December 31, 2008 and 2007, and the related consolidated statements of income, changes in shareholders' equity, comprehensive income, and cash flows for each of the years in the three-year period ended December 31, 2008. In connection with our audits of the consolidated financial statements, we have also audited the accompanying financial statement schedules listed in the Index at Item 15(2). These consolidated financial statements and financial statement schedules are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements and financial statement schedules based on our audits.

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. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes 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, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Entertainment Properties Trust as of December 31, 2008 and 2007, and the results of their operations and their cash flows for each of the years in the three-year period ended December 31, 2008, in conformity with U.S. generally accepted accounting principles. Also in our opinion, the related financial statement schedules, when considered in relation to the basic consolidated financial statements taken as a whole, present fairly, in all material respects, the information set forth therein.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the Company's internal control over financial reporting as of December 31, 2008, based on criteria established in *Internal Control - Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO), and our report dated February 23, 2009 expressed an unqualified opinion on the effectiveness of the Company's internal control over financial reporting.

/s/ KPMG LLP

KPMG LLP

Kansas City, Missouri

February 23, 2009

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**ENTERTAINMENT PROPERTIES TRUST**  
**Consolidated Balance Sheets**  
(Dollars in thousands except share data)

|   | <b>December 31,</b> |                     |
|---|---------------------|---------------------|
|   | <b>2008</b>         | <b>2007</b>         |
| <b>Assets</b>   |                     |                     |
| Rental properties, net of accumulated depreciation of \$214,078 and \$177,607 at December 31, 2008 and 2007, respectively                             | \$ 1,735,617        | \$ 1,648,621        |
| Property under development  | 30,835              | 23,001              |
| Mortgage notes and related accrued interest receivable  | 508,506             | 325,442             |
| Investment in a direct financing lease, net   | 166,089             |                     |
| Investment in joint ventures  | 2,493               | 42,331              |
| Cash and cash equivalents   | 50,082              | 15,170              |
| Restricted cash   | 10,413              | 12,789              |
| Intangible assets, net  | 12,400              | 16,528              |
| Deferred financing costs, net   | 10,741              | 10,361              |
| Accounts and notes receivable, net  | 73,312              | 61,193              |
| Other assets  | 33,437              | 16,197              |
| <b>Total assets</b>   | <b>\$ 2,633,925</b> | <b>\$ 2,171,633</b> |
| <b>Liabilities and Shareholders Equity</b>  |                     |                     |
| <b>Liabilities:</b>   |                     |                     |
| Accounts payable and accrued liabilities  | \$ 35,665           | \$ 26,532           |
| Common dividends payable  | 27,377              | 21,344              |
| Preferred dividends payable   | 7,552               | 5,611               |
| Unearned rents and interest   | 8,312               | 10,782              |
| Long-term debt  | 1,262,368           | 1,081,264           |
| <b>Total liabilities</b>  | <b>1,341,274</b>    | <b>1,145,533</b>    |
| Minority interests  | 15,217              | 18,207              |
| <b>Shareholders equity:</b>   |                     |                     |
| Common Shares, \$.01 par value; 50,000,000 shares authorized; and 33,734,181 and 28,878,285 shares issued at December 31, 2008 and 2007, respectively | 337                 | 289                 |
| Preferred Shares, \$.01 par value; 25,000,000 shares authorized:  |                     |                     |
| 3,200,000 Series B shares issued at December 31, 2008 and 2007; liquidation preference of \$80,000,000  | 32                  | 32                  |
| 5,400,000 Series C convertible shares issued at December 31, 2008 and 2007; liquidation preference of \$135,000,000                                   | 54                  | 54                  |
| 4,600,000 Series D shares issued at December 31, 2008 and 2007; liquidation preference of \$115,000,000   | 46                  | 46                  |
| 3,450,000 Series E convertible shares issued at December 31, 2008; liquidation preference of \$86,250,000   | 35                  |                     |
| Additional paid-in-capital  | 1,339,798           | 1,023,598           |
|   | (26,357)            | (22,889)            |

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Treasury shares at cost: 860,084 and 793,676 common shares at December 31,  
2008 and 2007, respectively

|   |              |              |
|---|--------------|--------------|
| Loans to shareholders                         | (1,925)      | (3,525)      |
| Accumulated other comprehensive income (loss) | (6,169)      | 35,994       |
| Distributions in excess of net income         | (28,417)     | (25,706)     |
| Shareholders' equity                          | 1,277,434    | 1,007,893    |
| Total liabilities and shareholders' equity    | \$ 2,633,925 | \$ 2,171,633 |

See accompanying notes to consolidated financial statements.

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**ENTERTAINMENT PROPERTIES TRUST**  
**Consolidated Statements of Income**  
(Dollars in thousands except per share data)

|  | <b>Year Ended December 31,</b> |                |               |
|--|--------------------------------|----------------|---------------|
|  | <b>2008</b>                    | <b>2007</b>    | <b>2006</b>   |
| Rental revenue   | \$ 202,581                     | \$ 185,873     | \$ 167,168    |
| Tenant reimbursements  | 20,883                         | 18,499         | 14,450        |
| Other income   | 2,241                          | 2,402          | 3,274         |
| Mortgage and other financing income  | 60,435                         | 28,841         | 10,968        |
| <br>Total revenue  | <br>286,140                    | <br>235,615    | <br>195,860   |
| <br>Property operating expense   | <br>26,775                     | <br>23,010     | <br>18,764    |
| Other expense  | 2,103                          | 4,205          | 3,486         |
| General and administrative expense   | 16,914                         | 12,970         | 12,515        |
| Costs associated with loan refinancing   |                                |                | 673           |
| Interest expense, net  | 70,951                         | 60,505         | 48,866        |
| Depreciation and amortization  | 43,829                         | 37,422         | 31,021        |
| <br>Income before gain on sale of land, equity in income from joint ventures, minority interests and discontinued operations | <br>125,568                    | <br>97,503     | <br>80,535    |
| <br>Gain on sale of land   |                                | 129            | 345           |
| Equity in income from joint ventures   | 1,962                          | 1,583          | 759           |
| Minority interests   | 2,353                          | 1,370          |               |
| <br>Income from continuing operations  | <br>\$ 129,883                 | <br>\$ 100,585 | <br>\$ 81,639 |
| Discontinued operations:   |                                |                |               |
| Income (loss) from discontinued operations   | (26)                           | 839            | 650           |
| Gain on sale of real estate  | 119                            | 3,240          |               |
| <br>Net income   | <br>129,976                    | <br>104,664    | <br>82,289    |
| Preferred dividend requirements  | (28,266)                       | (21,312)       | (11,857)      |
| Series A preferred share redemption costs  |                                | (2,101)        |               |
| <br>Net income available to common shareholders  | <br>\$ 101,710                 | <br>\$ 81,251  | <br>\$ 70,432 |
| <br>Per share data:  |                                |                |               |
| Basic earnings per share data:   |                                |                |               |
| Income from continuing operations available to common shareholders   | \$ 3.32                        | \$ 2.89        | \$ 2.67       |
| Income from discontinued operations  |                                | 0.15           | 0.02          |
| <br>Net income available to common shareholders  | <br>\$ 3.32                    | <br>\$ 3.04    | <br>\$ 2.69   |
| <br>Diluted earnings per share data:   |                                |                |               |

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|  |         |         |         |
|--|---------|---------|---------|
| Income from continuing operations available to common shareholders | \$ 3.28 | \$ 2.84 | \$ 2.62 |
| Income from discontinued operations                                |         | 0.15    | 0.03    |
| Net income available to common shareholders                        | \$ 3.28 | \$ 2.99 | \$ 2.65 |
| Shares used for computation (in thousands):                        |         |         |         |
| Basic  | 30,628  | 26,690  | 26,147  |
| Diluted  | 31,006  | 27,171  | 26,627  |
| Dividends per common share   | \$ 3.36 | \$ 3.04 | \$ 2.75 |

See accompanying notes to consolidated financial statements.

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**ENTERTAINMENT PROPERTIES TRUST**  
**Consolidated Statements of Changes in Shareholders' Equity**  
**Years Ended December 31, 2008, 2007 and 2006**  
(Dollars in thousands)

|  | Common Stock |        | Preferred Stock |       | Additional paid-in capital | Treasury shares | Accumulated           |                                   |                                       | Total   |
|--|--------------|--------|-----------------|-------|----------------------------|-----------------|-----------------------|-----------------------------------|---------------------------------------|---------|
|  | Shares       | Par    | Shares          | Par   |                            |                 | Loans to shareholders | other comprehensive income (loss) | Distributions in excess of net income |         |
| Balance at December 31, 2005   | 25,882       | \$ 259 | 5,500           | \$ 55 | 700,704                    | (14,350)        | (3,525)               | 13,402                            | (30,124)                              | 666,421 |
| Shares issued to Trustees  | 4            |        |                 |       | 161                        |                 |                       |                                   |                                       | 161     |
| Issuance of nonvested shares, including nonvested shares issued for the payment of bonuses | 83           | 1      |                 |       | (1)                        |                 |                       |                                   |                                       |         |
| Amortization of nonvested shares   |              |        |                 |       | 3,879                      |                 |                       |                                   |                                       | 3,879   |
| Share option expense   |              |        |                 |       | 829                        |                 |                       |                                   |                                       | 829     |
| Foreign currency translation adjustment  |              |        |                 |       |                            |                 |                       | (973)                             |                                       | (973)   |
| Change in unrealized gain on derivatives   |              |        |                 |       |                            |                 |                       | 72                                |                                       | 72      |
| Net income   |              |        |                 |       |                            |                 |                       |                                   | 82,289                                | 82,289  |
| Purchase of 21,308 common shares for treasury  |              |        |                 |       |                            | (919)           |                       |                                   |                                       | (919)   |
| Issuances of common shares, net of costs of  | 1,168        | 12     |                 |       | 47,015                     |                 |                       |                                   |                                       | 47,027  |



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|  |        |        |        |        |            |            |           |           |             |    |          |
|--|--------|--------|--------|--------|------------|------------|-----------|-----------|-------------|----|----------|
| \$1.1 million<br>Issuance of<br>preferred<br>shares, net of<br>costs of  |        |        | 5,400  | 54     | 130,746    |            |           |           |             |    | 130,800  |
| \$1.6 million<br>Adoption of<br>SAB 108  |        |        |        |        |            |            |           | 7,656     |             |    | 7,656    |
| Stock option<br>exercises, net   | 16     |        |        |        | 306        | (231)      |           |           |             |    | 75       |
| Dividends to<br>common and<br>preferred<br>shareholders  |        |        |        |        |            |            |           | (84,635)  |             |    | (84,635) |
| Balance at<br>December 31,<br>2006   | 27,153 | \$ 272 | 10,900 | \$ 109 | \$ 883,639 | \$(15,500) | \$(3,525) | \$ 12,501 | \$ (24,814) | \$ | 852,682  |
| Shares issued<br>to Trustees   | 6      |        |        |        | 354        |            |           |           |             |    | 354      |
| Issuance of<br>nonvested<br>shares,<br>including<br>nonvested<br>shares issued<br>for the<br>payment of<br>bonuses | 129    | 1      |        |        | 1,334      |            |           |           |             |    | 1,335    |
| Amortization<br>of nonvested<br>shares   |        |        |        |        | 2,537      |            |           |           |             |    | 2,537    |
| Share option<br>expense  |        |        |        |        | 422        |            |           |           |             |    | 422      |
| Foreign<br>currency<br>translation<br>adjustment   |        |        |        |        |            |            |           | 30,022    |             |    | 30,022   |
| Change in<br>unrealized<br>loss on<br>derivatives  |        |        |        |        |            |            |           | (6,529)   |             |    | (6,529)  |
| Net income   |        |        |        |        |            |            |           |           | 104,664     |    | 104,664  |
| Purchase of<br>24,740<br>common<br>shares for<br>treasury  |        |        |        |        |            |            |           |           |             |    | (1,448)  |
| Issuances of<br>common<br>shares, net of   | 1,409  | 14     |        |        | 74,437     |            |           |           |             |    | 74,451   |

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|  |        |        |         |        |              |             |            |           |             |              |
|--|--------|--------|---------|--------|--------------|-------------|------------|-----------|-------------|--------------|
| costs of<br>\$1.7 million<br>Issuance of<br>preferred<br>shares, net of<br>costs of<br>\$3.9 million               |        |        | 4,600   | 46     | 111,079      |             |            |           |             | 111,125      |
| Redemption<br>of Series A<br>preferred<br>shares   |        |        | (2,300) | (23)   | (55,412)     |             |            | (2,101)   |             | (57,536)     |
| Stock option<br>exercises, net   | 181    | 2      |         |        | 5,208        | (5,941)     |            |           |             | (731)        |
| Dividends to<br>common and<br>preferred<br>shareholders  |        |        |         |        |              |             |            | (103,455) |             | (103,455)    |
| Balance at<br>December 31,<br>2007   | 28,878 | \$ 289 | 13,200  | \$ 132 | \$ 1,023,598 | \$ (22,889) | \$ (3,525) | \$ 35,994 | \$ (25,706) | \$ 1,007,893 |
| Shares issued<br>to Trustees   | 6      |        |         |        | 332          |             |            |           |             | 332          |
| Issuance of<br>nonvested<br>shares,<br>including<br>nonvested<br>shares issued<br>for the<br>payment of<br>bonuses | 121    | 1      |         |        | 1,991        |             |            |           |             | 1,992        |
| Amortization<br>of nonvested<br>shares   |        |        |         |        | 3,179        |             |            |           |             | 3,179        |
| Share option<br>expense  |        |        |         |        | 446          |             |            |           |             | 446          |
| Foreign<br>currency<br>translation<br>adjustment   |        |        |         |        |              |             |            | (48,760)  |             | (48,760)     |
| Change in<br>unrealized<br>gain on<br>derivatives  |        |        |         |        |              |             |            | 6,597     |             | 6,597        |
| Payment<br>received on<br>shareholder<br>loan  |        |        |         |        |              |             | 1,600      |           |             | 1,600        |
| Net income   |        |        |         |        |              | (777)       |            |           | 129,976     | 129,976      |
|  |        |        |         |        |              |             |            |           |             | (777)        |

|   |        |        |        |        |              |             |            |            |             |              |
|---|--------|--------|--------|--------|--------------|-------------|------------|------------|-------------|--------------|
| Purchase of 16,771 common shares for treasury               |        |        |        |        |              |             |            |            |             |              |
| Issuances of common shares, net of costs of \$10.7 million  | 4,647  | 46     |        |        | 224,306      |             |            |            |             | 224,352      |
| Issuance of preferred shares, net of costs of \$2.8 million |        |        | 3,450  | 35     | 83,403       |             |            |            |             | 83,438       |
| Stock option exercises, net                                 | 82     | 1      |        |        | 2,543        | (2,691)     |            |            |             | (147)        |
| Dividends to common and preferred shareholders              |        |        |        |        |              |             |            | (132,687)  |             | (132,687)    |
| Balance at December 31, 2008                                | 33,734 | \$ 337 | 16,650 | \$ 167 | \$ 1,339,798 | \$ (26,357) | \$ (1,925) | \$ (6,169) | \$ (28,417) | \$ 1,277,434 |

See accompanying notes to consolidated financial statements.

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**ENTERTAINMENT PROPERTIES TRUST**  
**Consolidated Statements of Comprehensive Income**  
**(Dollars in thousands)**

|   | <b>Year ended December 31,</b> |             |             |
|---|--------------------------------|-------------|-------------|
|   | <b>2008</b>                    | <b>2007</b> | <b>2006</b> |
| Net income                                      | \$ 129,976                     | \$ 104,664  | \$ 82,289   |
| Other comprehensive income (loss):              |                                |             |             |
| Foreign currency translation adjustment         | (48,760)                       | 30,022      | (973)       |
| Change in unrealized gain (loss) on derivatives | 6,597                          | (6,529)     | 72          |
| Comprehensive income                            | \$ 87,813                      | \$ 128,157  | \$ 81,388   |

See accompanying notes to consolidated financial statements.

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**ENTERTAINMENT PROPERTIES TRUST**  
**Consolidated Statements of Cash Flows**  
(Dollars in thousands)

|   | <b>Year Ended December 31,</b> |             |             |
|---|--------------------------------|-------------|-------------|
|   | <b>2008</b>                    | <b>2007</b> | <b>2006</b> |
| Operating activities:   |                                |             |             |
| Net income  | \$ 129,976                     | \$ 104,664  | \$ 82,289   |
| Adjustments to reconcile net income to net cash provided by operating activities: |                                |             |             |
| Minority interests  | (2,353)                        | (1,370)     |             |
| Gain on sale of land  |                                | (129)       | (345)       |
| Income from discontinued operations   | (93)                           | (4,079)     | (650)       |
| Costs associated with loan refinancing (non-cash portion)                         |                                |             | 673         |
| Equity in income from joint ventures  | (1,962)                        | (1,583)     | (759)       |
| Distributions from joint ventures   | 2,262                          | 1,239       | 874         |
| Depreciation and amortization   | 43,829                         | 37,422      | 31,021      |
| Amortization of deferred financing costs  | 3,290                          | 2,905       | 2,713       |
| Share-based compensation expense to management and trustees                       | 3,965                          | 3,249       | 4,869       |
| Increase in mortgage notes accrued interest receivable                            | (20,519)                       | (14,921)    | (8,861)     |
| Increase in accounts and notes receivable   | (3,832)                        | (4,642)     | (5,404)     |
| Increase in direct financing lease receivable                                     | (2,285)                        |             |             |
| Increase in other assets  | (1,614)                        | (2,366)     | (3,122)     |
| Increase (decrease) in accounts payable and accrued liabilities                   | (2,534)                        | 5,923       | 2,635       |
| Increase (decrease) in unearned rents   | (1,848)                        | 4,381       | (281)       |
| Net operating cash provided by continuing operations                              | 146,282                        | 130,693     | 105,652     |
| Net operating cash provided (used) by discontinued operations                     | (26)                           | 897         | 784         |
| Net cash provided by operating activities   | 146,256                        | 131,590     | 106,436     |
| Investing activities:   |                                |             |             |
| Acquisition of rental properties and other assets                                 | (142,861)                      | (77,710)    | (89,727)    |
| Investment in consolidated joint ventures   |                                | (31,291)    |             |
| Investment in unconsolidated joint ventures                                       | (117)                          | (39,711)    |             |
| Investment in mortgage notes receivable   | (180,730)                      | (222,558)   | (23,697)    |
| Investment in promissory notes receivable   | (10,149)                       | (21,310)    | (3,500)     |
| Investment in direct financing lease, net   | (124,043)                      |             |             |
| Net proceeds from sale of land  |                                | 694         | 591         |
| Additions to properties under development   | (35,038)                       | (35,770)    | (45,693)    |
| Net cash used in investing activities of continuing operations                    | (492,938)                      | (427,656)   | (162,026)   |
| Net proceeds from sale of real estate from discontinued operations                | 986                            | 7,008       |             |
| Net cash used in investing activities   | (491,952)                      | (420,648)   | (162,026)   |
| Financing activities:   |                                |             |             |

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|  |           |           |           |
|--|-----------|-----------|-----------|
| Proceeds from long-term debt facilities            | 548,490   | 742,975   | 360,286   |
| Principal payments on long-term debt               | (346,156) | (473,989) | (392,942) |
| Deferred financing fees paid                       | (3,899)   | (2,553)   | (2,979)   |
| Net proceeds from issuance of common shares        | 224,214   | 74,451    | 47,027    |
| Net proceeds from issuance of preferred shares     | 83,438    | 111,125   | 130,800   |
| Redemption of preferred shares                     |           | (57,536)  |           |
| Impact of stock option exercises, net              | (147)     | (731)     | 75        |
| Proceeds from payment on shareholder loan          | 1,600     |           |           |
| Purchase of common shares for treasury             | (777)     | (1,448)   | (919)     |
| Distributions paid to minority interests           | (637)     | (140)     | (761)     |
| Dividends paid to shareholders                     | (124,930) | (97,815)  | (82,007)  |
| Net cash provided by financing activities          | 381,196   | 294,339   | 58,580    |
| Effect of exchange rate changes on cash            | (588)     | 475       | (122)     |
| Net increase in cash and cash equivalents          | 34,912    | 5,756     | 2,868     |
| Cash and cash equivalents at beginning of the year | 15,170    | 9,414     | 6,546     |
| Cash and cash equivalents at end of the year       | \$ 50,082 | \$ 15,170 | \$ 9,414  |

Supplemental information continued on next page.

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**ENTERTAINMENT PROPERTIES TRUST**  
**Consolidated Statements of Cash Flows**  
**(Dollars in thousands)**

Continued from previous page.

|  | <b>Year ended December 31,</b> |             |             |
|--|--------------------------------|-------------|-------------|
|  | <b>2008</b>                    | <b>2007</b> | <b>2006</b> |
| Supplemental schedule of non-cash activity:  |                                |             |             |
| Acquisition of interest in joint venture assets in exchange for assumption of debt and other liabilities at fair value | \$                             | \$ 136,029  | \$          |
| Transfer of property under development to rental property  | \$ 26,742                      | \$ 32,595   | \$ 46,104   |
| Issuance of nonvested shares, including nonvested shares issued for payment of bonuses                                 | \$ 6,028                       | \$ 8,756    | \$ 3,602    |
| Supplemental disclosure of cash flow information:  |                                |             |             |
| Cash paid during the year for interest   | \$ 69,160                      | \$ 56,664   | \$ 46,126   |
| Cash paid (received) during the year for income taxes  | \$ (429)                       | \$ 419      | \$ 378      |
| See accompanying notes to consolidated financial statements.   |                                |             |             |

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**ENTERTAINMENT PROPERTIES TRUST**  
**Notes to Consolidated Financial Statements**  
**December 31, 2008, 2007 and 2006**

**1. Organization**

**Description of Business**

Entertainment Properties Trust (the Company) is a Maryland real estate investment trust (REIT) organized on August 29, 1997. The Company develops, owns, leases and finances megaplex theatres, entertainment retail centers (centers generally anchored by an entertainment component such as a megaplex theatre and containing other entertainment-related properties), and destination recreational and specialty properties. The Company's properties are located in the United States and Canada.

**2. Summary of Significant Accounting Policies**

**Principles of Consolidation**

The consolidated financial statements include the accounts of Entertainment Properties Trust and its subsidiaries, all of which are wholly-owned except for those subsidiaries discussed below.

As further explained in Note 7, the Company owns 96% of the membership interests of VinREIT, LLC (VinREIT). Minority interest expense related to VinREIT was \$277 thousand and \$66 thousand for the years ended December 31, 2008 and 2007, respectively, representing GWP's portion of the annual cash flow. There was no minority interest expense related to VinREIT for the year ended December 31, 2006. Total minority interest in VinREIT included in the accompanying consolidated balance sheets was \$117 thousand and \$66 thousand at December 31, 2008 and 2007, respectively.

As further explained in Note 7, New Roc Associates, LP (New Roc) is owned 71.4% by the Company. There was no minority interest expense related to New Roc for the years ended December 31, 2008, 2007 and 2006. Total minority interest in New Roc included in the accompanying consolidated balance sheets was \$3.9 million and \$4.3 million at December 31, 2008 and 2007, respectively.

The Company consolidates certain entities if it is deemed to be the primary beneficiary in a variable interest entity (VIE), as defined in FIN No. 46(R), Consolidation of Variable Interest Entities (FIN 46R). The equity method of accounting is applied to entities in which the Company is not the primary beneficiary as defined in FIN 46R, or does not have effective control, but can exercise influence over the entity with respect to its operations and major decisions. As further explained in Note 7, LC White Plains Retail LLC, LC White Plains Recreation LLC and Cappelli Group LLC (together the White Plains entities), as well as Suffolk Retail LLC (Suffolk), are VIEs in which the Company has been deemed to be the primary beneficiary. Accordingly, the financial statements of these VIEs have been consolidated into the Company's financial statements. Total minority interest income related to the White Plains entities was \$2.6 million and \$1.4 million, respectively, for the years ended December 31, 2008 and 2007. There was no minority interest income or expense related to the White Plains entities for the year ended December 31, 2006. There was no minority interest income or expense related to Suffolk for the years ended December 31, 2008, 2007 or 2006. Total minority interest in the White Plains



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**ENTERTAINMENT PROPERTIES TRUST**  
**Notes to Consolidated Financial Statements**  
**December 31, 2008, 2007 and 2006**

entities was \$11.2 million and \$13.8 million as of December 31, 2008 and 2007, respectively. Total minority interest in Suffolk was \$3.0 thousand as of December 31, 2008 and 2007.

**Use of Estimates**

Management of the Company has made a number of estimates and assumptions relating to the reporting of assets and liabilities and the disclosure of contingent assets and liabilities to prepare these consolidated financial statements in conformity with accounting principles generally accepted in the United States of America. Actual results could differ from those estimates.

**Rental Properties**

Rental properties are carried at cost less accumulated depreciation. Costs incurred for the acquisition and development of the properties are capitalized. Depreciation is computed using the straight-line method over the estimated useful lives of the assets, which generally are estimated to be 40 years for buildings and 3 to 25 years for furniture, fixtures and equipment. Tenant improvements, including allowances, are depreciated over the shorter of the base term of the lease or the estimated useful life. Expenditures for ordinary maintenance and repairs are charged to operations in the period incurred. Significant renovations and improvements which improve or extend the useful life of the asset are capitalized and depreciated over their estimated useful life.

The Company applies Statement of Financial Accounting Standards (SFAS) No. 144, *Accounting for the Impairment or Disposal of Long-Lived Assets*, for the recognition and measurement of impairment of long-lived assets to be held and used. Management reviews a property for impairment whenever events or changes in circumstances indicate that the carrying value of a property may not be recoverable. The review of recoverability is based on an estimate of undiscounted future cash flows expected to result from its use and eventual disposition. If impairment exists due to the inability to recover the carrying value of the property, an impairment loss is recorded to the extent that the carrying value of the property exceeds its estimated fair value.

**Accounting for Acquisitions**

The Company considers the fair values of both tangible and intangible assets acquired or liabilities assumed when allocating the purchase price of acquisitions (plus any capitalized costs incurred during the acquisition). Tangible assets may include land, building, tenant improvements, furniture, fixtures and equipment. Intangible assets or liabilities may include values assigned to in-place leases (including the separate values that may be assigned to above-market and below-market in-place leases), the value of customer relationships, and any assumed financing that is determined to be above or below market terms.

Most of the Company's rental property acquisitions do not involve in-place leases. In such cases, the cost of the acquisition is allocated to the tangible assets based on recent independent appraisals and management judgment. Because the Company typically executes these leases simultaneously with the purchase of the real estate, no value is ascribed to in-place leases in these transactions.

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**ENTERTAINMENT PROPERTIES TRUST**  
**Notes to Consolidated Financial Statements**  
**December 31, 2008, 2007 and 2006**

For rental property acquisitions involving in-place leases, the fair value of the tangible assets is determined by valuing the property as if it were vacant based on management's determination of the relative fair values of the assets.

Management determines the as if vacant fair value of a property using recent independent appraisals or methods similar to those used by independent appraisers. The aggregate value of intangible assets or liabilities is measured based on the difference between the stated price plus capitalized costs and the property as if vacant.

In determining the fair value of acquired in-place leases, the Company considers many factors. On a lease-by-lease basis, management considers the present value of the difference between the contractual amounts to be paid pursuant to the leases and management's estimate of fair market lease rates. For above market leases, management considers such differences over the remaining non-cancelable lease terms and for below market leases, management considers such differences over the remaining initial lease terms plus any fixed rate renewal periods. The capitalized above-market lease values are amortized as a reduction of rental income over the remaining non-cancelable terms of the respective leases. The capitalized below market lease values are amortized as an increase to rental income over the remaining initial lease terms plus any fixed rate renewal periods. Management considers several factors in determining the discount rate used in the present value calculations, including the credit risks associated with the respective tenants. If debt is assumed in the acquisition, the determination of whether it is above or below market is based upon a comparison of similar financing terms for similar rental properties at the time of the acquisition.

The fair value of acquired in-place leases also includes management's estimate, on a lease-by-lease basis, of the present value of the following amounts: (i) the value associated with avoiding the cost of originating the acquired in-place leases (i.e. the market cost to execute the leases, including leasing commissions, legal and other related costs); (ii) the value associated with lost revenue related to tenant reimbursable operating costs estimated to be incurred during the assumed re-leasing period, (i.e. real estate taxes, insurance and other operating expenses); (iii) the value associated with lost rental revenue from existing leases during the assumed re-leasing period; and (iv) the value associated with avoided tenant improvement costs or other inducements to secure a tenant lease. These values are amortized over the remaining initial lease term of the respective leases.

The Company also determines the value, if any, associated with customer relationships considering factors such as the nature and extent of the Company's existing business relationship with the tenants, growth prospects for developing new business with the tenants and expectation of lease renewals. The value of customer relationship intangibles is amortized over the remaining initial lease terms plus any renewal periods.

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**ENTERTAINMENT PROPERTIES TRUST**  
**Notes to Consolidated Financial Statements**  
**December 31, 2008, 2007 and 2006**

Management of the Company reviews the carrying value of intangible assets for impairment on an annual basis. Intangible assets consist of the following at December 31 (in thousands):

|   | <b>2008</b> | <b>2007</b> |
|---|-------------|-------------|
| In-place leases, net of accumulated amortization of \$7.1 million and \$5.4 million, respectively | \$ 11,707   | 15,835      |
| Goodwill  | 693         | 693         |
| Total intangible assets, net  | \$ 12,400   | 16,528      |

In-place leases, net at December 31, 2008 of approximately \$11.7 million, relate to four entertainment retail centers in Ontario, Canada that were purchased on March 1, 2004, one entertainment retail center in Burbank, California that was purchased on March 31, 2005 and one entertainment retail center in White Plains, New York that was purchased on May 8, 2007. Goodwill at December 31, 2008 and 2007 relates solely to the acquisition of New Roc that was acquired on October 27, 2003. Amortization expense related to in-place leases is computed using the straight-line method and was \$2.7 million, \$1.8 million and \$1.1 million for the years ended December 31, 2008, 2007 and 2006, respectively. The weighted average life for these in-place leases at December 31, 2008 is 6.4 years. Future amortization of in-place leases at December 31, 2008 is as follows (in thousands):

|            | <b>Amount</b> |
|------------|---------------|
| Year:      |               |
| 2009       | \$ 3,268      |
| 2010       | 1,458         |
| 2011       | 1,458         |
| 2012       | 1,458         |
| 2013       | 1,456         |
| Thereafter | 2,609         |
| Total      | \$ 11,707     |

**Deferred Financing Costs**

Deferred financing costs are amortized over the terms of the related long-term debt obligations or mortgage note receivable as applicable.

**Capitalized Development Costs**

The Company capitalizes certain costs that relate to property under development including interest and internal legal personnel costs.

**Operating Segment**

The Company aggregates the financial information of all its investments into one reportable segment because the investments all have similar economic characteristics and because the Company does not internally report and is not internally organized by investment or transaction type.

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**ENTERTAINMENT PROPERTIES TRUST**  
**Notes to Consolidated Financial Statements**  
**December 31, 2008, 2007 and 2006**

**Revenue Recognition**

Rents that are fixed and determinable are recognized on a straight-line basis over the minimum terms of the leases. Base rent escalation on leases that are dependent upon increases in the Consumer Price Index (CPI) is recognized when known. Straight-line rent receivable is included in accounts receivable and was \$23.1 million and \$20.8 million at December 31, 2008 and 2007, respectively. In addition, most of the Company's tenants are subject to additional rents if gross revenues of the properties exceed certain thresholds defined in the lease agreements (percentage rents). Percentage rents are recognized at the time when specific triggering events occur as provided by the lease agreements. Percentage rents of \$1.7 million, \$2.1 million and \$1.6 million were recognized for the years ended December 31, 2008, 2007 and 2006, respectively. Lease termination fees are recognized when the related leases are canceled and the Company has no obligation to provide services to such former tenants. Termination fees of \$4.1 million were recognized for the year ended December 31, 2006. No termination fees were recognized during the years ended December 31, 2007 and 2008.

In accordance with Staff Accounting Bulletin No. 108, "Considering the Effects of Prior Year Misstatements when Quantifying Misstatements in Current Year Financial Statements" (SAB 108), the Company increased distributions in excess of net income as of January 1, 2006 by \$7.7 million, and increased rental revenue and net income for the first three quarters of fiscal 2006 by \$1.0 million to reflect an adjustment for the recognition of straight line rent revenues and receivables related to certain leases executed or acquired between 1998 and 2003. See Note 20 for additional information on SAB 108.

Direct financing lease income is recognized on the effective interest method to produce a level yield on funds not yet recovered. Estimated unguaranteed residual values at the date of lease inception represent management's initial estimates of fair value of the leased assets at the expiration of the lease, not to exceed original cost. Significant assumptions used in estimating residual values include estimated net cash flows over the remaining lease term and expected future real estate values. The estimated unguaranteed residual value is reviewed on an annual basis to determine if there is other than temporary impairments. The Company evaluates the collectibility of its direct financing lease receivable and unguaranteed residual value to determine whether they are impaired. A receivable is considered to be impaired when, based on current information and events, it is probable that the Company will be unable to collect all amounts due according to the existing contractual terms. When a receivable is considered to be impaired, the amount of loss is calculated by comparing the recorded investment to the value determined by discounting the expected future cash flows at the receivable's effective interest rate or to the value of the underlying collateral if the receivable is collateralized.

**Allowance for Doubtful Accounts**

Accounts receivable is reduced by an allowance for amounts that may become uncollectible in the future. The Company's accounts receivable balance is comprised primarily of rents and operating cost recoveries due from tenants as well as accrued rental rate increases to be received over the life of the existing leases. The Company regularly evaluates the adequacy of its allowance for doubtful accounts. The evaluation primarily consists of reviewing past due account balances and considering such factors as the credit quality of the Company's tenants, historical trends of the

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**ENTERTAINMENT PROPERTIES TRUST**  
**Notes to Consolidated Financial Statements**  
**December 31, 2008, 2007 and 2006**

tenant and/or other debtor, current economic conditions and changes in customer payment terms. Additionally, with respect to tenants in bankruptcy, the Company estimates the expected recovery through bankruptcy claims and increases the allowance for amounts deemed uncollectible. If the Company's assumptions regarding the collectibility of accounts receivable prove incorrect, the Company could experience write-offs of the accounts receivable or accrued straight-line rents receivable in excess of its allowance for doubtful accounts. The allowance for doubtful accounts was \$2.3 million and \$1.1 million at December 31, 2008 and 2007.

**Mortgage Notes and Other Notes Receivable**

Mortgage notes and other notes receivable, including related accrued interest receivable, consist of loans originated by the Company and the related accrued and unpaid interest income as of the balance sheet date. Mortgage notes and other notes receivable are initially recorded at the amount advanced to the borrower and the Company defers certain loan origination and commitment fees, net of certain origination costs, and amortizes them over the term of the related loan. The Company evaluates the collectibility of both interest and principal of each of its loans to determine whether it is impaired. A loan is considered to be impaired when, based on current information and events, it is probable that the Company will be unable to collect all amounts due according to the existing contractual terms. When a loan is considered to be impaired, the amount of loss is calculated by comparing the recorded investment to the value determined by discounting the expected future cash flows at the loan's effective interest rate or to the fair value of the underlying collateral if the loan is collateralized less costs to sell. Interest income on performing loans is accrued as earned. Interest income on impaired loans is recognized on a cash basis.

**Income Taxes**

The Company operates in a manner intended to enable it to qualify as a REIT under the Internal Revenue Code (the Code). A REIT which distributes at least 90% of its taxable income to its shareholders each year and which meets certain other conditions is not taxed on that portion of its taxable income which is distributed to its shareholders. The Company intends to continue to qualify as a REIT and distribute substantially all of its taxable income to its shareholders.

In 2004, the Company acquired certain real estate operations that are subject to income tax in Canada. Also in 2004, the Company formed certain taxable REIT subsidiaries, as permitted under the Code, through which it conducts certain business activities. The taxable REIT subsidiaries are subject to federal and state income taxes on their net taxable income. Temporary differences between income for financial reporting purposes and taxable income for the Canadian operations and the taxable REIT subsidiaries relate primarily to depreciation, amortization of deferred financing costs and straight line rents. As of December 31, 2008 and 2007, respectively, the Canadian operations and the taxable REIT subsidiaries had deferred tax assets totaling approximately \$8.7 million and \$8.6 million and deferred tax liabilities totaling approximately \$3.4 million and \$3.5 million. As there is no assurance that the Canadian operations and the taxable REIT subsidiaries will generate taxable income in the future beyond the reversal of temporary taxable differences, the deferred tax assets have been offset by a valuation allowance such that there is no net deferred tax asset at December 31, 2008 and 2007. Furthermore, the Company qualified as a REIT and distributed the necessary amount of taxable income such that

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no federal income taxes were due for the years ended December 31, 2008, 2007 and 2006. Accordingly, no provision for income taxes was recorded for any of those years. If the Company fails to qualify as a REIT in any taxable year, it will be subject to federal income taxes at regular corporate rates (including any applicable alternative minimum tax) and may not be able to qualify as a REIT for four subsequent taxable years. Even if the Company qualifies for taxation as a REIT, the Company is subject to certain state and local taxes on its income and property, and federal income and excise taxes on its undistributed taxable income.

In June 2006, the Financial Accounting Standards Board (FASB) issued FASB Interpretation No. 48, *Accounting for Uncertainty in Income Taxes*. FIN 48 clarifies the accounting for uncertainty in income taxes recognized in an enterprise's financial statements in accordance with SFAS 109, *Accounting for Income Taxes*, and it prescribes a recognition threshold and measurement attribute criteria for the financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return.

The Company adopted the provisions of FIN 48 on January 1, 2007. The Company does not have any material unrecognized tax positions, and therefore, the adoption of FIN 48 did not have a material impact on the Company's financial position or results of operations.

The Company's policy is to recognize estimated interest and penalties as general and administrative expense. The Company believes that it has appropriate support for the income tax positions taken on its tax returns and that its accruals for tax liabilities are adequate for all open years (after 2005 for federal and state and after 2003 for Canada) based on an assessment of many factors including past experience and interpretations of tax laws applied to the facts of each matter.

**Concentrations of Risk**

American Multi-Cinema, Inc. (AMC) is the lessee of a substantial portion (51%) of the megaplex theatre rental properties held by the Company (including joint venture properties) at December 31, 2008 as a result of a series of sale leaseback transactions pertaining to a number of AMC megaplex theatres. A substantial portion of the Company's rental revenues (approximately \$97.4 million or 48%, \$95.6 million or 51%, and \$93.4 million or 56% for the years ended December 31, 2008, 2007 and 2006, respectively) result from the rental payments by AMC under the leases, or its parent, AMC Entertainment, Inc. (AMCE), as the guarantor of AMC's obligations under the leases. AMCE had total assets of \$3.8 billion and \$4.1 billion, total liabilities of \$2.7 billion and \$2.7 billion and total stockholders' equity of \$1.1 billion and \$1.4 billion at April 3, 2008 and March 29, 2007, respectively. AMCE had net earnings of \$43.4 million for the fifty-three weeks ended April 3, 2008 and \$134.1 million for the fifty-two weeks ended March 29, 2007. In addition, AMCE had a net loss of \$67.5 million for the 39 weeks ended January 1, 2009. AMCE has publicly held debt and accordingly, its consolidated financial information is publicly available.

For the years ended December 31, 2008, 2007 and 2006, respectively, approximately \$37.6 million, or 13.1%, \$35.8 million, or 15.2%, and \$32.8 million, or 16.7%, of total revenue was derived from the Company's four entertainment retail centers in Ontario, Canada. For the years

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ended December 31, 2008, 2007 and 2006, respectively, approximately \$54.4 million, or 19.0%, \$48.5 million, or 20.6%, and \$41.7 million, or 21.3%, of our total revenue was derived from the Company's four entertainment retail centers in Ontario, Canada combined with the mortgage financing interest related to the Company's mortgage note receivable held in Canada and initially funded on June 1, 2005. The Company's wholly-owned subsidiaries that hold the Canadian entertainment retail centers, third party debt and mortgage note receivable represent approximately \$219.5 million or 17% and \$233.3 million or 23% of the Company's net assets as of December 31, 2008 and 2007, respectively.

**Cash Equivalents**

Cash equivalents include bank demand deposits and shares of highly liquid institutional money market mutual funds for which cost approximates market value.

**Restricted Cash**

Restricted cash represents cash held for a borrower's debt service reserve for mortgage notes receivable and also deposits required in connection with debt service, payment of real estate taxes and capital improvements.

**Share-Based Compensation**

Share-based compensation is issued to employees of the Company pursuant to the Annual Incentive Program and the Long-Term Incentive Plan, and to Trustees for their service to the Company. Prior to May 9, 2007, all common shares and options to purchase common shares (share options) were issued under the 1997 Share Incentive Plan. The 2007 Equity Incentive Plan was approved by shareholders at the May 9, 2007 annual meeting and this plan replaces the 1997 Share Incentive Plan. Accordingly, all common shares and options to purchase common shares granted on or after May 9, 2007 are issued under the 2007 Equity Incentive Plan.

The Company accounts for share based compensation under the Financial Accounting Standard (SFAS) No. 123R

Share-Based Payment. Share based compensation expense consists of share option expense, amortization of nonvested share grants and shares issued to Trustees for payment of their annual retainers. Share based compensation is included in general and administrative expense in the accompanying consolidated statements of income, and totaled \$4.0 million, \$3.2 million and \$4.9 million for the years ended December 31, 2008, 2007 and 2006, respectively.

***Share Options***

Share options are granted to employees pursuant to the Long-Term Incentive Plan and to Trustees for their service to the Company. The fair value of share options granted is estimated at the date of grant using the Black-Scholes option pricing model. Share options granted to employees vest over a period of five years and share option expense for these options is recognized on a straight-line basis over the vesting period, except for those unvested options held by a retired executive which were fully expensed as of June 30, 2006. Share options granted to Trustees vest immediately but shares issued upon exercise cannot be sold or transferred for a period of one year from the grant date. Share option expense for Trustees is recognized on a straight-line basis over the year of service by the Trustees.

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The expense related to share options included in the determination of net income for the years ended December 31, 2008, 2007 and 2006 was \$446 thousand, \$422 thousand and \$829 thousand (including \$522 thousand in expense recognized related to unvested share options held by a retired executive at the time of his retirement), respectively. The following assumptions were used in applying the Black-Scholes option pricing model at the grant dates: risk-free interest rate of 3.2% to 3.5%, 4.8% and 4.8% to 5.0% in 2008, 2007 and 2006, respectively, dividend yield of 6.7%, 5.2% to 5.4% and 5.8% in 2008, 2007 and 2006, respectively, volatility factors in the expected market price of the Company's common shares of 23.2%, 19.5% to 19.8% and 21.1% in 2008, 2007 and 2006, respectively, no expected forfeitures and an expected life of eight years. The Company uses historical data to estimate the expected life of the option and the risk-free interest rate is based on the U.S. Treasury yield curve in effect at the time of grant. Additionally, expected volatility is computed based on the average historical volatility of the Company's publicly traded shares.

***Nonvested Shares***

The Company grants nonvested shares to employees pursuant to both the Annual Incentive Program and the Long-Term Incentive Plan. The Company amortizes the expense related to the nonvested shares awarded to employees under the Long-Term Incentive Plan and the premium awarded under the nonvested share alternative of the Annual Incentive Program on a straight-line basis over the future vesting period (usually three to five years), except for those nonvested shares held by a retired executive which were fully expensed as of June 30, 2006.

Total expense recognized related to all nonvested shares was \$3.2 million, \$2.5 million and \$3.9 million for the years ended December 31, 2008, 2007 and 2006, respectively. The expense of \$3.9 million for the year ended December 31, 2006 includes \$852 thousand in expense related to nonvested shares held by a retired executive at the time of his retirement, and \$1.7 million in expense related to nonvested shares from prior years related to the Annual Incentive Program.

***Shares Issued to Trustees***

The Company issues shares to Trustees for payment of their annual retainers. These shares vest immediately but may not be sold for a period of one year from the grant date. This expense is amortized by the Company on a straight-line basis over the year of service by the Trustees. Total expense recognized related to shares issued to Trustees was \$340 thousand, \$290 thousand and \$161 thousand for the years ended December 31, 2008, 2007 and 2006, respectively.

***Foreign Currency Translation***

The Company accounts for the operations of its Canadian properties and mortgage note in Canadian dollars. The assets and liabilities related to the Company's Canadian properties and mortgage note are translated into U.S. dollars at current exchange rates; revenues and expenses are translated at average exchange rates. Resulting translation adjustments are recorded as a separate component of comprehensive income.

***Derivative Instruments***

The Company acquired certain derivative instruments during 2008, 2007 and 2006 to reduce exposure to fluctuations in foreign currency exchange rates and variable rate interest rates. The



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Company has established policies and procedures for risk assessment and the approval, reporting and monitoring of derivative financial instrument activities. These derivatives consist of foreign currency forward contracts, cross currency swaps and interest rate swaps.

The Company measures its derivative instruments at fair value and records them in the Consolidated Balance Sheets as assets or liabilities. The effective portions of changes in fair value of cash flow hedges are reported in Other Comprehensive Income (OCI) and subsequently reclassified into earnings when the hedged item affects earnings. Changes in the fair value of foreign currency hedges that are designated and effective as net investment hedges are included in the cumulative translation component of OCI to the extent they are economically effective and subsequently reclassified to earnings when the hedged investments are sold or otherwise disposed of.

**Reclassifications**

Certain reclassifications have been made to the prior period amounts to conform to the current period presentation.

**3. Rental Properties**

The following table summarizes the carrying amounts of rental properties as of December 31, 2008 and 2007 (in thousands):

|                                 | <b>2008</b>  | <b>2007</b> |
|---------------------------------|--------------|-------------|
| Buildings and improvements      | \$ 1,452,500 | 1,412,812   |
| Furniture, fixtures & equipment | 62,090       | 25,005      |
| Land                            | 435,105      | 388,411     |
|                                 | 1,949,695    | 1,826,228   |
| Accumulated depreciation        | (214,078)    | (177,607)   |
| Total                           | \$ 1,735,617 | 1,648,621   |

Depreciation expense on rental properties was \$40.2 million, \$34.8 million and \$29.1 million for the years ended December 31, 2008, 2007 and 2006, respectively.

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**4. Investment in Mortgage Notes**

Investment in mortgage notes, including related accrued interest receivable, at December 31, 2008 and 2007 consists of the following (in thousands):

|  | <b>2008</b>       | <b>2007</b>    |
|--|-------------------|----------------|
| (1) Mortgage note and related accrued interest receivable, LIBOR plus 3.5%, due on demand          | \$ 3,651          | 3,515          |
| (2) Mortgage note and related accrued interest receivable, 10.00%, due April 2, 2010               | 29,735            | 26,916         |
| (3) Mortgage note and related accrued interest receivable, 15.00%, due June 2, 2010-May 31, 2013   | 103,289           | 103,661        |
| (4) Mortgage note and related accrued interest receivable, 9.00%, due September 10, 2010           | 134,150           |                |
| (5) Mortgage note and related accrued interest receivable, LIBOR plus 3.5%, due September 30, 2012 | 134,948           | 95,718         |
| (6) Mortgage note, 9.53%, due March 10, 2027   | 8,000             | 8,000          |
| (7) Mortgage notes, 10.15%, due April 3, 2027  | 62,500            | 56,600         |
| (8) Mortgage note, 9.40%, due October 30, 2027   | 32,233            | 31,000         |
| (9) Accrued interest receivable related to guarantee   |                   | 32             |
| <b>Total</b>   | <b>\$ 508,506</b> | <b>325,442</b> |

(1) On December 28, 2007, a wholly-owned subsidiary of the Company entered into a secured first mortgage loan agreement for \$27.0 million with Prairie Creek Properties, LLC for the development of an approximately 9,000 seat amphitheatre in Hoffman Estates, Illinois.

The Company advanced \$3.5 million during the year ended December 31, 2007 under this agreement. The secured property is approximately 10 acres of development land located in Hoffman Estates, Illinois. The carrying value of this mortgage note receivable at December 31, 2008, was \$3.7 million, including related accrued interest receivable of \$140 thousand. This loan is guaranteed by certain individuals associated with Prairie Creek Properties, LLC and, if the project is completed, the loan will have a maturity date that will be 20 years subsequent to the completion of the project. Prairie Creek Properties, LLC is a VIE, but it was determined that the Company was not the primary beneficiary of

this VIE. The Company's maximum exposure to loss associated with Prairie Creek Properties, LLC is limited to the Company's outstanding mortgage note and related accrued interest receivable.

- (2) On April 4, 2007, a wholly-owned subsidiary of the Company entered into a secured first mortgage loan agreement for \$25.0 million with Peak Resorts, Inc. (Peak) for the further development of Mount Snow. The loan is secured by approximately 696 acres of development land. The carrying value of this mortgage note receivable at December 31, 2008 was \$29.7 million, including related accrued interest receivable of \$4.7 million. All principal and accrued interest from inception

of the loan is  
due at maturity.

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- (3) The Company's second mortgage note and related accrued interest receivable is denominated in Canadian dollars (CAD) and during the year ended December 31, 2008, a wholly-owned subsidiary of the Company invested an additional CAD \$5.0 million (\$5.1 million U.S.) in the second mortgage note receivable from Metropolis Limited Partnership (the Partnership) related to the construction of Toronto Life Square, a 13 level entertainment retail center in downtown Toronto that was completed in May 2008 for a total cost of approximately CAD \$330 million. The loan is

secured by this property. Consistent with the previous advances on this project, each advance has a five year stated term and bears interest at 15%. A group of banks (the bank syndicate) has provided first mortgage construction financing to the Partnership totaling CAD \$119.5 million (\$98.1 million U.S.) as of December 31, 2008.

Additionally, as of December 31, 2008, the Company had posted irrevocable stand-by letters of credit related to this project totaling \$7.6 million which are expected to be cancelled or drawn upon during 2009. Interest accrues on these outstanding letters of credit at a rate of 12% (15% if drawn upon).

During May 2008, the

Partnership exercised its option to extend by six months the 25% principal payment and all accrued interest from inception that was due on May 31, 2008 to November 30, 2008.

Additionally, in conjunction with the extension of the first mortgage by the bank syndicate to February 27, 2009, the Company agreed to extend the 25% principal payment due, plus all accrued interest from inception, to March 2, 2009. See Note 21 for additional discussion regarding this second mortgage note receivable.

The Company received origination fees of CAD \$250 thousand (\$237 thousand U.S.) and CAD \$400 thousand (\$353 thousand U.S.) for the years ended December 31,



2007 and 2006, respectively, in connection with this second mortgage note receivable and the fees were amortized through May 31, 2008.

- (4) On August 20, 2008, a wholly-owned subsidiary of the Company provided a secured first mortgage loan of \$225.0 million to Concord Resorts, LLC related to a planned resort development in Sullivan County, New York. The total project is expected to consist of a casino complex and a 1,580 acre resort complex. The resort complex is expected to consist of a 125-room spa hotel, a 350-room waterpark style hotel, a convention center and support facilities, a waterpark, two golf courses, and a retail and

residential development. The Company's investment is secured by a first mortgage on the resort complex real estate. The Company has certain rights to convert its mortgage interest into fee ownership as the project is further developed. The loan is guaranteed by Louis R. Cappelli and has a maturity date of September 10, 2010 with 105% of the outstanding principal balance due at payoff. This note requires a debt service reserve to be maintained that was initially funded during August of 2008 with \$4 million from the initial advance. An additional \$21 million is anticipated to be funded to the debt service reserve with the Company's next expected advance. Monthly interest

only payments  
are transferred  
to the Company  
from the debt  
service reserve  
and the unpaid  
principal  
balance bears  
interest at 9.0%  
until the first  
anniversary of  
the loan, on  
which the  
interest rate  
increases to  
11.0% for the  
remaining term.  
The Company  
charges a  
commitment fee  
equal to 3% of  
the

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amount advanced. During the year ended December 31, 2008, the Company advanced \$133.1 million under this agreement. The commitment fees, interest payments and 5% additional principal payment, net of direct cost incurred, are recognized as interest income using the effective interest method over the term of the loan (weighted average effective interest rate was 13.9% at December 31, 2008). Accordingly, the net carrying value of this mortgage note receivable at December 31, 2008 was \$134.2 million, including related accrued interest receivable of \$1.0 million. In conjunction

with the investment in Concord Resorts, LLC, the Company obtained a secured mortgage loan commitment in the amount of \$112.5 million as described in Note 9.

- (5) On March 13, 2007, a wholly-owned subsidiary of the Company entered into a secured mortgage loan agreement for \$93.0 million with a maturity date of March 12, 2012 with SVV I, LLC for the development of a water-park anchored entertainment village. This mortgage loan agreement was subsequently amended to \$175.0 million with a maturity date of September 30, 2012 and is expected to be amended again to \$163.0 million. The Company advanced \$39.3 million and

\$95.0 million during the years ended December 31, 2008 and 2007, respectively, under this agreement. The secured property is approximately 368 acres of development land located in Kansas City, Kansas. The carrying value of this mortgage note receivable at December 31, 2008 was \$134.9 million, including related accrued interest receivable of \$618 thousand. SVVI has the choice of either making monthly interest payments or receiving advances on the mortgage note receivable to pay such monthly interest. This loan is guaranteed by the Schlitterbahn New Braunfels Group (Bad-Schloss, Inc., Waterpark Management, Inc., Golden Seal Investments, Inc., Liberty

Partnership, Ltd., Henry Condo I, Ltd., and Henry-Walnut, Ltd.) which owns the Schlitterbahn water-park in New Braunfels, Texas. SVV I, LLC is a VIE, but it was determined that the Company was not the primary beneficiary of this VIE. The Company's maximum exposure to loss associated with SVVI, LLC is limited to the Company's outstanding mortgage note and related accrued interest receivable.

- (6) On March 10, 2006, a wholly-owned subsidiary of the Company provided a secured mortgage loan of \$8.0 million to SNH Development, Inc. The secured property is the Crotched Mountain Ski Resort located in Bennington, New Hampshire. The

property serves the Boston and Southern New Hampshire markets and has approximately 308 acres. This loan is guaranteed by Peak, which operates the property. Peak is currently required to fund debt service reserves to maintain a minimum balance of four months of debt service payments. Monthly interest payments are transferred to the Company from these debt service reserves. Annually, this interest rate increases based on a formula dependent in part on increases in the CPI.

- (7) On April 4, 2007, a wholly-owned subsidiary of the Company entered into two secured first mortgage loan agreements totaling \$73.5 million with Peak. The Company advanced



\$5.9 million and \$56.6 million during the years ended December 31, 2008 and 2007 under these agreements. The loans are secured by two ski resorts located in Vermont and New Hampshire. Mount Snow is approximately 2,378 acres and is located in both West Dover and Wilmington, Vermont. Mount Attitash is approximately 1,250 acres and is located in Bartlett, New Hampshire. Peak is currently required to fund debt service reserves to maintain a minimum balance of four months of debt service payments. Monthly interest payments are transferred to

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the Company  
from these debt  
service reserves.  
Annually, this  
interest rate  
increases based  
on a formula  
dependent in  
part on  
increases in the  
CPI.

- (8) On October 30,  
2007, a  
wholly-owned  
subsidiary of the  
Company  
entered into a  
secured first  
mortgage loan  
agreement for  
\$31.0 million  
with Peak,  
which was  
subsequently  
amended to  
\$41.0 million.  
The Company  
advanced  
\$1.2 million and  
\$31.0 million  
during the years  
ended  
December 31,  
2008 and 2007,  
respectively,  
under this  
agreement. The  
loan is secured  
by seven ski  
resorts located  
in Missouri,  
Indiana, Ohio  
and  
Pennsylvania

with a total of approximately 1,431 acres.

Peak is currently required to fund debt service reserves to maintain a minimum balance of four months of debt service payments.

Monthly interest payments are transferred to the Company from these debt service reserves.

Annually, this interest rate increases based on a formula dependent in part on increases in the CPI.

- (9) On October 31, 2007, a wholly-owned subsidiary of the Company entered into an agreement to guarantee the payment of certain economic development revenue bonds with a total principal amount of \$22.0 million, maturing on October 31, 2037 and issued to Southern Theatres for the

purpose of financing the development and construction of three megaplex theatres in Louisiana. The Company earns a fee at an annual rate of 1.75% of the principal amount of the bonds, and the fee is payable by Southern Theatres on a monthly basis.

**5. Investment in a Direct Financing Lease**

The Company's investment in a direct financing lease relates to the Company's master lease of 22 public charter school properties. Investment in a direct financing lease, net represents estimated unguaranteed residual values of leased assets and net unpaid rentals, less related deferred income. The following table summarizes the carrying amounts of investment in a direct financing lease, net as of December 31, 2008 (in thousands):

|  | <b>December 31,<br/>2008</b> |
|--|------------------------------|
| Total minimum lease payments receivable                | \$ 555,869                   |
| Estimated unguaranteed residual value of leased assets | 162,093                      |
| Less deferred income <sup>(1)</sup>                    | (551,873)                    |
| <br>Investment in a direct financing lease, net        | <br>\$ 166,089               |

<sup>(1)</sup> Deferred income is net of \$1.7 million of initial direct costs.

There was no investment in a direct financing lease for the year ended December 31, 2007. Additionally, the Company has determined that no allowance for losses was necessary at December 31, 2008.

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The Company's direct financing lease has expiration dates ranging from approximately 23 to 25 years. Future minimum rentals receivable on this direct financing lease at December 31, 2008 are as follows (in thousands):

|            | <b>Amount</b>  |
|------------|----------------|
| Year:      |                |
| 2009       | \$ 16,393      |
| 2010       | 16,766         |
| 2011       | 17,269         |
| 2012       | 17,787         |
| 2013       | 18,320         |
| Thereafter | 469,334        |
| <br>Total  | <br>\$ 555,869 |

**6. Unconsolidated Real Estate Joint Ventures**

At December 31, 2008, the Company had a 21.7% and 21.9% investment interest in two unconsolidated real estate joint ventures, Atlantic-EPR I and Atlantic-EPR II, respectively. The Company accounts for its investment in these joint ventures under the equity method of accounting.

The Company recognized income of \$538, \$491 and \$464 (in thousands) from its investment in the Atlantic-EPR I joint venture during 2008, 2007 and 2006, respectively. The Company also received distributions from Atlantic-EPR I of \$602, \$556 and \$533 (in thousands) during 2008, 2007 and 2006, respectively. Condensed financial information for Atlantic-EPR I is as follows as of and for the years ended December 31, 2008, 2007 and 2006 (in thousands):

|                               | <b>2008</b> | <b>2007</b> | <b>2006</b> |
|-------------------------------|-------------|-------------|-------------|
| Rental properties, net        | \$27,957    | 28,501      | 29,245      |
| Cash                          | 141         | 141         | 141         |
| Long-term debt (due May 2010) | 15,416      | 15,795      | 16,146      |
| Partners' equity              | 12,582      | 12,844      | 13,134      |
| Rental revenue                | 4,410       | 4,323       | 4,239       |
| Net income                    | 2,402       | 2,280       | 2,170       |

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The Company recognized income of \$324, \$301 and \$295 (in thousands) from its investment in the Atlantic-EPR II joint venture during 2008, 2007 and 2006, respectively. The Company also received distributions from Atlantic-EPR II of \$364, \$345 and \$341 (in thousands) during 2008, 2007 and 2006, respectively. Condensed financial information for Atlantic-EPR II is as follows as of and for the years ended December 31, 2008, 2007 and 2006 (in thousands):

|                                     | <b>2008</b> | <b>2007</b> | <b>2006</b> |
|-------------------------------------|-------------|-------------|-------------|
| Rental properties, net              | \$21,958    | 22,419      | 22,880      |
| Cash                                | 538         | 99          | 68          |
| Long-term debt (due September 2013) | 13,280      | 13,587      | 13,877      |
| Note payable to EPR                 | 117         | 117         | 117         |
| Partners equity                     | 8,459       | 8,613       | 8,789       |
| Rental revenue                      | 2,867       | 2,778       | 2,778       |
| Net income                          | 1,331       | 1,304       | 1,287       |

The joint venture agreements for Atlantic-EPR I and Atlantic-EPR II allow the Company's partner, Atlantic of Hamburg, Germany (Atlantic), to exchange up to a maximum of 10% of its ownership interest per year in each of the joint ventures for common shares of the Company or, at the discretion of the Company, the cash value of those shares as defined in each of the joint venture agreements. Atlantic gave the Company notice during the years ended December 31, 2007 and 2008 that they wanted to exchange a portion of their ownership in Atlantic-EPR I and Atlantic-EPR II. During 2008, the Company paid Atlantic cash of \$133 and \$79 (in thousands) in exchange for additional ownership of 0.7%, for Atlantic-EPR I and Atlantic-EPR II, respectively. In January of 2009, the Company paid Atlantic cash of \$105 (in thousands) in exchange for additional ownership of 0.7% for Atlantic-EPR I. These exchanges did not impact total partners' equity in either Atlantic-EPR I or Atlantic-EPR II.

On April 2, 2008, the Company acquired, through a wholly-owned subsidiary, the remaining 50% ownership interest in CS Fund I and CS Fund I became a wholly-owned subsidiary. Prior to the date of this acquisition, CS Fund I was accounted for as an unconsolidated real estate joint venture. From January 1, 2008 to April 1, 2008, the Company recognized income of \$1.1 million and received distributions of \$1.3 million related to this investment. For the year ended December 31, 2007, the Company recognized income of \$791 (in thousands) and received distributions of \$338 (in thousands) related to this investment.

#### **7. Consolidated Real Estate Joint Ventures**

The Company owns 96% of the membership interests of VinREIT, LLC (VinREIT) and accordingly, the financial statements of VinREIT have been consolidated into the Company's financial statements. VinREIT owns ten wineries and eight vineyards located in California and Washington. The Company's partner in VinREIT is Global Wine Partners (U.S.), LLC (GWP). GWP provides certain consulting services to VinREIT in connection with the acquisition, development, administration and marketing of vineyard properties and wineries.

As detailed in the operating agreement, GWP is entitled to receive a 1% origination fee on winery and vineyard investments and 4% of the annual cash flow of VinREIT after a charge for debt service. GWP may receive additional amounts upon certain events and after certain hurdle rates

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of return are achieved by us. Minority interest expense related to VinREIT was \$277 thousand and \$66 thousand for the years ended December 31, 2008 and 2007, respectively, representing GWP's portion of the annual cash flow. The Company's consolidated statements of income include net income related to VinREIT of \$6.2 million, \$1.9 million and \$30 thousand for the years ended December 31, 2008, 2007 and 2006, respectively. The Company received operating distributions from VinREIT of \$8.6 million and \$1.0 million during 2008 and 2007, respectively. There was no operating distribution received from VinREIT for the year ended December 31, 2006.

The Company acquired a 71.4% ownership interest in New Roc Associates, LP (New Roc) on October 27, 2003 in exchange for cash of \$25 million. New Roc owns an entertainment retail center encompassing 446 thousand square feet located in New Rochelle, New York. The results of New Roc's operations have been included in the consolidated financial statements since the date of acquisition.

As detailed in the limited partnership agreement, income or loss is allocated as follows: first, to the Company to allow its capital account to equal its cumulative preferred return of 10.142% of its original limited partnership investment, or \$2.5 million per year; second, to the Company's partner in New Roc, LRC Industries L.T.D. (LRC), to allow its capital account to equal its cumulative preferred return of 8% of its original limited partnership investment, or \$800 thousand per year; third, as necessary to cause the capital account balance of the Company to equal the sum of its cumulative preference amount plus its invested capital; fourth, as necessary to cause the capital account balance of LRC to equal the sum of its cumulative preference amount plus its invested capital; fifth, after giving effect to the above, among the partners as necessary to cause the portion of each partner's capital account balance exceeding such partner's total preference amount to be in proportion to the partners' then respective ownership interests; and sixth, any balance among the partners in proportion to their then respective ownership interests. The Company's consolidated statements of income include net income related to New Roc of \$1.8, \$1.5 and \$1.9 (in millions) for the years ended December 31, 2008, 2007 and 2006, respectively. As described in Note 8, the Company also had a \$10 million note receivable from LRC at December 31, 2008 and 2007 and a \$5 million note receivable from LRC at December 31, 2006.

As detailed in the limited partnership agreement, cash flow is distributed as follows: first, to the Company to allow for a preferred return of 10.142% of its original limited partnership investment, or \$2.5 million per year, less a prorata share of capital expenditures; second, to LRC to allow for a preferred return of 8% of its original limited partnership investment, or \$800 thousand per year, less a prorata share of capital expenditures; third, in proportion to the partners' ownership interests for any undistributed capital expenditures; and fourth, until all current year distributions and the amount of debt service payments equals \$8.9 million (the Trigger Level), cash flow shall be distributed 85% to the Company and 15% to LRC. After the Trigger Level has been reached for the applicable fiscal year, cash flow shall be distributed 60% to the Company and 40% to LRC. The Company received distributions from New Roc of \$2.4 million, \$2.5 million and \$2.3 million during 2008, 2007 and 2006, respectively.

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At any time after March 8, 2007, LRC has the right to exchange its interest in New Roc for common shares of the Company or the cash value of those shares, at the Company's option, as long as the net operating income (NOI) of New Roc during the preceding 12 months exceeds \$8.9 million, and certain other conditions are met. The number of common shares of the Company issuable to LRC would equal 75% of LRC's capital in New Roc (up to 100% if New Roc's NOI is between \$8.9 million and \$10.0 million), divided by the greater of the Company's book value per share or the average closing price of the Company's common shares. New Roc's NOI was approximately \$8.0 million for the year ended December 31, 2008 and LRC's capital in New Roc was approximately \$3.6 million.

On May 8, 2007, the Company acquired Class A shares in both LC White Plains Retail LLC and LC White Plains Recreation LLC in exchange for \$10.5 million. These two entities (together the White Plains LLCs) own City Center at White Plains, a 390 thousand square foot entertainment retail center in White Plains, New York that is anchored by a 15 screen megaplex theatre operated by National Amusements. The Class A shares have an initial capital account balance of \$10.5 million, a 66.67% voting interest and a 10% preferred return, as further described below.

Cappelli Group, LLC holds the Class B shares in the White Plains LLCs. The Class B shares have an initial capital account balance of \$25 million and a 9% preferred return as further described below. City Center Group LLC holds the Class C and Class D shares in the White Plains LLCs. The Class C and Class D shares each have an initial capital account balance of \$5 million, the Class C shares have a 33.33% voting interest and preferred returns for each of these classes are further described below.

As detailed in the operating agreements of the White Plains LLCs, cash flow is distributed as follows: first to the Company to allow for a preferred return of 10% on the original capital account of its Class A shares, or \$1.05 million, second to Cappelli Group to allow for a preferred return of 9% on the original capital account of its Class B shares, or \$2.25 million, third to City Center Group LLC to allow for a preferred return of 10% on the original capital account of its Class C shares, or \$0.5 million, fourth to City Center Group LLC to allow for a preferred return of 10% on the original capital account of its Class D shares, or \$0.5 million. The operating agreements provide several other priorities of cash flow related to return on and return of subsequent capital contributions that rank below the above four preferred returns. The final priority calls for the remaining cash flow to be distributed 66.67% to the Company's Class A shares and 33.33% to City Center Group LLC's Class C shares. If the cash flow of the White Plains LLCs is not sufficient to pay any of the preferred returns described above, the preferred returns remain undistributed, but are due upon a liquidation or refinancing event. Upon liquidation or refinancing, after all undistributed preferred returns and return of capital accounts are paid, any remaining cash is distributed 66.67% to the Company and 33.33% to City Center Group LLC.

Additionally, the Company loaned \$20 million to Cappelli Group, LLC which is secured by the Cappelli Group, LLC's Class B shares of the White Plains LLCs. The note has a stated maturity of May 8, 2027 and bears interest at the rate of 10%. Cappelli Group, LLC is only required to



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make cash interest payments on the \$20 million note payable to the extent that they have received cash distributions on their Class B shares of the White Plains LLCs. The White Plains LLCs are required to pay Cappelli Group, LLC's Class B distributions directly to the Company to the extent there is accrued interest receivable on the \$20 million note. The Cappelli Group, LLC as well as the White Plains LLCs are VIEs and the Company has been determined to be the primary beneficiary of each of these VIEs. As further discussed below, the financial statements of these VIEs have been consolidated into the Company's December 31, 2008 and 2007 financial statements. The \$20 million note between the Company and Cappelli Group, LLC and the related interest income and expense have been eliminated. Cappelli Group's income statement for the years ended December 31, 2008 and 2007 is presented below (in thousands):

Equity

|                                       | <b>2008</b> | <b>2007</b> |
|---------------------------------------|-------------|-------------|
| Equity in losses of White Plains LLCs | \$ 652      | 113         |
| Interest expense                      | 1,978       | 1,322       |
| Net loss                              | \$ 2,630    | 1,435       |

Pursuant to FIN 46R, the Company consolidated Cappelli Group LLC's net loss of \$2.6 million and \$1.4 million and recognized a corresponding amount of minority interest income for the years ended December 31, 2008 and 2007, respectively, since the Company's only variable interest in Cappelli Group LLC is debt and Cappelli Group LLC has sufficient equity to cover its cumulative net loss subsequent to the May 8, 2007 loan transaction with the Company. The Cappelli Group LLC's equity, after the net loss allocations, is reflected as minority interest in the Company's consolidated balance sheets and was \$934 thousand and \$3.6 million at December 31, 2008 and 2007, respectively. The Company also consolidated the net loss of the White Plains LLCs of \$1.5 million and \$164 thousand for the years ended December 31, 2008 and 2007, respectively, of which \$892 thousand and \$652 thousand for the year ended December 31, 2008 and \$51 thousand and \$113 thousand for the year ended December 31, 2007, was allocated to the Company and to Cappelli Group, LLC, respectively, based on relative cash distributions received from the White Plains LLCs. The \$652 thousand and \$113 thousand for the years ended December 31, 2008 and 2007, respectively, of net losses allocated to Cappelli Group LLC has been eliminated in consolidation against Cappelli Group LLC's corresponding equity in losses of the White Plains LLCs.

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The following table shows the details of the Company's investment and a detail of the net assets recorded in the consolidated balance sheet as of the May 8, 2007 acquisition date:

|   |            |
|---|------------|
| Cash paid for Class A Shares of the White Plains LLCs | \$ 10,475  |
| Cash advanced to Capelli Group, LLC                   | 20,000     |
| Other cash acquisition related costs                  | 816        |
| <br>  |            |
| Total investment                                      | \$ 31,291  |
| <br>  |            |
| Rental properties                                     | \$ 158,221 |
| In-place leases                                       | 7,595      |
| Other assets  | 1,504      |
| Mortgage notes payable                                | (119,740)  |
| Unearned rents  | (1,032)    |
| Accounts payable and accrued liabilities              | (14)       |
| Minority interest                                     | (15,243)   |
| <br>  |            |
| Total net assets acquired                             | \$ 31,291  |

As of the May 8, 2007 acquisition date, management determined the White Plains LLCs had real estate assets with a fair value of approximately \$166.0 million (taking into account an independent appraisal) which included \$7.6 million of in-place leases and \$0.5 million of net other assets. Amortization expense related to these in-place leases is computed using the straight-line method and was \$1.5 million and \$660 thousand for the years ended December 31, 2008 and 2007. The weighted average remaining life of these in-place leases at December 31, 2008 was 6.6 years. The outstanding mortgage debt on the property at the date of the acquisition totaled \$119.7 million and consisted of two mortgage notes payable which approximated their fair values. The mortgage note payable to Union Labor Life Insurance Company had a balance of \$114.7 million at the date of the acquisition. This note bears interest at 5.6% and requires monthly principal payments of \$42 thousand plus interest through October 2009, and \$83 thousand plus interest from November 2009 through the maturity date, with a final principal payment due at maturity on October 7, 2010 of \$113.5 million. This note can be extended for an additional two to four years at the option of the borrower upon meeting certain conditions outlined in the loan agreement. The mortgage note payable to Empire State Department Corporation (ESDC) had a balance of \$5.0 million at the date of the acquisition. This note bears interest at 5.0%, requires monthly payments of interest only and provides for the conversion from construction loan to a ten year permanent loan upon completion of construction. However, as of December 31, 2008, ESDC had not yet completed such conversion.

As described in Note 8, during the year ended December 31, 2007, the Company also provided a \$10.0 million loan to City Center Group LLC.

As of December 31, 2008, the Company held a 50% ownership interest in Suffolk. Suffolk owns 25 acres of development land and is in process of developing additional retail square footage

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adjacent to one of the Company's megaplex theatres in Suffolk, Virginia. Additionally, as of December 31, 2008, the Company has loaned \$15.2 million to Suffolk including related accrued interest receivable of \$1.7 million. The note bears interest at a rate of 10%. Suffolk is a VIE and it was determined that the Company is the primary beneficiary of this VIE. Accordingly, the Company consolidates the financial statements of Suffolk and eliminates the note, related accrued interest receivable and payable, as well as related interest income and expense.

As detailed in the operating agreement of Suffolk, cash flow is first disbursed to the Company to reduce the balance owed on the accrued interest receivable and principal on the loan. Once the interest and principal on the loan are paid in full, available cash is allocated to the partners in accordance with their ownership percentages. Net income of the partnership is also allocated to the partners in accordance with their ownership percentages.

**8. Notes Receivable**

The Company loaned \$5 million to its New Roc minority joint venture partner in 2003 in connection with the acquisition of its interest in New Roc. This note is included in accounts and notes receivable, bears interest at 10%, requires monthly interest payments and matures on March 1, 2009. The note is secured by the minority partner's interest in the partnership. In April 2007, the Company loaned an additional \$5 million to the minority partner under this same note agreement. Interest income from these loans was \$1.0 million, \$996 thousand and \$500 thousand for the years ended December 31, 2008, 2007 and 2006, respectively.

During the year ended December 31, 2007, the Company loaned \$10 million to City Center Group, LLC, a minority joint venture partner of the White Plains LLC's. This note is included in accounts and notes receivable, bears interest at 10%, requires monthly interest payments, and matures on May 8, 2017. The note is secured by rights to the economic interest of the Class C and Class D interests in the White Plains LLCs, and is personally guaranteed by two of the shareholders of City Center Group LLC. Interest income from this loan was \$997 thousand and \$261 thousand for the years ended December 31, 2008 and 2007. No interest income was recognized on this note for the year ended December 31, 2006.

On February 29, 2008, the Company loaned \$10 million to Louis Cappelli. Through his related interests, Louis Cappelli is the developer and minority interest partner of the Company's New Roc and White Plains entertainment retail centers located in the New York metropolitan area. The note bears interest at 10% and matures on February 28, 2009. As part of this transaction, the Company also received an option to purchase 50% of Louis Cappelli's interests (or Louis Cappelli's related interests) in three other projects in the New York metropolitan area. These projects are expected to cost approximately \$300.0 million. Interest income from this loan was \$839 thousand for the year ended December 31, 2008. No interest income was recognized on this note for the years ended December 31, 2007 and 2006. The Company has a note receivable from Mosaica Education, Inc. of \$3.8 million at December 31, 2008. This note is included in accounts and notes receivable, bears interest at 9.23%, requires monthly principal and interest payments of approximately \$35 thousand and matures on August

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1, 2010. The note is secured by certain pledge agreements and other collateral. The Company also has the right to call the note and 120 days after such notice to the borrower, the note becomes due and payable, including all related accrued interest. Interest income from this loan was \$350 thousand, \$351 thousand and \$314 thousand for the years ended December 31, 2008, 2007 and 2006 respectively.

The Company has a note receivable from a tenant, Sapphire Wines, LLC, of \$5.0 million at December 31, 2008. This note is included in accounts and notes receivable, bears interest at 9.0%, requires monthly interest payments and matures on April 1, 2013. This note is secured by certain pledge agreements and other collateral. Interest income from this loan was \$450 thousand and \$187 thousand for the years ended December 31, 2008 and 2007, respectively. No interest income was recognized on this note for the year ended December 31, 2006.

The Company has other notes receivable totaling \$1.2 million with interest rates ranging from 5.40% to 6.33% at December 31, 2008.

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**9. Long-Term Debt**

Long term debt at December 31, 2008 and 2007 consists of the following (in thousands):

|   | <b>2008</b> | <b>2007</b> |
|---|-------------|-------------|
| (1) Unsecured revolving variable rate credit facility, due January 31, 2010   | \$ 149,000  |             |
| (2) Mortgage note payable, variable rate, due September 10, 2010  | 56,250      |             |
| (3) Mortgage note payable, 5.60%, due October 7, 2010, two to four year extension available at Company's option upon meeting certain conditions | 113,917     | 114,417     |
| (4) Term loan payable, variable rate, due October 26, 2011, one year extension available at Company's option                                    | 118,800     | 120,000     |
| (5) Mortgage notes payable, 6.57%-6.73%, due October 1, 2012  | 47,056      | 48,214      |
| (6) Mortgage note payable, 6.63%, due November 1, 2012  | 26,302      | 26,946      |
| (7) Mortgage notes payable, 4.26%-9.012%, due February 10, 2013   | 125,424     | 131,151     |
| (8) Mortgage note payable, 6.84%, due March 1, 2014   | 91,583      | 116,619     |
| (9) Mortgage note payable, 5.58%, due April 1, 2014   | 61,742      | 62,745      |
| (10) Mortgage note payable, 5.56%, due June 5, 2015   | 34,311      | 34,825      |
| (11) Mortgage notes payable, 5.77%, due November 6, 2015  | 74,443      | 76,002      |
| (12) Mortgage notes payable, 5.84%, due March 6, 2016   | 41,798      | 42,639      |
| (13) Mortgage notes payable, 6.37%, due June 30, 2016   | 29,712      | 30,250      |
| (14) Mortgage notes payable, 6.10%, due October 1, 2016   | 26,716      | 27,208      |
| (15) Mortgage notes payable, 6.02%, due October 6, 2016   | 20,149      | 20,526      |
| (16) Mortgage note payable, 6.06%, due March 1, 2017  | 11,207      | 11,408      |
| (17) Mortgage note payable, 6.07%, due April 6, 2017  | 11,530      | 11,735      |
| (18) Mortgage notes payable, 5.73%-5.95%, due May 1, 2017   | 53,494      | 54,480      |
| (19) Mortgage notes payable, 5.86%, due August 1, 2017  | 27,352      | 27,843      |
| (20) Term loans payable, 5.11%-5.78%, due December 1, 2017-June 5, 2018   | 92,120      |             |
| (21) Mortgage note payable, 6.19%, due February 1, 2018   | 17,133      |             |
| (22) Mortgage note payable, 7.37%, due July 15, 2018  | 12,694      | 13,518      |
| (23) Mortgage note payable, 6.77%, due July 11, 2028  |             | 91,103      |
| (24) Bond payable, variable rate, due October 1, 2037   | 10,635      | 10,635      |
| (25) Mortgage note payable, 5.50%   | 4,000       | 4,000       |
| (26) Mortgage note payable, 5.00%   | 5,000       | 5,000       |
| Total   | \$1,262,368 | 1,081,264   |

(1) The Company's \$235 million unsecured revolving credit facility is due January 31, 2010. On

November 4,  
2008, the  
Company  
exercised the  
option to extend  
the maturity  
date by one  
additional year  
to January 31,  
2010. In  
accordance with  
the terms of the  
credit  
agreement, the  
Company paid  
an extension fee  
of \$470  
thousand. The  
note requires  
monthly  
payments of

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interest at LIBOR plus 130-175 basis points, depending on the Company's leverage, as defined, with the outstanding principal due at maturity. The amount that the Company is able to borrow on their unsecured revolving credit facility is a function of the values and advance rates, as defined by the credit agreement, assigned to the assets included in the borrowing base less outstanding letters of credit and less certain other liabilities that are recourse obligations of the Company. As of December 31, 2008, the Company's total availability under the revolving credit facility was \$78.4 million.

- (2) The Company's mortgage note payable is due September 10, 2010. The \$56.25 million was advanced to the Company as a part of a secured mortgage loan commitment of \$112.5 million. The mortgage is secured by the mortgage note receivable due on the same date entered into with Concord Resorts, LLC in conjunction with the planned resort development as discussed in Note 4, which had a carrying value of approximately \$134.2 million. The mortgage loan bears interest at LIBOR plus 350 basis points, and in the event LIBOR is less than 2.5%,

LIBOR shall be deemed to be 2.5% for purposes of calculating the applicable interest rate for the period. The loan is recourse to the Company and requires monthly interest only payments, with all outstanding principal due at maturity.

- (3) The Company's mortgage note payable is due October 7, 2010 and can be extended for an additional two to four years at the Company's option upon meeting certain conditions including a minimum net operating income threshold. The note payable is secured by one theatre and retail mix property, which had a net book value of approximately \$152.8 million at December 31, 2008. The note had an initial balance of \$115.0 million and requires monthly principal



payments of \$42 thousand plus interest through October 2009, and \$83 thousand plus interest from November 2009 through the maturity date, with a final principal payment due at maturity of \$113.5 million.

- (4) The Company's term loan is due October 26, 2011 with a one year extension available at the Company's option. The term loan has a stated interest rate of LIBOR plus 175 basis points and is secured by one theatre and one ski resort, which had a total net book value of approximately \$34.2 million at December 31, 2008. In addition, the loan is secured by five mortgage notes receivable, which had a carrying value of approximately \$237.7 million including accrued interest receivable at

December 31, 2008. The loan had an initial balance of \$120.0 million and bears interest at LIBOR plus 175 basis points (2.25% at December 31, 2008). Due to interest rate swaps entered into on November 26, 2007, \$114.0 million of the principal amount bears interest at an effective rate of 5.81%. Interest is payable monthly and the loan is recourse to the Company. Principal payments of \$300 thousand are required quarterly with a final principal payment at maturity of \$115.2 million.

- (5) The Company's mortgage notes payable due October 1, 2012 are secured by two theatre properties, which had a net book value of approximately \$37.8 million at December 31, 2008. The notes had an initial

balance of  
\$48.4 million  
and the monthly  
payments are  
based on a  
20 year  
amortization  
schedule. The  
notes require  
monthly  
principal and  
interest  
payments of  
approximately  
\$365 thousand  
with a final  
principal  
payment at  
maturity of  
approximately  
\$42.0 million.

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- (6) The Company's mortgage note payable due November 1, 2012 is secured by one theatre property, which had a net book value of approximately \$26.9 million at December 31, 2008. The note had an initial balance of \$27.0 million and the monthly payments are based on a 20 year amortization schedule. The note requires monthly principal and interest payments of approximately \$203 thousand with a final principal payment at maturity of approximately \$23.4 million.
- (7) The Company's mortgage notes payable due February 10, 2013 are secured by thirteen theatre properties and one theatre and

retail mix property, which had a net book value of approximately \$215.4 million at December 31, 2008. The notes had an initial balance of \$155.5 million of which approximately \$98.6 million has monthly payments that are interest only and \$56.9 million has monthly payments based on a 10 year amortization schedule. The notes require monthly principal and interest payments of approximately \$1.1 million with a final principal payment at maturity of approximately \$99.2 million. The weighted average interest rate on these notes is 5.63%.

- (8) The Company's mortgage note payable due March 1, 2014 is secured by four theatre and retail mix properties in Ontario,

Canada, which had a net book value of approximately \$186.3 million at December 31, 2008. The mortgage note payable is denominated in Canadian dollars (CAD). The note had an initial balance of CAD \$128.6 million and the monthly payments are based on a 20 year amortization schedule. The note requires monthly principal and interest payments of approximately CAD \$977 thousand with a final principal payment at maturity of approximately CAD \$85.6 million. At December 31, 2008 and 2007, the outstanding balance in Canadian dollars was CAD \$111.5 million and CAD \$115.6 million, respectively.

- (9) The Company's mortgage note

payable due April 1, 2014 is secured by one theatre and retail mix property, which had a net book value of approximately \$88.3 million at December 31, 2008. The note had an initial balance of \$66.0 million and the monthly payments are based on a 30 year amortization schedule. The note requires monthly principal and interest payments of approximately \$378 thousand with a final principal payment at maturity of approximately \$55.3 million.

- (10) The Company's mortgage note payable due June 5, 2015 is secured by one theatre and retail mix property, which had a net book value of approximately \$51.0 million at December 31, 2008. The note had an initial balance of

\$36.0 million and the monthly payments are based on a 30 year amortization schedule. The note requires monthly principal and interest payments of approximately \$206 thousand with a final principal payment at maturity of approximately \$30.1 million.

- (11) The Company's mortgage notes payable due November 6, 2015 are secured by six theatre properties, which had a net book value of approximately \$84.3 million at December 31, 2008. The notes had an initial balance of \$79.0 million and the monthly payments are based on a 25 year amortization schedule. The notes require monthly principal and interest payments of



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approximately \$498 thousand with a final principal payment at maturity of approximately \$ 60.7 million.

(12) The Company's mortgage notes payable due March 6, 2016 are secured by two theatre properties, which had a net book value of approximately \$36.7 million at December 31, 2008. The notes had an initial balance of \$44.0 million and the monthly payments are based on a 25 year amortization schedule. The notes require monthly principal and interest payments of approximately \$279 thousand with a final principal payment at maturity of approximately \$33.9 million.

(13) The Company's mortgage notes payable due June 30, 2016 are secured by two theatre properties, which had a net

book value of approximately \$35.5 million at December 31, 2008. The notes had an initial balance of \$31.0 million and the monthly payments are based on a 25 year amortization schedule. The notes require monthly principal and interest payments of approximately \$207 thousand with a final principal payment at maturity of approximately \$24.4 million.

- (14) The Company's mortgage notes payable due October 1, 2016 are secured by four theatre properties, which had a net book value of approximately \$30.0 million at December 31, 2008. The notes had an initial balance of \$27.8 million and the monthly payments are based on a 25 year amortization schedule. The notes require

monthly  
principal and  
interest  
payments of  
approximately  
\$180 thousand  
with a final  
principal  
payment at  
maturity of  
approximately  
\$21.6 million.

- (15) The Company's mortgage notes payable due October 6, 2016 are secured by three theatre properties, which had a net book value of approximately \$22.6 million at December 31, 2008. The notes had an initial balance of \$20.9 million and the monthly payments are based on a 25 year amortization schedule. The notes require monthly principal and interest payments of approximately \$135 thousand with a final principal payment at maturity of approximately \$16.2 million.

- (16) The Company's mortgage note

payable due  
March 1, 2017  
is secured by  
one theatre  
property, which  
had a net book  
value of  
approximately  
\$11.5 million at  
December 31,  
2008. The note  
had an initial  
balance of  
\$11.6 million  
and the monthly  
payments are  
based on a  
25 year  
amortization  
schedule. The  
note requires  
monthly  
principal and  
interest  
payments of  
approximately  
\$75 thousand  
with a final  
principal  
payment at  
maturity of  
approximately  
\$9.0 million.

- (17) The Company's  
mortgage note  
payable due  
April 6, 2017 is  
secured by one  
theatre property,  
which had a net  
book value of  
approximately  
\$10.6 million at  
December 31,  
2008. The note  
had an initial  
balance of  
\$11.9 million  
and the monthly  
payments are

based on a  
30 year  
amortization  
schedule. The  
note requires  
monthly  
principal and  
interest  
payments of  
approximately  
\$77 thousand  
with a final  
principal  
payment at  
maturity of  
approximately  
\$9.2 million.

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- (18) The Company's mortgage notes payable due May 1, 2017 are secured by five theatre properties, which had a net book value of approximately \$47.6 million at December 31, 2008. The notes had an initial balance of \$55.0 million and the monthly payments are based on a 25 year amortization schedule. The notes require monthly principal and interest payments of approximately \$348 thousand with a final principal payment at maturity of approximately \$42.4 million. The weighted average interest rate on these notes is 5.81%.
- (19) The Company's mortgage notes payable due August 1, 2017 are secured by

two theatre properties, which had a net book value of approximately \$25.7 million at December 31, 2008. The notes had an initial balance of \$28.0 million and the monthly payments are based on a 25 year amortization schedule. The notes require monthly principal and interest payments of approximately \$178 thousand with a final principal payment at maturity of approximately \$21.7 million.

- (20) The Company's term loans drawn under a credit facility of \$160.0 million are due December 1, 2017 to June 5, 2018 and are 30% recourse to the Company. The terms loans are secured by the real property and equipment at four wineries and six vineyards with a net book value of

approximately \$143.9 million at December 31, 2008. The term loans have stated interest rates of LIBOR plus 175 basis points on loans secured by real property and LIBOR plus 200 basis points on loans secured by fixtures and equipment. Term loans can be drawn through September 26, 2010 under the credit facility. The credit facility provides for an aggregate advance rate of 65% based on the lesser of cost or appraised value. The credit facility contains an accordion feature, whereby, subject to lender approval, the Company may obtain additional revolving credit and term loan commitments in an aggregate principal amount not to exceed \$140.0 million.

The initial disbursement under the credit facility consisted of two term loans secured by real property with initial balances of \$4.6 million and \$4.8 million that mature on December 1, 2017 and March 5, 2018, respectively. Due to two interest rate swaps entered into on March 14, 2008, the \$4.6 million and \$4.8 million balances bear interest at



effective rates of 5.76% and 5.78%, respectively. Principal and interest are payable monthly with a final principal payment at maturity of \$3.7 million for each of these loans. On March 24, 2008 and August 20, 2008, the Company obtained \$3.2 million and \$5.1 million, respectively, of term loans secured by fixtures and equipment under the facility. These term loans mature on December 1, 2017. Due to an interest rate swap entered into on September 15, 2008, the balances bear interest at an effective rate of 5.63%. Principal and interest are payable monthly and these loans will be fully amortized at maturity. Additionally, on September 26, 2008, the Company obtained four term loans secured by real property with an aggregate principal amount of \$74.9 million under the facility that mature on June 5, 2018. Due to four interest rate swaps entered into simultaneously, these loans bear interest at an effective rate of 5.11%. Principal and interest are payable monthly with a final aggregate principal payment at maturity of \$59.1 million. Subsequent to the closing of these loans, approximately \$67.3 million of the facility remains available.

(21) The Company's mortgage note payable due February 1, 2018 is secured by one theatre property which had a net book value of approximately \$21.8 million at December 31, 2008. The mortgage loan had an initial balance of \$17.5 million and the monthly payments are based on a 20

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year amortization schedule. The mortgage loan bears interest at 6.19% and requires monthly principal and interest payments of approximately \$127 thousand with a final principal payment at maturity of approximately \$11.6 million.

(22) The Company's mortgage note payable due July 15, 2018 is secured by one theatre property, which had a net book value of approximately \$20.1 million at December 31, 2008. The note had an initial balance of \$18.9 million and the monthly payments are based on a 20 year amortization schedule. The notes require monthly principal and interest payments of approximately \$151 thousand with a final principal payment at maturity of approximately \$843 thousand

(23) The Company's mortgage note payable due July 11, 2028 was secured by eight theatre properties. On July 11, 2008, the Company paid in full its mortgage note payable which had an outstanding balance of principal and interest totaling

\$90.6 million. The mortgage agreement contained a hyper-amortization feature, in which the principal payment schedule was rapidly accelerated, and the Company's principal and interest payments were substantially increased, if the balance was not paid in full on the anticipated prepayment date of July 11, 2008.

(24) The Company's bond payable due October 1, 2037 is secured by one theatre, which had a net book value of approximately \$10.9 million at December 31, 2008, and bears interest at a variable rate which resets on a weekly basis and was 1.85% at December 31, 2008. The bond requires monthly interest payments with a final principal payment at maturity of approximately \$10.6 million.

(25) The Company's mortgage note payable is secured by one theatre and retail mix property,

which had a net book value of approximately \$88.3 million at December 31, 2008, and bears interest at 5.50%. The note requires monthly payments of interest only and provides for the conversion from construction loan to a ten year permanent loan upon completion of construction. However, as of December 31, 2008, this conversion had not yet been completed.

- (26) The Company's mortgage note payable is secured by one theatre and retail mix property, which had a net book value of approximately \$152.8 million at December 31, 2008, and bears interest at 5.00%. The note requires monthly payments of interest only and provides for the conversion from construction loan to a ten year permanent loan upon completion of construction. However, as of December 31, 2008, this conversion had not yet been

completed.

Certain of the Company's long-term debt agreements contain customary restrictive covenants related to financial and operating performance. At December 31, 2008, the Company was in compliance with all restrictive covenants.

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Principal payments due on long-term debt obligations subsequent to December 31, 2008 (without consideration of any extensions) are as follows (in thousands):

|              | <b>Amount</b>       |
|--------------|---------------------|
| Year:        |                     |
| 2009         | \$ 24,630           |
| 2010         | 344,060             |
| 2011         | 142,195             |
| 2012         | 92,080              |
| 2013         | 127,151             |
| Thereafter   | 532,252             |
| <b>Total</b> | <b>\$ 1,262,368</b> |

The Company capitalizes a portion of interest costs as a component of property under development. The following is a summary of interest expense, net for the years ended December 31, 2008, 2007 and 2006 (in thousands):

|  | <b>2008</b>      | <b>2007</b>   | <b>2006</b>   |
|--|------------------|---------------|---------------|
| Interest on credit facility and mortgage loans | \$ 68,681        | 58,018        | 46,176        |
| Amortization of deferred financing costs       | 3,290            | 2,905         | 2,713         |
| Credit facility and letter of credit fees      | 687              | 453           | 203           |
| Interest cost capitalized                      | (797)            | (494)         | (100)         |
| Interest income                                | (910)            | (377)         | (126)         |
| <b>Interest expense, net</b>                   | <b>\$ 70,951</b> | <b>60,505</b> | <b>48,866</b> |

**10. Derivative Instruments**

The Company is exposed to the effect of changes in foreign currency exchange rates and interest rates on its LIBOR based borrowings. The Company limits this risk by following established risk management policies and procedures including the use of derivatives. The Company's objective in using derivatives is to add stability to reported earnings and to manage its exposure to foreign exchange and interest rate movements or other identified risks. To accomplish this objective, the Company primarily uses foreign currency forwards, cross currency swaps and interest rate swaps. On November 26, 2007, the Company entered into two interest rate swap agreements to fix the interest rate on \$114.0 million of an outstanding term loan. These agreements each have outstanding notional amounts of \$57.0 million, a termination date of October 26, 2012 and a fixed rate of 5.81%.

On June 1, 2007, the Company entered into a cross currency swap with a notional value of \$76.0 million Canadian dollars (CAD) and \$71.5 million U.S. The swap calls for monthly exchanges from January 2008 through February 2014 with the Company paying CAD based on an annual rate of 17.16% of the notional amount and receiving U.S. dollars based on an annual rate of 17.4% of the notional amount. There is no initial or final exchange of the notional amounts. The net effect of this swap is to lock in an exchange rate of \$1.05 CAD per U.S. dollar on approximately \$13 million of annual CAD denominated cash flows.

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Additionally, on June 1, 2007, the Company entered into a forward contract with a notional amount of \$100 million CAD and a February 2014 settlement date. The exchange rate of this forward contract is approximately \$1.04 CAD per U.S. dollar. The Company designated this forward contract as a net investment hedge.

In March 2008, the Company entered into two interest rate swap agreements to fix the interest rates on the two initial outstanding term loans described in Note 9 with an aggregate notional amount of \$9.4 million. At December 31, 2008, these agreements have outstanding notional amounts of \$4.6 million and \$4.8 million, termination dates of December 1, 2017 and March 5, 2018 and fixed rates of 5.76% and 5.78%, respectively.

In September 2008, the Company entered into five interest rate swap agreements to fix the interest rates on the remaining outstanding term loans described in Note 9 with an aggregate initial notional amount of \$83.1 million. At December 31, 2008, four of these agreements have aggregate outstanding notional amounts of \$74.7 million, a termination date of October 7, 2013 and fixed rates of 5.11%. The remaining agreement has an outstanding notional amount of \$8.0 million at December 31, 2008, a termination date of December 1, 2017 and a fixed rate of 5.63%.

At December 31, 2008 and 2007, respectively, derivatives with a fair value of \$15.6 million and \$6.5 million were included in accounts payable and accrued liabilities. Additionally, at December 31, 2008, derivatives with a fair value of \$15.7 million were included in other assets. The change in unrealized gain (loss) on derivatives of \$6.6 million, (\$6.5) million and \$72 thousand is recorded in the consolidated statements of changes in shareholders' equity and comprehensive income for the years ended December 31, 2008, 2007 and 2006, respectively. No hedge ineffectiveness was recognized for the years ended December 31, 2008, 2007 and 2006.

Amounts reported in accumulated other comprehensive income related to derivatives will be reclassified to earnings as monthly payments are made and received on the foreign currency forwards, cross currency swap and interest rate swaps. As of December 31, 2008, the Company estimates that during 2009, \$3.8 million will be reclassified from other comprehensive income to earnings. Other expense for the year ended December 31, 2008 and 2007 includes \$66 thousand and \$1.7 million, respectively, of net realized losses resulting from regular monthly settlements of foreign currency forward contracts. No such expense was recorded for the year ended December 31, 2006.

**11. Fair Value Disclosures**

On January 1, 2008, the Company adopted Statement of Financial Accounting Standards (SFAS) No. 157, Fair Value Measurements. SFAS No. 157 defines fair value, establishes a framework for measuring fair value, and expands disclosures about fair value measurements. SFAS No. 157 applies to reported balances that are required or permitted to be measured at fair value under existing accounting pronouncements; accordingly, the standard does not require any new fair value measurements of reported balances.

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SFAS No. 157 emphasizes that fair value is a market-based measurement, not an entity-specific measurement. Therefore, a fair value measurement should be determined based on the assumptions that market participants would use in pricing the asset or liability. As a basis for considering market participant assumptions in fair value measurements, SFAS No. 157 establishes a fair value hierarchy that distinguishes between market participant assumptions based on market data obtained from sources independent of the reporting entity (observable inputs that are classified within Levels 1 and 2 of the hierarchy) and the reporting entity's own assumptions about market participant assumptions (unobservable inputs classified within Level 3 of the hierarchy). Level 1 inputs utilize quoted prices (unadjusted) in active markets for identical assets or liabilities that the Company has the ability to access. Level 2 inputs are inputs other than quoted prices included in Level 1 that are observable for the asset or liability, either directly or indirectly. Level 2 inputs may include quoted prices for similar assets and liabilities in active markets, as well as inputs that are observable for the asset or liability (other than quoted prices), such as interest rates, foreign exchange rates, and yield curves that are observable at commonly quoted intervals. Level 3 inputs are unobservable inputs for the asset or liability, which are typically based on an entity's own assumptions, as there is little, if any, related market activity. In instances where the determination of the fair value measurement is based on inputs from different levels of the fair value hierarchy, the level in the fair value hierarchy within which the entire fair value measurement falls is based on the lowest level input that is significant to the fair value measurement in its entirety. The Company's assessment of the significance of a particular input to the fair value measurement in its entirety requires judgment, and considers factors specific to the asset or liability.

***Derivative financial instruments***

The Company uses interest rate swaps, foreign currency forwards and cross currency swaps to manage its interest rate and foreign currency risk. The valuation of these instruments is determined using widely accepted valuation techniques including discounted cash flow analysis on the expected cash flows of each derivative. This analysis reflects the contractual terms of the derivatives, including the period to maturity, and uses observable market-based inputs, including interest rate curves, foreign exchange rates, and implied volatilities. To comply with the provisions of SFAS No. 157, the Company incorporates credit valuation adjustments to appropriately reflect both its own nonperformance risk and the respective counterparty's nonperformance risk in the fair value measurements. In adjusting the fair value of its derivative contracts for the effect of nonperformance risk, the Company has considered the impact of netting and any applicable credit enhancements, such as collateral postings, thresholds, mutual puts, and guarantees.

Although the Company has determined that the majority of the inputs used to value its derivatives fall within Level 2 of the fair value hierarchy, the credit valuation adjustments associated with its derivatives utilize Level 3 inputs, such as estimates of current credit spreads to evaluate the likelihood of default by itself and its counterparties. However, as of December 31, 2008, the Company has assessed the significance of the impact of the credit valuation adjustments on the



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overall valuation of its derivative positions and has determined that the credit valuation adjustments are not significant to the overall valuation of its derivatives. As a result, the Company has determined that its derivative valuations in their entirety are classified in Level 2 of the fair value hierarchy.

The table below presents the Company's assets and liabilities measured at fair value on a recurring basis as of December 31, 2008, aggregated by the level in the fair value hierarchy within which those measurements fall.

**Liabilities Measured at Fair Value on a Recurring Basis at December 31, 2008**  
**(Unaudited, dollars in thousands)**

| Description                        | Quoted   | Significant                                    |  | Balance at<br>December<br>31,<br>2008 |
|------------------------------------|--|--|--|---------------------------------------|
|                                    | Prices in<br>Active<br>Markets<br><br>for Identical<br>Assets<br>(Level I) | Other<br><br>Observable<br>Inputs (Level<br>2) | Significant<br><br>Unobservable<br>Inputs<br>(Level 3) |                                       |
| Derivative financial instruments*  | \$   | \$ 15,704                                      | \$   | \$ 15,704                             |
| Derivative financial instruments** | \$   | \$ (15,564)                                    | \$   | \$(15,564)                            |

\* Included in Other Assets in the accompanying consolidated balance sheet.

\*\* Included in Accounts payable and accrued liabilities in the accompanying consolidated balance sheet.

The Company does not have any fair value measurements using significant unobservable inputs (Level 3) as of December 31, 2008.

In February 2008, the FASB adopted FSP FAS 157-2, Effective Date of FASB Statement No. 157, which allows for a one-year deferral of fair value measurement requirements for nonfinancial assets and liabilities that are not required or permitted to be measured at fair value on a recurring basis. Accordingly, the Company's adoption of this standard in 2008 was limited to financial assets and liabilities, which affects the valuation of the Company's derivative contracts.

**12. Fair Value of Financial Instruments**

Management compares the carrying value and the estimated fair value of our financial instruments. The following methods and assumptions were used by the Company to estimate the fair value of each class of financial instruments at December 31, 2008 and 2007:

**Mortgage notes receivable and related accrued interest receivable:**

The fair value of the Company's mortgage notes receivable and related accrued interest receivable as of December 31, 2008 is estimated by discounting the future cash flows of each instrument using current market rates. At December 31, 2008, the Company had a carrying

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value of \$138.6 million in variable rate mortgage notes receivable outstanding, including related accrued interest, with a weighted average interest rate of approximately 5.40%. The variable mortgage notes bear interest rates of LIBOR plus 350 basis points. Discounting the future cash flows for variable rate mortgage notes receivable using an estimated weighted average market rate of 7.65%, management estimates the variable rate mortgage notes receivable's fair value to be approximately \$128.7 million at December 31, 2008.

At December 31, 2007, the Company had variable rate mortgage notes receivable with a carrying value, including related accrued interest of \$99.2 million with a weighted average interest rate of approximately 8.75%. The variable rate mortgage notes bear interest at rates of LIBOR plus 350 basis points and their carrying value approximates fair value at December 31, 2007.

At December 31, 2008, the Company had a carrying value of \$369.9 million in fixed rate mortgage notes receivable outstanding, including related accrued interest, with a weighted average interest rate of approximately 12.77%. The fixed rate mortgage notes bear interest at rates of 9.00% to 15.00%. Discounting the future cash flows for fixed rate mortgage notes receivable using an estimated weighted average market rate of 15.14%, management estimates the fixed rate mortgage notes receivable's fair value to be approximately \$345.2 million at December 31, 2008.

At December 31, 2007, the Company had fixed rate mortgage notes receivable with a carrying value, including related accrued interest of \$226.2 million with a weighted average interest rate of approximately 12.17%. The fixed rate mortgage notes bear interest at rates of 9.25% to 15.00%, and their carrying value approximates fair value at December 31, 2007.

**Investment in a direct financing lease**

The fair value of the Company's investment in a direct financing lease as of December 31, 2008 is estimated by discounting the future cash flows of the instrument using current market rates. At December 31, 2008, the Company had an investment in a direct financing lease with a carrying value of \$166.1 million and a weighted average effective interest rate of 12.0%. The investment in direct financing lease bears interest at effective interest rates of 11.9% to 12.4%. Discounting the future cash flows for the investment in a direct financing lease using an estimated market rate of 14.26%, management estimates the investment in a direct financing lease's fair value to be approximately \$140.8 million at December 31, 2008. The Company had no investment in a direct financing lease at December 31, 2007.

**Cash and cash equivalents, restricted cash:**

Due to the highly liquid nature of our short term investments, the carrying values of our cash and cash equivalents and restricted cash approximate the fair market values.

**Accounts and notes receivable:**

The carrying values of our accounts receivable approximate the fair market value at December 31, 2008 and 2007.

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The fair value of the Company's notes receivable as of December 31, 2008 is estimated by discounting the future cash flows of each instrument using current market rates. At December 31, 2008, the Company had a carrying value of \$1.0 million in a variable rate mortgage note receivable outstanding with an interest rate of 5.40%. The variable note bears interest at a rate of LIBOR plus 350 basis points. Discounting the future cash flows for the variable rate note receivable using an estimated market rate of 7.65%, management estimates the variable rate mortgage note receivable's fair value to be approximately \$1.0 million at December 31, 2008.

At December 31, 2007, the Company had a variable rate note receivable with a carrying value of \$1.0 million with an interest rate of 8.75%. The variable rate note bears interest at a rate of LIBOR plus 350 basis points and the carrying value approximates fair value at December 31, 2007.

At December 31, 2008, the Company had a carrying value of \$38.9 million in fixed rate notes receivable outstanding with a weighted average interest rate of approximately 9.78%. The fixed rate notes bear interest at rates of 6.33% to 10.00%. Discounting the future cash flows for fixed rate notes receivable using an estimated market rate of 12.03%, management estimates the fixed rate notes receivable's fair value to be approximately \$37.1 million at December 31, 2008.

At December 31, 2007, the Company had fixed rate notes receivable with a carrying value of \$28.9 million with a weighted average interest rate of approximately 9.70%. The fixed rate notes bear interest at rates of 6.33% to 10.00% and their carrying value approximates fair value at December 31, 2007.

**Derivative instruments:**

Derivative instruments are carried at their fair market value.

**Debt instruments:**

The fair value of the Company's debt as of December 31, 2008 and 2007 is estimated by discounting the future cash flows of each instrument using current market rates. At December 31, 2008, the Company had a carrying value of \$426.8 million in variable rate debt outstanding with an average weighted interest rate of approximately 4.68%. Discounting the future cash flows for variable rate debt using an estimated market rate of 5.65%, management estimates the variable rate debt's fair value to be approximately \$412.4 million at December 31, 2008. As described in Note 10, \$206.1 million of variable rate debt outstanding at December 31, 2008 has been converted to a fixed rate by interest rate swap agreements.

At December 31, 2007, the Company had a carrying value of \$130.6 million in variable rate debt outstanding with an average weighted interest rate of approximately 5.65%, which management believes represents fair value. At December 31, 2007, \$114.0 million of variable rate debt outstanding had been converted to a fixed rate by interest rate swap agreements.

At December 31, 2008, the Company had a carrying value of \$835.6 million in fixed rate long-term debt outstanding with an average weighted interest rate of approximately 5.99%. Discounting the future cash flows for fixed rate debt using an estimated market rate of 5.84%,

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management estimates the fixed rate debt's fair value to be approximately \$842.4 million at December 31, 2008. At December 31, 2007, the Company had a carrying value of \$950.7 million in fixed rate long-term debt outstanding with an average weighted interest rate of approximately 6.04%. Discounting the future cash flows for fixed rate debt using an estimated market rate of 5.92%, management estimates the fixed rate debt's fair value to be approximately \$954.0 million at December 31, 2007.

**Accounts payable and accrued liabilities:**

The carrying value of accounts payable and accrued liabilities approximates fair value due to the short term maturities of these amounts.

**Common and preferred dividends payable:**

The carrying values of common and preferred dividends payable approximate fair value due to the short term maturities of these amounts.

**13. Common and Preferred Shares****Common Shares**

The Board of Trustees declared cash dividends totaling \$3.36 per common share for the year ended December 31, 2008 and \$3.04 per common share for the year ended December 31, 2007.

Of the total dividends calculated for tax purposes, the amounts characterized as ordinary income, return of capital and long-term capital gain for 2008 and 2007 are as follows:

**Cash dividends paid per common share for the year ended December 31, 2008:**

| Record date                   | Cash payment<br>date | Cash<br>distribution<br>per share | Taxable<br>ordinary<br>income | Return<br>of<br>capital | Long-term Unrecaptured<br>capital<br>gain | Sec.<br>1250<br>gain |
|-------------------------------|----------------------|-----------------------------------|-------------------------------|-------------------------|---|----------------------|
| 12-31-07                      | 01-15-08             | \$ 0.7600                         | 0.7314                        | 0.0286                  |   |                      |
| 03-31-08                      | 04-15-08             | 0.8400                            | 0.8084                        | 0.0316                  |   |                      |
| 06-30-08                      | 07-15-08             | 0.8400                            | 0.8084                        | 0.0316                  |   |                      |
| 09-30-08                      | 10-15-08             | 0.8400                            | 0.8084                        | 0.0316                  |   |                      |
| Total for 2008 <sup>(1)</sup> |                      | \$ 3.2800                         | 3.1565                        | 0.1235                  |   |                      |
|                               |                      | 100.0%                            | 96.2%                         | 3.8%                    |   |                      |

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Cash dividends paid per common share for the year ended December 31, 2007:

| Record date                   | Cash payment date | Cash distribution per share | Taxable ordinary income | Return of capital | Long-term capital gain | Unrecaptured Sec. 1250 gain |
|-------------------------------|-------------------|-----------------------------|-------------------------|-------------------|------------------------|-----------------------------|
| 12-29-06                      | 01-15-07          | \$ 0.6875                   | 0.6482                  | 0.0010            | 0.0382                 | 0.0091                      |
| 03-30-07                      | 04-16-07          | 0.7600                      | 0.7166                  | 0.0012            | 0.0423                 | 0.0101                      |
| 06-29-07                      | 07-16-07          | 0.7600                      | 0.7166                  | 0.0012            | 0.0423                 | 0.0101                      |
| 09-28-07                      | 10-15-07          | 0.7600                      | 0.7166                  | 0.0012            | 0.0423                 | 0.0101                      |
| Total for 2007 <sup>(1)</sup> |                   | \$ 2.9675                   | 2.7980                  | 0.0045            | 0.1650                 | 0.0394                      |
|                               |                   | 100.0%                      | 94.3%                   | 0.1%              | 5.6%                   |                             |

(1) Differences between totals and details relate to rounding.

On April 2, 2008, the Company issued pursuant to a registered public offering 2,415,000 of common shares (including the exercise of the over-allotment option of 315,000 shares) at a purchase price of \$48.18 per share. Total net proceeds to the Company after underwriting discounts and expenses were approximately \$111.2 million.

During July 2008, the Company issued pursuant to a registered public offering 324 thousand common shares under the direct share purchase component of the Company's Dividend Reinvestment and Direct Share Purchase Plan. These shares were sold at an average price of \$50.61 per share and total net proceeds after expenses were approximately \$16.3 million.

On August 5, 2008, the Company issued pursuant to a registered public offering 1,900,000 of common shares at a purchase price of \$50.96 per share. Total net proceeds to the Company after underwriting discounts and expenses were approximately \$96.5 million.

The proceeds from the above public offerings were used to pay down the Company's unsecured revolving credit facility, to fund the CS Fund I purchase described in Note 5 and remaining net proceeds were invested in interest-bearing accounts and short-term interest-bearing securities which are consistent with the qualification as a REIT under the Internal Revenue Code.

**Series A Preferred Shares**

On May 29, 2002, the Company issued 2.3 million 9.50% Series A cumulative redeemable preferred shares (Series A preferred shares) in a registered public offering. On May 29, 2007, the Company completed the redemption of all 2.3 million outstanding 9.50% Series A preferred shares. The shares were redeemed at a redemption price of \$25.39 per share. This price is the sum of the \$25.00 per share liquidation preference and a quarterly dividend per share of \$0.59375 prorated through the redemption date. In conjunction with the redemption, the Company recognized both a non-cash charge representing the original issuance costs that were paid in 2002 and also other redemption related expenses. The aggregate reduction to net income available to common shareholders was approximately \$2.1 million (\$0.08 per fully diluted common share) for year ended December 31, 2007.



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The Board of Trustees declared cash dividends totaling \$.9830 per Series A preferred share for the year ended December 31, 2007.

Of the total dividends calculated for tax purposes, the amounts characterized as ordinary income, return of capital and long-term capital gain for 2007 are as follows:

Cash dividends paid per Series A preferred share for the year ended December 31, 2007:

| Record date                   | Cash payment<br>date | Cash<br>distribution<br>per share | Taxable<br>ordinary<br>income | Return<br>of<br>capital | Long-term<br>capital<br>gain |
|-------------------------------|----------------------|-----------------------------------|-------------------------------|-------------------------|------------------------------|
| 12-29-06                      | 01-15-07             | \$ 0.5938                         | 0.5938                        |                         |                              |
| 03-30-07                      | 04-16-07             | 0.5938                            | 0.5938                        |                         |                              |
| 05-29-07                      | 05-29-07             | 0.3892                            | 0.3892                        |                         |                              |
| Total for 2007 <sup>(1)</sup> |                      | \$ 1.5767                         | 1.5767                        |                         |                              |
|                               |                      | 100.0%                            | 100.0%                        |                         |                              |

(1) Differences between totals and details relate to rounding.

**Series B Preferred Shares**

On January 19, 2005, the Company issued 3.2 million 7.75% Series B cumulative redeemable preferred shares ( Series B preferred shares ) in a registered public offering for net proceeds of \$77.5 million, before expenses. The Company pays cumulative dividends on the Series B preferred shares from (and including) the date of original issuance in the amount of \$1.9375 per share each year, which is equivalent to 7.75% of the \$25 liquidation preference per share. Dividends on the Series B preferred shares are payable quarterly in arrears, and began on April 15, 2005. The Company may not redeem the Series B preferred shares before January 19, 2010, except in limited circumstances to preserve the Company's REIT status. On or after January 19, 2010, the Company may, at its option, redeem the Series B preferred shares in whole at any time or in part from time to time, by paying \$25 per share, plus any accrued and unpaid dividends up to and including the date of redemption. The Series B preferred shares generally have no stated maturity, will not be subject to any sinking fund or mandatory redemption, and are not convertible into any of the Company's other securities. Owners of the Series B preferred shares generally have no voting rights, except under certain dividend defaults. The Board of Trustees declared cash dividends totaling \$1.9375 per Series B preferred share for each of the years ended December 31, 2008 and 2007.



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Of the total dividends calculated for tax purposes, the amounts characterized as ordinary income, return of capital and long-term capital gain for 2008 and 2007 are as follows:

Cash dividends paid per Series B preferred share for the year ended December 31, 2008:

| <b>Record date</b>            | <b>Cash payment date</b> | <b>Cash distribution per share</b> | <b>Taxable ordinary income</b> | <b>Return of capital</b> | <b>Long-term capital gain</b> |
|-------------------------------|--------------------------|------------------------------------|--------------------------------|--------------------------|-------------------------------|
| 12-31-07                      | 01-15-08                 | \$ 0.4844                          | 0.4844                         |                          |                               |
| 03-31-08                      | 04-15-08                 | 0.4844                             | 0.4844                         |                          |                               |
| 06-30-08                      | 07-15-08                 | 0.4844                             | 0.4844                         |                          |                               |
| 09-30-08                      | 10-15-08                 | 0.4844                             | 0.4844                         |                          |                               |
| Total for 2008 <sup>(1)</sup> |                          | \$ 1.9375                          | 1.9375                         |                          |                               |
|                               |                          | 100.0%                             | 100.0%                         |                          |                               |

Cash dividends paid per Series B preferred share for the year ended December 31, 2007:

| <b>Record date</b>            | <b>Cash payment date</b> | <b>Cash distribution per share</b> | <b>Taxable ordinary income</b> | <b>Return of capital</b> | <b>Long-term capital gain</b> |
|-------------------------------|--------------------------|------------------------------------|--------------------------------|--------------------------|-------------------------------|
| 12-29-06                      | 01-15-07                 | \$ 0.4844                          | 0.4844                         |                          |                               |
| 03-30-07                      | 04-16-07                 | 0.4844                             | 0.4844                         |                          |                               |
| 06-29-07                      | 07-16-07                 | 0.4844                             | 0.4844                         |                          |                               |
| 09-28-07                      | 10-15-07                 | 0.4844                             | 0.4844                         |                          |                               |
| Total for 2007 <sup>(1)</sup> |                          | \$ 1.9375                          | 1.9375                         |                          |                               |
|                               |                          | 100.0%                             | 100.0%                         |                          |                               |

<sup>(1)</sup> Differences between totals and details relate to rounding.

**Series C Convertible Preferred Shares**

On December 22, 2006, the Company issued 5.4 million 5.75% Series C cumulative convertible preferred shares ( Series C preferred shares ) in a registered public offering for net proceeds of approximately \$130.8 million, after expenses. The Company will pay cumulative dividends on the Series C preferred shares from the date of original issuance in the amount of \$1.4375 per share each year, which is equivalent to 5.75% of the \$25 liquidation preference per share. Dividends on the Series C preferred shares are payable quarterly in arrears, and began on January 15, 2007 with a pro-rated quarterly payment of \$0.0359 per share. The Company does not have the right to redeem the Series C

preferred shares except in limited circumstances to preserve the Company's REIT status. The Series C preferred shares have no stated maturity and will not be subject to any sinking fund or mandatory redemption. As of December 31, 2008, the Series C preferred shares are convertible, at the holder's option, into the Company's common shares at a conversion rate of 0.3572 common shares per Series C preferred share, which is equivalent to a conversion price of \$69.99 per common share. This conversion ratio may increase over time upon certain specified triggering events including if the Company's common dividend per share exceeds a quarterly threshold of \$0.6875.

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Upon the occurrence of certain fundamental changes, the Company will under certain circumstances increase the conversion rate by a number of additional common shares or, in lieu thereof, may in certain circumstances elect to adjust the conversion rate upon the Series C preferred shares becoming convertible into shares of the public acquiring or surviving company.

On or after January 15, 2012, the Company may, at its option, cause the Series C preferred shares to be automatically converted into that number of common shares that are issuable at the then prevailing conversion rate. The Company may exercise its conversion right only if, at certain times, the closing price of the Company's common shares equals or exceeds 135% of the then prevailing conversion price of the Series C preferred shares.

Owners of the Series C preferred shares generally have no voting rights, except under certain dividend defaults. Upon conversion, the Company may choose to deliver the conversion value to the owners in cash, common shares, or a combination of cash and common shares.

The Board of Trustees declared cash dividends totaling \$1.4375 per Series C preferred share for each of the years ended December 31, 2008 and 2007, respectively.

Of the total dividends calculated for tax purposes, the amounts characterized as ordinary income, return of capital and long-term capital gain for 2008 and 2007 are as follows:

Cash dividends paid per Series C preferred share for the year ended December 31, 2008:

| <b>Record date</b>            | <b>Cash payment date</b> | <b>Cash distribution per share</b> | <b>Taxable ordinary income</b> | <b>Return of capital</b> | <b>Long-term capital gain</b> |
|-------------------------------|--------------------------|------------------------------------|--------------------------------|--------------------------|-------------------------------|
| 12-31-07                      | 01-15-08                 | 0.3594                             | 0.3594                         |                          |                               |
| 03-31-08                      | 04-15-08                 | 0.3594                             | 0.3594                         |                          |                               |
| 06-30-08                      | 07-15-08                 | 0.3594                             | 0.3594                         |                          |                               |
| 09-30-08                      | 10-15-08                 | 0.3594                             | 0.3594                         |                          |                               |
| Total for 2008 <sup>(1)</sup> |                          | \$ 1.4375                          | 1.4375                         |                          |                               |
|                               |                          | 100.0%                             | 100.0%                         |                          |                               |

Cash dividends paid per Series C preferred share for the year ended December 31, 2007:

| <b>Record date</b>            | <b>Cash payment date</b> | <b>Cash distribution per share</b> | <b>Taxable ordinary income</b> | <b>Return of capital</b> | <b>Long-term capital gain</b> |
|-------------------------------|--------------------------|------------------------------------|--------------------------------|--------------------------|-------------------------------|
| 12-29-06                      | 01-15-07                 | 0.0359                             | 0.0359                         |                          |                               |
| 03-30-07                      | 04-16-07                 | 0.3594                             | 0.3594                         |                          |                               |
| 06-29-07                      | 07-16-07                 | 0.3594                             | 0.3594                         |                          |                               |
| 09-28-07                      | 10-15-07                 | 0.3594                             | 0.3594                         |                          |                               |
| Total for 2007 <sup>(1)</sup> |                          | \$ 1.1141                          | 1.1141                         |                          |                               |
|                               |                          | 100.0%                             | 100.0%                         |                          |                               |

- (1) Differences between totals and details relate to rounding.

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**Series D Preferred Shares**

On May 25, 2007, the Company issued 4.6 million 7.375% Series D cumulative redeemable preferred shares ( Series D preferred shares ) in a registered public offering for net proceeds of approximately \$111.1 million, after expenses. The Company pays cumulative dividends on the Series D preferred shares from the date of original issuance in the amount of \$1.844 per share each year, which is equivalent to 7.375% of the \$25 liquidation preference per share. Dividends on the Series D preferred shares are payable quarterly in arrears, and were first payable on July 16, 2007 with a pro-rated quarterly payment of \$0.1844 per share. The Company may not redeem the Series D preferred shares before May 25, 2012, except in limited circumstances to preserve the Company's REIT status. On or after May 25, 2012, the Company may, at its option, redeem the Series D preferred shares in whole at any time or in part from time to time, by paying \$25 per share, plus any accrued and unpaid dividends up to and including the date of redemption. The Series D preferred shares generally have no stated maturity, will not be subject to any sinking fund or mandatory redemption, and are not convertible into any of the Company's other securities. Owners of the Series D preferred shares generally have no voting rights, except under certain dividend defaults. The net proceeds from this offering were used to redeem the Company's 9.50% Series A preferred shares and to pay down the Company's unsecured revolving credit facility. The Board of Trustees declared cash dividends totaling \$1.8438 and \$1.1062 per Series D preferred share for the years ended December 31, 2008 and 2007.

Of the total dividends calculated for tax purposes, the amounts characterized as ordinary income, return of capital and long-term capital gain for 2008 and 2007 are as follows:

Cash dividends paid per Series D preferred share for the year ended December 31, 2008:

|                               | <b>Cash</b>         | <b>Taxable</b>   |                |                  |
|-------------------------------|---------------------|------------------|----------------|------------------|
| <b>Cash payment</b>           | <b>distribution</b> | <b>ordinary</b>  | <b>Return</b>  | <b>Long-term</b> |
| <b>Record date</b>            | <b>date</b>         | <b>per share</b> | <b>of</b>      | <b>capital</b>   |
|                               |                     |                  | <b>capital</b> | <b>gain</b>      |
| 12-31-07                      | 01-15-08            | 0.4609           |                |                  |
| 03-31-08                      | 04-15-08            | 0.4609           |                |                  |
| 06-30-08                      | 07-15-08            | 0.4609           |                |                  |
| 09-30-08                      | 10-15-08            | 0.4609           |                |                  |
| Total for 2008 <sup>(1)</sup> | \$ 1.8438           | 1.8438           |                |                  |
|                               | 100.0%              | 100.0%           |                |                  |

Cash dividends paid per Series D preferred share for the year ended December 31, 2007:

|                               | <b>Cash</b>         | <b>Taxable</b>   |                |                  |
|-------------------------------|---------------------|------------------|----------------|------------------|
| <b>Cash payment</b>           | <b>distribution</b> | <b>ordinary</b>  | <b>Return</b>  | <b>Long-term</b> |
| <b>Record date</b>            | <b>date</b>         | <b>per share</b> | <b>of</b>      | <b>capital</b>   |
|                               |                     |                  | <b>capital</b> | <b>gain</b>      |
| 06-29-07                      | 07-16-07            | 0.1844           |                |                  |
| 09-28-07                      | 10-15-07            | 0.4609           |                |                  |
| Total for 2007 <sup>(1)</sup> | \$ 0.6453           | 0.6453           |                |                  |
|                               | 100.0%              | 100.0%           |                |                  |

- (1) Differences  
between totals  
and details  
relate to  
rounding

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**Series E Convertible Preferred Shares**

On April 2, 2008, the Company issued 3.5 million 9.00% Series E cumulative convertible preferred shares ( Series E preferred shares ) in a registered public offering for net proceeds of approximately \$83.4 million, after expenses. The Company will pay cumulative dividends on the Series E preferred shares from the date of original issuance in the amount of \$2.25 per share each year, which is equivalent to 9.00% of the \$25 liquidation preference per share. Dividends on the Series E preferred shares are payable quarterly in arrears, and began on July 15, 2008 with a pro-rated quarterly payment of \$0.65 per share. The Company does not have the right to redeem the Series E preferred shares except in limited circumstances to preserve the Company's REIT status. The Series E preferred shares have no stated maturity and will not be subject to any sinking fund or mandatory redemption. As of December 31, 2008, the Series E preferred shares are convertible, at the holder's option, into the Company's common shares at a conversion rate of 0.4512 common shares per Series E preferred share, which is equivalent to a conversion price of \$55.41 per common share. This conversion ratio may increase over time upon certain specified triggering events including if the Company's common dividend per share exceeds a quarterly threshold of \$0.84. Upon the occurrence of certain fundamental changes, the Company will under certain circumstances increase the conversion rate by a number of additional common shares or, in lieu thereof, may in certain circumstances elect to adjust the conversion rate upon the Series E preferred shares becoming convertible into shares of the public acquiring or surviving company.

On or after April 20, 2013, the Company may, at its option, cause the Series E preferred shares to be automatically converted into that number of common shares that are issuable at the then prevailing conversion rate. The Company may exercise its conversion right only if, at certain times, the closing price of the Company's common shares equals or exceeds 150% of the then prevailing conversion price of the Series E preferred shares.

Owners of the Series E preferred shares generally have no voting rights, except under certain dividend defaults. Upon conversion, the Company may choose to deliver the conversion value to the owners in cash, common shares, or a combination of cash and common shares.

The Board of Trustees declared cash dividends totaling \$1.775 per Series E preferred share for each of the year ended December 31, 2008.

Of the total dividends calculated for tax purposes, the amounts characterized as ordinary income, return of capital and long-term capital gain for 2008 are as follows:

Cash dividends paid per Series E preferred share for the year ended December 31, 2008:

|                               | <b>Cash</b>         | <b>Taxable</b>      |                 |                  |
|-------------------------------|---------------------|---------------------|-----------------|------------------|
| <b>Record date</b>            | <b>Cash payment</b> | <b>distribution</b> | <b>ordinary</b> | <b>Return</b>    |
| <b>date</b>                   | <b>per share</b>    | <b>income</b>       | <b>of</b>       | <b>Long-term</b> |
|                               |                     |                     | <b>capital</b>  | <b>capital</b>   |
|                               |                     |                     |                 | <b>gain</b>      |
| 06-30-08                      | 07-15-08            | 0.6500              | 0.6500          |                  |
| 09-30-08                      | 10-15-08            | 0.5625              | 0.5625          |                  |
| Total for 2008 <sup>(1)</sup> | \$                  | 1.2125              | 1.2125          |                  |
|                               |                     | 100.0%              | 100.0%          |                  |

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**14. Earnings Per Share**

The following table summarizes the Company's common shares used for computation of basic and diluted earnings per share for the years ended December 31, 2008, 2007 and 2006 (amounts in thousands except per share information):

|  | <b>Year Ended December 31, 2008</b> |                                 |                                 |
|--|-------------------------------------|---------------------------------|---------------------------------|
|  | <b>Income<br/>(numerator)</b>       | <b>Shares<br/>(denominator)</b> | <b>Per<br/>Share<br/>Amount</b> |
| Basic earnings:  |                                     |                                 |                                 |
| Income from continuing operations                                  | \$ 129,883                          | 30,628                          | \$ 4.24                         |
| Preferred dividend requirements                                    | (28,266)                            |                                 | (0.92)                          |
| Income from continuing operations available to common shareholders | 101,617                             | 30,628                          | 3.32                            |
| Effect of dilutive securities:                                     |                                     |                                 |                                 |
| Share options  |                                     | 266                             | (0.03)                          |
| Nonvested common share grants                                      |                                     | 112                             | (0.01)                          |
| Diluted earnings: Income from continuing operations                | \$ 101,617                          | 31,006                          | \$ 3.28                         |
| Income from continuing operations available to common shareholders | \$ 101,617                          | 30,628                          | \$ 3.32                         |
| Income from discontinued operations                                | 93                                  |                                 |                                 |
| Income available to common shareholders                            | 101,710                             | 30,628                          | 3.32                            |
| Effect of dilutive securities:                                     |                                     |                                 |                                 |
| Share options  |                                     | 266                             | (0.03)                          |
| Nonvested common share grants                                      |                                     | 112                             | (0.01)                          |
| Diluted earnings   | \$ 101,710                          | 31,006                          | \$ 3.28                         |



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|  | <b>Year Ended December 31, 2007</b> |                      |               |
|--|-------------------------------------|----------------------|---------------|
|  | <b>Income</b>                       | <b>Shares</b>        | <b>Per</b>    |
|  | <b>(numerator)</b>                  | <b>(denominator)</b> | <b>Share</b>  |
|  |                                     |                      | <b>Amount</b> |
| Basic earnings:  |                                     |                      |               |
| Income from continuing operations                                  | \$ 100,585                          | 26,690               | \$ 3.77       |
| Preferred dividend requirements                                    | (21,312)                            |                      | (0.80)        |
| Series A preferred share redemption costs                          | (2,101)                             |                      | (0.08)        |
| Income from continuing operations available to common shareholders | 77,172                              | 26,690               | 2.89          |
| Effect of dilutive securities:                                     |                                     |                      |               |
| Share options  |                                     | 375                  | (0.04)        |
| Nonvested common share grants                                      |                                     | 106                  | (0.01)        |
| Diluted earnings: Income from continuing operations                | \$ 77,172                           | 27,171               | \$ 2.84       |
| Income from continuing operations available to common shareholders | \$ 77,172                           | 26,690               | \$ 2.89       |
| Income from discontinued operations                                | 4,079                               |                      | 0.15          |
| Income available to common shareholders                            | 81,251                              | 26,690               | 3.04          |
| Effect of dilutive securities:                                     |                                     |                      |               |
| Share options  |                                     | 375                  | (0.04)        |
| Nonvested common share grants                                      |                                     | 106                  | (0.01)        |
| Diluted earnings   | \$ 81,251                           | 27,171               | \$ 2.99       |

|  | <b>Year Ended December 31, 2006</b> |                      |               |
|--|-------------------------------------|----------------------|---------------|
|  | <b>Income</b>                       | <b>Shares</b>        | <b>Per</b>    |
|  | <b>(numerator)</b>                  | <b>(denominator)</b> | <b>Share</b>  |
|  |                                     |                      | <b>Amount</b> |
| Basic earnings:  |                                     |                      |               |
| Income from continuing operations                                  | \$ 81,639                           | 26,147               | \$ 3.12       |
| Preferred dividend requirements                                    | (11,857)                            |                      | (0.45)        |
| Income from continuing operations available to common shareholders | 69,782                              | 26,147               | 2.67          |
| Effect of dilutive securities:                                     |                                     |                      |               |
| Share options  |                                     | 372                  | (0.04)        |
| Nonvested common share grants                                      |                                     | 108                  | (0.01)        |
| Diluted earnings: Income from continuing operations                | \$ 69,782                           | 26,627               | \$ 2.62       |

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|  |           |        |         |
|--|-----------|--------|---------|
| Income from continuing operations available to common shareholders | \$ 69,782 | 26,147 | \$ 2.67 |
| Income from discontinued operations                                | 650       |        | 0.02    |
| Income available to common shareholders                            | 70,432    | 26,147 | 2.69    |
| Effect of dilutive securities:                                     |           |        |         |
| Share options  |           | 372    | (0.03)  |
| Nonvested common share grants                                      |           | 108    | (0.01)  |
| Diluted earnings   | \$ 70,432 | 26,627 | \$ 2.65 |

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The additional 1.9 million common shares that would result from the conversion of the Company's 5.75% Series C cumulative convertible preferred shares and the additional 1.6 million common shares that would result from the conversion of the Company's 9.00% Series E cumulative convertible preferred shares and the corresponding add-back of the preferred dividends declared on those shares are not included in the calculation of diluted earnings per share for the years ended December 31, 2008, 2007 and 2006 because the effect is anti-dilutive.

**15. Equity Incentive Plan**

All grants of common shares and options to purchase common shares were issued under the 1997 Share Incentive Plan prior to May 9, 2007, and under the 2007 Equity Incentive Plan on and after May 9, 2007. Under the 2007 Equity Incentive Plan, an aggregate of 950,000 common shares and options to purchase common shares, subject to adjustment in the event of certain capital events, may be granted. At December 31, 2008, there were 721,216 shares available for grant under the 2007 Equity Incentive Plan.

**Share Options**

Share options granted under both the 1997 Share Incentive Plan and the 2007 Equity Incentive Plan have exercise prices equal to the fair market value of a common share at the date of grant. The options may be granted for any reasonable term, not to exceed 10 years, and for employees typically become exercisable at a rate of 20% per year over a five year period. For Trustees, share options become exercisable upon issuance, however, the underlying shares cannot be sold within a one year period subsequent to the grant date. The Company generally issues new common shares upon option exercise. A summary of the Company's share option activity and related information is as follows:

|                                  | Number of<br>shares |    | Option price<br>per share | Weighted<br>avg.<br>exercise<br>price |
|----------------------------------|---------------------|----|---------------------------|---------------------------------------|
| Outstanding at December 31, 2005 | 890,176             | \$ | 14.00 - \$43.75           | \$ 26.52                              |
| Exercised                        | (16,326)            |    | 16.05 - 41.65             | 18.77                                 |
| Granted                          | 107,823             |    | 40.55 - 42.46             | 41.86                                 |
| Outstanding at December 31, 2006 | 981,673             | \$ | 14.00 - \$43.75           | \$ 28.33                              |
| Exercised                        | (181,620)           |    | 16.05 - 41.65             | 28.68                                 |
| Granted                          | 106,945             |    | 60.03 - 65.50             | 64.15                                 |
| Outstanding at December 31, 2007 | 906,998             | \$ | 14.00 - \$65.50           | \$ 32.49                              |
| Exercised                        | (81,914)            |    | 19.30 - 42.46             | 31.06                                 |
| Granted                          | 86,033              |    | 47.20 - 52.72             | 47.84                                 |
| Outstanding at December 31, 2008 | 911,117             | \$ | 14.00 - \$65.50           | \$ 34.07                              |

The weighted average fair value of options granted was \$4.31, \$7.91 and \$5.19 during 2008, 2007 and 2006, respectively. The intrinsic value of stock options exercised was \$1.9 million, \$6.1 million and \$0.4 million during the years ended December 31, 2008, 2007 and 2006, respectively.

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At December 31, 2008, stock-option expense to be recognized in future periods was \$1.0 million as follows (in thousands):

|           | <b>Amount</b> |
|-----------|---------------|
| Year:     |               |
| 2009      | \$ 407        |
| 2010      | 305           |
| 2011      | 221           |
| 2012      | 70            |
| 2013      |               |
| <br>Total | <br>\$ 1,003  |

The following table summarizes outstanding options at December 31, 2008:

| <b>Exercise price range</b> | <b>Options outstanding</b> | <b>Weighted avg. life remaining</b> | <b>Weighted avg. exercise price</b> | <b>Aggregate intrinsic value (in thousands)</b> |
|-----------------------------|----------------------------|-------------------------------------|-------------------------------------|---|
| \$ 14.00 19.99              | 189,141                    | 1.6                                 |                                     |   |
| 20.00 29.99                 | 264,127                    | 4.0                                 |                                     |   |
| 30.00 39.99                 | 82,222                     | 5.3                                 |                                     |   |
| 40.00 49.99                 | 258,682                    | 7.5                                 |                                     |   |
| 50.00 59.99                 | 10,000                     | 9.4                                 |                                     |   |
| 60.00 65.50                 | 106,945                    | 8.1                                 |                                     |   |
|                             | 911,117                    | 5.2                                 | \$34.07                             | \$4,204   |

The following table summarizes exercisable options at December 31, 2008:

| <b>Exercise price range</b> | <b>Options outstanding</b> | <b>Weighted avg. life remaining</b> | <b>Weighted avg. exercise price</b> | <b>Aggregate intrinsic value (in thousands)</b> |
|-----------------------------|----------------------------|-------------------------------------|-------------------------------------|---|
| \$14.00 19.99               | 189,141                    | 1.6                                 |                                     |   |
| 20.00 29.99                 | 264,127                    | 4.0                                 |                                     |   |
| 30.00 39.99                 | 61,506                     | 5.3                                 |                                     |   |
| 40.00 49.99                 | 87,459                     | 6.9                                 |                                     |   |
| 50.00 59.99                 | 10,000                     | 9.4                                 |                                     |   |
| 60.00 65.50                 | 29,393                     | 8.1                                 |                                     |   |
|                             | 641,626                    | 4.1                                 | \$27.53                             | \$4,204   |

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**Nonvested Shares**

A summary of the Company's nonvested share activity and related information is as follows:

|                                  | Number<br>of<br>shares | Weighted<br>avg.<br>grant date<br>fair value | Weighted<br>avg.<br>life<br>remaining |
|----------------------------------|------------------------|--|---------------------------------------|
| Outstanding at December 31, 2007 | 238,553                | \$ 53.80                                     |                                       |
| Granted                          | 120,691                | 47.20  |                                       |
| Vested                           | (76,916)               | 49.38  |                                       |
| Outstanding at December 31, 2008 | 282,328                | 52.18  | 1.3                                   |

The holders of nonvested shares have voting rights and receive dividends from the date of grant. These shares vest ratably over a period of three to five years. The fair value of the nonvested shares that vested was \$3.6 million, \$3.5 million and \$2.2 million for the years ended December 31, 2008, 2007 and 2006, respectively. At December 31, 2008, unamortized share-based compensation expense related to nonvested shares was \$8.0 million and will be recognized in future periods as follows (in thousands):

|       | Amount   |
|-------|----------|
| Year: |          |
| 2009  | \$ 2,921 |
| 2010  | 2,464    |
| 2011  | 1,928    |
| 2012  | 638      |
| Total | \$ 7,951 |

**16. Related Party Transactions**

In 2000, the Company loaned an aggregate of \$3.5 million to Company executives. The loans were made in order for the executives to purchase common shares of the Company at the market value of the shares on the date of the loan, as well as to repay borrowings on certain amounts previously loaned. The loans are recourse to the executives' assets and bear interest at 6.24%, are due on January 1, 2011 and interest is payable at maturity. During July of 2008, a former executive paid to the Company the \$1.6 million of principal on his loan which reduces the aggregate carrying value of these loans to \$1.9 million (before accrued interest) at December 31, 2008. Interest income from these loans totaled \$351 thousand, \$369 thousand and \$347 thousand for the years ended December 31, 2008, 2007 and 2006, respectively. These loans were issued with terms that include a Loan Forgiveness Program, under which the compensation committee of the Board of Trustees may forgive a portion of the above referenced indebtedness after application of proceeds from the sale of shares, following a change in control of the Company. The compensation committee may also forgive the debt incurred upon termination of employment by reason of death, disability, normal retirement or without cause. At December 31, 2008 and

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2007, accrued interest receivable on these loans, included in other assets in the accompanying consolidated balance sheets, was \$3.1 million and \$2.7 million, respectively.

The Company loaned \$5 million to its New Roc minority joint venture partner in 2003 in connection with the acquisition of its interest in New Roc. During 2007, the Company loaned an additional \$5 million to the same partner. See Note 8 for additional information on this note.

The Company loaned \$10 million to a minority joint venture partner of the White Plains entities in 2007 in connection with the acquisition of its interest in these entities. See Note 8 for additional information on this note.

The Company loaned \$10 million to Louis Cappelli in 2008. Through his related interests, Louis Cappelli is the developer and minority interest partner of the Company's New Roc and White Plains entertainment retail centers. See Note 8 for additional information on this note.

In 2008, Donald Brain, the brother of the Company's Chief Executive Officer, acquired a 33.33% interest in the Company's partner in VinREIT, Global Wine Partners (U.S.), LLC (GWP). The Company's Board of Trustees was informed of Donald Brain's acquisition of such interest, and affirmed VinREIT's business relationship with GWP. There was no modification to the operating agreement of VinREIT, and future amendments or modifications to the operating agreement or relationship with GWP will require the Board of Trustees approval.

**17. Operating Leases**

Most of the Company's rental properties are leased under operating leases with expiration dates ranging from 3 to 25 years. Future minimum rentals on non-cancelable tenant operating leases at December 31, 2008 are as follows (in thousands):

|            | <b>Amount</b>    |
|------------|------------------|
| Year:      |                  |
| 2009       | \$ 199,557       |
| 2010       | 199,575          |
| 2011       | 185,629          |
| 2012       | 174,637          |
| 2013       | 166,031          |
| Thereafter | 1,106,468        |
| <br>Total  | <br>\$ 2,031,897 |

The Company leases its executive office from an unrelated landlord and such lease expires in December 2009. Rental expense for this lease totaled approximately \$319 thousand, \$212 thousand and \$206 thousand for the years ended December 31, 2008, 2007 and 2006, respectively, and is included as a component of general and administrative expense in the accompanying consolidated statements of income. Future minimum lease payments under this lease at December 31, 2008 are \$322 thousand for 2009. The Company can extend the lease, at its option, for two option periods of five years each, with annual rent increasing \$0.50 per square foot per year.

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**18. Quarterly Financial Information (unaudited)**

Summarized quarterly financial data for the years ended December 31, 2008 and 2007 are as follows (in thousands, except per share data):

|   | <b>March<br/>31</b> | <b>June 30</b> | <b>September<br/>30</b> | <b>December<br/>31</b> |
|---|---------------------|----------------|-------------------------|------------------------|
| 2008:                                       |                     |                |                         |                        |
| Total revenue                               | \$ 65,859           | 68,755         | 74,967                  | 76,559                 |
| Net income                                  | 27,122              | 31,411         | 36,058                  | 35,385                 |
| Net income available to common shareholders | 21,511              | 23,859         | 28,506                  | 27,834                 |
| Basic net income per per common share       | 0.77                | 0.79           | 0.90                    | 0.85                   |
| Diluted net income per common share         | 0.76                | 0.78           | 0.89                    | 0.85                   |
|   |                     |                |                         |                        |
|   | <b>March<br/>31</b> | <b>June 30</b> | <b>September<br/>30</b> | <b>December<br/>31</b> |
| 2007:                                       |                     |                |                         |                        |
| Total revenue                               | \$ 50,740           | 57,584         | 61,564                  | 65,727                 |
| Net income                                  | 22,911              | 28,275         | 26,350                  | 27,128                 |
| Net income available to common shareholders | 18,054              | 20,939         | 20,740                  | 21,518                 |
| Basic net income per per common share       | 0.69                | 0.79           | 0.78                    | 0.78                   |
| Diluted net income per common share         | 0.67                | 0.78           | 0.77                    | 0.77                   |

All periods have been adjusted to reflect the impact of the operating properties sold during 2008 and 2007, which are reflected as discontinued operations on the accompanying consolidated statements of income for the years ended December 31, 2008, 2007 and 2006.

Certain reclassifications have been made to the prior period amounts to conform to the current period presentation.

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**ENTERTAINMENT PROPERTIES TRUST**  
**Notes to Consolidated Financial Statements**  
**December 31, 2008, 2007 and 2006**

**19. Discontinued Operations**

Included in discontinued operations for the years ended December 31, 2008 and 2007 is a land parcel sold in June of 2008 for \$1.1 million. The land parcel was previously leased under a ground lease. Additionally, included in discontinued operations for the year ended December 31, 2007 is a parcel including two leased properties sold in June of 2007 for \$7.7 million, aggregating 107 thousand square feet.

The operating results relating to assets sold are as follows (in thousands):

|  | <b>Year ended December 31,</b> |              |             |
|--|--------------------------------|--------------|-------------|
|  | <b>2008</b>                    | <b>2007</b>  | <b>2006</b> |
| Rental revenue                               | \$                             | \$ 262       | \$ 526      |
| Tenant reimbursements                        |                                | 76           | 185         |
| Other income                                 |                                | 700          | 357         |
| <br>Total revenue                            |                                | <br>1,038    | <br>1,068   |
| Property operating expense                   | 26                             | 141          | 284         |
| Depreciation and amortization                |                                | 58           | 134         |
| <br>Income before gain on sale of real state | <br>(26)                       | <br>839      | <br>650     |
| Gain on sale of real estate                  | 119                            | 3,240        |             |
| <br>Net income                               | <br>\$ 93                      | <br>\$ 4,079 | <br>\$ 650  |

**20. Staff Accounting Bulletin No. 108 (SAB 108)**

In September 2006, the SEC released SAB 108. SAB 108 permits the Company to adjust for the cumulative effect of errors relating to prior years previously considered to be immaterial by adjusting the opening balance of retained earnings in the year of adoption. SAB 108 also requires the adjustment of any prior quarterly financial statements within the fiscal year of adoption for the effects of such errors on the quarters when the information is next presented. Such adjustments do not require previously filed reports with the SEC to be amended.

Effective January 1, 2006, the Company adopted SAB 108. In accordance with SAB 108, the Company increased distributions in excess of net income as of January 1, 2006, and its rental revenue and net income for the first three quarters of 2006 for the recognition of straight-line rental revenues and net receivables as further described below. The Company considers these adjustments to be immaterial to prior years on both a qualitative and quantitative basis. SFAS No. 13 Accounting for Leases requires rental income that is fixed and determinable to be recognized on a straight-line basis over the minimum term of the lease. Certain leases executed or acquired between 1998 and 2003 contain rental income provisions that are fixed and determinable yet straight line revenue recognition in accordance with SFAS No. 13 was not



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**ENTERTAINMENT PROPERTIES TRUST**  
**Notes to Consolidated Financial Statements**  
**December 31, 2008, 2007 and 2006**

applied. Accordingly, the implementation of SAB 108 corrects the revenue recognition related to such leases. The cumulative effect of implementing SAB 108 is to increase shareholders' equity as of January 1, 2006 by \$7.7 million.

**21. Other Commitments and Contingencies**

As of December 31, 2008, the Company had one winemaking and storage facility project under development for which it has agreed to finance the development costs. Through December 31, 2008, the Company has invested approximately \$3.7 million in this project for the purchase of land and development in Sonoma County, California, and has commitments to fund approximately \$4.8 million of additional improvements. Development costs are advanced by the Company in periodic draws. If the Company determines that construction is not being completed in accordance with the terms of the development agreement, the Company can discontinue funding construction draws. The Company has agreed to lease the facility to the operator at pre-determined rates.

As discussed in Note 7, the Company held a 50% ownership interest in Suffolk which is developing additional retail square footage adjacent to one of the Company's megaplex theatres in Suffolk, Virginia. The Company's joint venture partner is the developer of the project and Suffolk has paid the developer a development fee of \$1.2 million and has no commitment to pay additional development fees. Additionally, as of December 31, 2008, Suffolk has commitments to fund approximately \$4.6 million in additional improvements for this development.

As further described in Note 4, the Company has provided a guarantee of the payment of certain economic development revenue bonds totaling \$22.0 million for which the Company earns a fee at an annual rate of 1.75% over the 30 year term of the bond. The Company evaluated this guarantee in connection with the provisions of FASB Interpretation No. 45, Guarantor's Accounting and Disclosure Requirements, Including Indirect Guarantees of Indebtedness of Others (FIN 45). Based on certain criteria, FIN 45 requires a guarantor to record an asset and a liability at inception. Accordingly, the Company has recorded \$4.0 million as a deferred asset included in accounts receivable and \$4.0 million included in other liabilities in the accompanying consolidated balance sheet as of December 31, 2008 and 2007 which represents management's best estimate of the fair value of the guarantee at inception which will be realized over the term of the guarantee. No amounts have been accrued as a loss contingency related to this guarantee because payment by the Company is not probable.

The Company has certain commitments related to its mortgage note investments that it may be required to fund in the future. The Company is generally obligated to fund these commitments at the request of the borrower or upon the occurrence of events outside of its direct control. As of December 31, 2008, the Company had four mortgage notes receivable with commitments totaling approximately \$140.3 million. If such commitments are funded in the future, interest will be charged at rates consistent with the existing investments.

As discussed in Note 4, the Company's 25% principal payment and all accrued interest to date on the second mortgage note receivable from the Partnership related to the construction of Toronto

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**ENTERTAINMENT PROPERTIES TRUST**  
**Notes to Consolidated Financial Statements**  
**December 31, 2008, 2007 and 2006**

Life Square was extended to March 2, 2009. In conjunction with this extension, the maturity on the first mortgage construction financing (provided by a group of banks) was extended to February 27, 2009. Management of the Partnership is actively seeking to refinance the first mortgage which is expected to total approximately \$119.5 million Canadian on its due date of February 27, 2009. A refinancing of the first mortgage triggers all amounts due under the Company's second mortgage as well as certain ownership conversion rights. The Company anticipates that the proceeds from the refinancing will be inadequate to take out both the existing first mortgage and its mortgage. As a result, the Company is negotiating a restructuring of the Partnership wherein the Company would become the sole owner of the general partnership interest. Under this scenario, the Company would expect its mortgage note receivable to remain in place and be further extended. Alternatively, if a restructuring of the Partnership or a refinancing cannot be successfully executed, the property will likely go into foreclosure and the Company could become the owner of the property by offering to purchase the property for at least the total amount of the first and second mortgage during a foreclosure related auction, or could be paid in full. In either a restructuring or a foreclosure in which the Company becomes the owner, the Company would expect to consolidate the financial results of the property subsequent to the restructuring.

As indicated above, the carrying value of the Company's mortgage note receivable including all accrued interest at December 31, 2008 was \$125.8 million Canadian and the balance of the first mortgage was \$119.5 million Canadian. The Company projects its second mortgage note receivable balance including accrued interest will be approximately \$128.9 million Canadian and the first mortgage balance will remain at approximately \$119.5 million Canadian at February 27, 2009, for a total of approximately \$248.4 million Canadian. All other debt and equity amounts are subordinate to the existing first and the Company's second mortgage. The real estate component of the project was 87% leased and the signage component was 43% leased at January 31, 2009. Management determined the fair market value of the project to be \$277.0 million Canadian, taking into account an independent appraisal dated January 31, 2009. Furthermore, while there can be no assurance regarding the success of the first mortgage refinancing or its timing, based on preliminary negotiations, the Company currently projects the new first mortgage will provide proceeds of \$100 million to \$130 million Canadian.

**22. Subsequent Events**

During January 2009, the Company issued pursuant to a registered public offering 1.6 million common shares under the direct share purchase component of the Company's Dividend Reinvestment and Direct Share Purchase Plan. These shares were sold at an average price of \$23.86 per share and total net proceeds after expenses were approximately \$36.8 million. Additionally, during February 2009, the Company issued pursuant to a registered public offering 339 thousand common shares under this plan. These shares were sold at an average price of \$22.12 per share and total net proceeds after expenses were approximately \$7.5 million.

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**Entertainment Properties Trust**  
Schedule II Valuation and Qualifying Accounts  
December 31, 2008

| Description                         | Balance at<br>December 31, 2007 | Additions<br>During 2008 | Deductions<br>During 2008 | Balance at<br>December 31, 2008 |
|-------------------------------------|---------------------------------|--------------------------|---------------------------|---------------------------------|
| Reserve for<br>Doubtful<br>Accounts | 1,083,000                       | 2,015,000                | (833,000)                 | 2,265,000                       |

See accompanying report of independent registered public accounting firm.

**Entertainment Properties Trust**  
Schedule II Valuation and Qualifying Accounts  
December 31, 2007

| Description                         | Balance at<br>December 31, 2006 | Additions<br>During 2007 | Deductions<br>During 2007 | Balance at<br>December 31, 2007 |
|-------------------------------------|---------------------------------|--------------------------|---------------------------|---------------------------------|
| Reserve for<br>Doubtful<br>Accounts | 1,123,000                       | 1,301,000                | (1,341,000)               | 1,083,000                       |

See accompanying report of independent registered public accounting firm.

**Entertainment Properties Trust**  
Schedule II Valuation and Qualifying Accounts  
December 31, 2006

| Description                         | Balance at<br>December 31, 2005 | Additions<br>During 2006 | Deductions<br>During 2006 | Balance at<br>December 31, 2006 |
|-------------------------------------|---------------------------------|--------------------------|---------------------------|---------------------------------|
| Reserve for<br>Doubtful<br>Accounts | 244,000                         | 1,127,000                | * (248,000)               | 1,123,000                       |

\* Additions during 2006 include \$877,000 in bad debt expense and \$250,000 recorded in conjunction with the Company's implementation of SAB 108.

See accompanying report of independent registered public accounting firm.

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**Entertainment Properties Trust**  
Schedule III Real Estate and Accumulated Depreciation  
December 31, 2008  
(Dollars in thousands)

| Description                               | Market          | Encumbrance | Initial cost      |  | Gross Amount at December 31, 2008        |  |        | Accumulated Depreciation | Date acquired | Useful life |          |
|---|-----------------|-------------|-------------------|--|--|--|--------|--------------------------|---------------|-------------|----------|
|   |                 |             | Land improvements | Buildings, Equipment & Land improvements | Buildings, Equipment & Land improvements | Buildings, Equipment & Land improvements | Total  |                          |               |             |          |
| Grand 24                                  | Dallas, TX      | \$ 4,979    | 3,060             | 15,281                                   |  | 3,060                                    | 15,281 | 18,341                   | 4,011         | 11/97       | 40 years |
| Mission Valley 20                         | San Diego, CA   | 7,859       |                   | 16,028                                   |  |  | 16,028 | 16,028                   | 4,207         | 11/97       | 40 years |
| Promenade 16                              | Los Angeles, CA | 13,754      | 6,021             | 22,104                                   |  | 6,021                                    | 22,104 | 28,125                   | 5,802         | 11/97       | 40 years |
| Ontario Mills 30                          | Los Angeles, CA | 12,197      | 5,521             | 19,450                                   |  | 5,521                                    | 19,450 | 24,971                   | 5,106         | 11/97       | 40 years |
| Lennox 24                                 | Columbus, OH    | 6,194       |                   | 12,685                                   |  |  | 12,685 | 12,685                   | 3,330         | 11/97       | 40 years |
| West Olive 16                             | St. Louis, MO   | 5,763       | 4,985             | 12,602                                   |  | 4,985                                    | 12,602 | 17,587                   | 3,308         | 11/97       | 40 years |
| Studio 30                                 | Houston, TX     | 12,728      | 6,023             | 20,037                                   |  | 6,023                                    | 20,037 | 26,060                   | 5,260         | 11/97       | 40 years |
| Huebner Oaks 24                           | San Antonio, TX | 8,141       | 3,006             | 13,662                                   |  | 3,006                                    | 13,662 | 16,668                   | 3,586         | 11/97       | 40 years |
| First Colony 24                           | Houston, TX     | 18,075      |                   | 19,100                                   | 67                                       |  | 19,167 | 19,167                   | 5,271         | 11/97       | 40 years |
| Oakview 24                                | Omaha, NE       | 18,776      | 5,215             | 16,700                                   | 59                                       | 5,215                                    | 16,759 | 21,974                   | 4,609         | 11/97       | 40 years |
| Leawood 20                                | Kansas City, MO | 14,994      | 3,714             | 12,086                                   | 43                                       | 3,714                                    | 12,129 | 15,843                   | 3,335         | 11/97       | 40 years |
| On The Border Vacant (formerly Bennigans) | Dallas, TX      | 565         | 879               |  |  | 879                                      |        | 879                      |               | 11/97       | n/a      |
| Vacant (formerly Bennigans)               | Dallas, TX      | 565         | 565               |  | 1,000                                    | 565                                      | 1,000  | 1,565                    | 434           | 11/97       | 20 years |
| Vacant (formerly Bennigans)               | Houston, TX     | 426         | 652               |  | 750                                      | 652                                      | 750    | 1,402                    | 326           | 11/97       | 20 years |
|   |                 | 426         | 1,519             |  |  | 1,519                                    |        | 1,519                    |               | 11/97       | n/a      |

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|                        |                   |        |       |        |       |       |        |        |       |       |       |
|------------------------|-------------------|--------|-------|--------|-------|-------|--------|--------|-------|-------|-------|
| Texas Land & Cattle    | Dallas, TX        |        |       |        |       |       |        |        |       |       | 40    |
| Gulf Pointe 30         | Houston, TX       | 25,465 | 4,304 | 21,496 | 76    | 4,304 | 21,572 | 25,876 | 5,887 | 2/98  | years |
| South Barrington 30    | Chicago, IL       | 26,302 | 6,577 | 27,723 | 98    | 6,577 | 27,821 | 34,398 | 7,535 | 3/98  | years |
| Mesquite 30            | Dallas, TX        | 21,590 | 2,912 | 20,288 | 72    | 2,912 | 20,360 | 23,272 | 5,432 | 4/98  | years |
| Hampton Town Center 24 | Norfolk, VA       | 18,758 | 3,822 | 24,678 | 88    | 3,822 | 24,766 | 28,588 | 6,501 | 6/98  | years |
| Pompano 18             | Pompano Beach, FL | 10,366 | 6,771 | 9,899  | 2,425 | 6,771 | 12,324 | 19,095 | 3,210 | 8/98  | years |
| Raleigh Grand 16       | Raleigh, NC       | 6,690  | 2,919 | 5,559  |       | 2,919 | 5,559  | 8,478  | 1,436 | 8/98  | years |
| Paradise 24            | Miami, FL         | 20,899 | 2,000 | 13,000 | 8,512 | 2,000 | 21,512 | 23,512 | 5,288 | 11/98 | years |
| Aliso Viejo 20         | Los Angeles, CA   | 20,899 | 8,000 | 14,000 |       | 8,000 | 14,000 | 22,000 | 3,500 | 12/98 | years |
| Bosie Stadium 20       | Boise, ID         | 14,983 |       | 16,003 |       |       | 16,003 | 16,003 | 4,001 | 12/98 | years |
| Texas Roadhouse Grill  | Atlanta, GA       | 565    | 886   |        |       | 886   |        | 886    |       | 3/99  | n/a   |
| Roadhouse Grill        | Atlanta, GA       | 243    | 868   |        | (868) |       |        |        |       | 3/99  | n/a   |
| Woodridge 18           | Chicago, IL       | 7,170  | 9,926 | 8,968  |       | 9,926 | 8,968  | 18,894 | 2,130 | 6/99  | years |
| Cary Crossroads 20     | Cary, NC          | 7,675  | 3,352 | 11,653 | 155   | 3,352 | 11,808 | 15,160 | 2,657 | 6/99  | years |
| Tampa Palms 20         | Tampa, FL         | 9,089  | 6,000 | 12,809 |       | 6,000 | 12,809 | 18,809 | 2,909 | 6/99  | years |
| Palms Promenade        | San Diego, CA     | 12,068 | 7,500 | 17,750 |       | 7,500 | 17,750 | 25,250 | 3,957 | 6/99  | years |
| Westminster 24         | Denver, CO        | 12,694 | 5,850 | 17,314 |       | 5,850 | 17,314 | 23,164 | 3,066 | 12/01 | years |
| Westminster Promenade  | Denver, CO        | 6,085  | 6,204 | 12,600 | 6,567 | 6,204 | 19,167 | 25,371 | 2,993 | 12/01 | years |
| Westbank Palace 10     | Westbank, LA      | 8,079  | 4,378 | 12,330 |       | 4,378 | 12,330 | 16,708 | 2,106 | 3/02  | years |
| Houma Palace 10        | Houma, LA         | 4,544  | 2,404 | 6,780  |       | 2,404 | 6,780  | 9,184  | 1,158 | 3/02  | years |
| Hammond Palace 10      | Hammond, LA       | 4,418  | 2,404 | 6,780  | (565) | 1,839 | 6,780  | 8,619  | 1,158 | 3/02  | years |
| Elmwood Palace 10      | Elmwood, LA       | 11,613 | 5,264 | 14,820 |       | 5,264 | 14,820 | 20,084 | 2,532 | 3/02  | years |

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|   |                            |           |         |         |        |         |         |         |         |             |             |
|---|----------------------------|-----------|---------|---------|--------|---------|---------|---------|---------|-------------|-------------|
| Clearview<br>Palace 12                    | Clearview,<br>LA           | 6,059     |         | 11,740  |        | 11,740  | 11,740  | 2,006   | 3/02    | 40<br>years |             |
| Sterling<br>Forum 30                      | Sterling<br>Heights,<br>MI | 14,138    | 5,975   | 17,956  | 3,400  | 5,975   | 21,356  | 27,331  | 4,113   | 6/02        | 40<br>years |
| Olathe<br>Studio 30                       | Olathe,<br>KS              | 10,100    | 4,000   | 15,935  |        | 4,000   | 15,935  | 19,935  | 2,589   | 6/02        | 40<br>years |
| Cherrydale<br>16                          | Greenville,<br>SC          | 4,166     | 1,600   | 6,400   |        | 1,600   | 6,400   | 8,000   | 1,040   | 6/02        | 40<br>years |
| Cherrydale<br>Shops                       | Greenville,<br>SC          |           | 60      | 1,170   |        | 60      | 1,170   | 1,230   | 190     | 6/02        | 40<br>years |
| Livonia                                   | Livonia,<br>MI             | 11,563    | 4,500   | 17,525  |        | 4,500   | 17,525  | 22,025  | 2,811   | 8/02        | 40<br>years |
| Hoffman 22                                | Alexandria,<br>VA          | 11,613    |         | 22,035  |        |         | 22,035  | 22,035  | 3,443   | 10/02       | 40<br>years |
| Little Rock<br>Rave                       | Little<br>Rock,<br>AR      | 10,271    | 3,858   | 7,990   |        | 3,858   | 7,990   | 11,848  | 1,215   | 12/02       | 40<br>years |
| Subtotals<br>carried over to<br>next page |                            | \$443,547 | 153,494 | 554,936 | 21,879 | 152,061 | 578,248 | 730,309 | 133,448 |             |             |

**Table of Contents****Entertainment Properties Trust**

Continued Schedule III Real Estate and Accumulated Depreciation

December 31, 2008

(Dollars in thousands)

| Description                 | Market  | Encumbrance | Initial cost |              |                              | Gross Amount at December 31, 2008 |              |                              | Accumulated Depreciation | Date acquired | Useful life |
|-----------------------------|---------|-------------|--------------|--------------|------------------------------|-----------------------------------|--------------|------------------------------|--------------------------|---------------|-------------|
|                             |         |             | Land         | Improvements | Buildings, Equipment & other | Land                              | Improvements | Buildings, Equipment & other |                          |               |             |
| Subtotal from previous page | n/a     | \$443,547   | 153,494      | 554,936      | 21,879                       | 152,061                           | 578,248      | 730,309                      | 133,448                  | n/a           | n/a         |
| AmStar Cinema 16            | GA      | 6,332       | 1,982        | 5,056        |                              | 1,982                             | 5,056        | 7,038                        | 727                      | 3/03          | years       |
| Johnny Carinos Star         | TX      | 565         | 789          | 990          |                              | 789                               | 990          | 1,779                        | 144                      | 3/03          | years       |
| Southfield Center           | MI      | 6,080       | 8,000        | 20,518       | 4,802                        | 8,000                             | 25,320       | 33,320                       | 4,650                    | 5/03          | years       |
| Southwind 12                | KS      | 4,669       | 1,500        | 3,526        |                              | 1,500                             | 3,526        | 5,026                        | 492                      | 6/03          | years       |
| New Roc City                | NY      | 65,742      | 6,100        | 97,601       | 226                          | 6,100                             | 97,827       | 103,927                      | 15,578                   | 10/03         | years       |
| Harbour View Station        | VA      | 5,730       | 3,256        | 9,206        |                              | 3,256                             | 9,206        | 12,462                       | 1,189                    | 11/03         | years       |
| Columbiana Grande 14        | SC      | 8,029       | 1,000        | 10,534       | (2,447)                      | 1,000                             | 8,087        | 9,087                        | 1,085                    | 11/03         | years       |
| The Grande 18               | FL      | 1,471       | 7,985        |              |                              | 7,985                             |              | 7,985                        |                          | 12/03         | n/a         |
| Kanata Centrum              | Ontario | 30,337      | 10,345       | 37,728       | 26,372                       | 10,345                            | 64,100       | 74,445                       | 6,306                    | 3/04          | years       |
| Oakville Centrum            | Ontario | 24,792      | 10,345       | 24,376       | 3,923                        | 10,345                            | 28,299       | 38,644                       | 3,158                    | 3/04          | years       |
| Mississauga Centrum         | Ontario | 16,575      | 9,523        | 18,136       | 13,290                       | 13,498                            | 27,450       | 40,948                       | 2,994                    | 3/04          | years       |
| Whitby Centrum              | Ontario | 19,879      | 10,509       | 22,638       | 16,177                       | 12,488                            | 36,836       | 49,324                       | 4,605                    | 3/04          | years       |
| Deer Valley 30              | AZ      | 15,171      | 4,276        | 15,934       |                              | 4,276                             | 15,934       | 20,210                       | 1,892                    | 3/04          | years       |
| Mesa Grand 24               | AZ      | 15,335      | 4,446        | 16,565       |                              | 4,446                             | 16,565       | 21,011                       | 1,967                    | 3/04          | years       |
| Hamilton 24                 | NJ      | 16,963      | 4,869        | 18,143       |                              | 4,869                             | 18,143       | 23,012                       | 2,154                    | 3/04          | years       |
|                             |         | 4,029       | 1,836        | 8,230        |                              | 1,836                             | 8,230        | 10,066                       | 719                      | 7/04          |             |

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|                                    |                   |        |        |        |       |        |        |        |       |          |          |
|------------------------------------|-------------------|--------|--------|--------|-------|--------|--------|--------|-------|----------|----------|
| Conroe Grande Theatre              | Conroe, TX        |        |        |        |       |        |        |        |       | 40 years |          |
| Grand Prairie 18 Lafayette         | Peoria, IL        | 3,847  | 2,948  | 11,177 |       | 2,948  | 11,177 | 14,125 | 1,234 | 7/04     | 40 years |
| Grand 16 Vland                     | Lafayette, LA     | 8,910  | 1,935  | 8,383  |       |        | 10,318 | 10,318 | 1,155 | 7/04     | 40 years |
| Multi-tenant Retail                | Chicago, IL       | 663    | 1,936  |        | 114   | 2,050  |        | 2,050  |       | 7/04     | n/a      |
| Stir Crazy Northeast Mall 18       | Chicago, IL       | 663    | 1,983  | 900    |       | 1,983  | 900    | 2,883  | 255   | 10/04    | 40 years |
| The Grand D Iberville 14           | Hurst, TX         | 14,377 | 5,000  | 11,729 | 1,015 | 5,000  | 12,744 | 17,744 | 1,308 | 11/04    | 40 years |
| Melbourne 16                       | Biloxi, MS        | 11,208 | 2,001  | 8,043  | 2,432 | 2,001  | 10,475 | 12,476 | 948   | 12/04    | 40 years |
| Splitz Mayfaire Cinema 16 Plex RMP | Melbourne, FL     | 5,074  | 3,817  | 8,830  | 320   | 3,817  | 9,150  | 12,967 | 915   | 12/04    | 40 years |
| Chatanooga 18                      | Westminster, CO   |        |        | 2,213  | 335   |        | 2,548  | 2,548  | 250   | 12/04    | 40 years |
| Burbank Village Savannah Land      | Wilmington, NC    | 7,577  | 1,650  | 7,047  |       | 1,650  | 7,047  | 8,697  | 690   | 2/05     | 40 years |
| Washington Square                  | Chatanooga, TN    | 12,357 | 2,798  | 11,467 |       | 2,798  | 11,467 | 14,265 | 1,099 | 3/05     | 40 years |
| Etouffee Asahi Sushi Bar           | Burbank, CA       | 34,312 | 16,584 | 35,016 | 2,714 | 16,584 | 37,730 | 54,314 | 3,313 | 3/05     | 40 years |
| Hattiesburg Theatre                | Savannah, GA      |        | 2,783  |        | 5     | 2,788  |        | 2,788  |       | 5/05     | n/a      |
| Mad River Mountain                 | Indianapolis, IN  | 4,986  | 1,481  | 4,565  |       | 1,481  | 4,565  | 6,046  | 399   | 6/05     | 40 years |
| Manchester Stadium 16              | Southfield, MI    |        |        | 1,200  | 54    |        | 1,254  | 1,254  | 103   | 8/05     | 40 years |
| Modesto Stadium 10                 | Houston, TX       | 425    | 1,482  | 1,365  | (170) | 1,237  | 1,440  | 2,677  | 325   | 8/05     | 15 years |
| Sizzler Arroyo Grande Stadium 10   | Hattiesburg, MS   | 10,117 | 1,978  | 7,733  | 2,432 | 1,978  | 10,165 | 12,143 | 750   | 9/05     | 40 years |
|                                    | Bellefontaine, OH | 6,021  | 5,108  | 5,994  | 1,500 | 5,251  | 7,351  | 12,602 | 879   | 11/05    | 40 years |
|                                    | Fresno, CA        | 11,530 | 7,600  | 11,613 |       | 7,600  | 11,613 | 19,213 | 1,009 | 12/05    | 40 years |
|                                    | Modesto, CA       | 4,756  | 2,542  | 3,910  |       | 2,542  | 3,910  | 6,452  | 301   | 12/05    | 40 years |
|                                    | Arroyo Grande, CA |        | 444    | 534    |       | 444    | 534    | 978    | 41    | 12/05    | 40 years |
|                                    | Arroyo Grande, CA | 4,907  | 2,641  | 3,810  |       | 2,641  | 3,810  | 6,451  | 294   | 12/05    | 40 years |



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|                                     |                   |           |         |           |        |         |           |           |         |       |          |
|-------------------------------------|-------------------|-----------|---------|-----------|--------|---------|-----------|-----------|---------|-------|----------|
| Auburn Stadium 10                   | Auburn, CA        | 6,354     | 2,178   | 6,185     |        | 2,178   | 6,185     | 8,363     | 477     | 12/05 | 40 years |
| Columbia 14                         | Columbia, MD      | 4,742     |         | 12,204    |        |         | 12,204    | 12,204    | 839     | 3/06  | 40 years |
| Firewheel 18                        | Garland, TX       | 17,133    | 8,028   | 14,825    |        | 8,028   | 14,825    | 22,853    | 1,019   | 3/06  | 40 years |
| Oak Village Cinema 14               | Garner, NC        | 3,554     | 1,305   | 6,899     |        | 1,305   | 6,899     | 8,204     | 460     | 4/06  | 40 years |
| Grand 18                            | Winston-Salem, NC | 4,212     |         | 12,153    | 1,925  |         | 14,078    | 14,078    | 880     | 7/06  | 40 years |
| Subtotals carried over to next page |                   | \$862,971 | 318,477 | 1,061,912 | 96,898 | 321,080 | 1,156,206 | 1,477,286 | 200,051 |       |          |

**Table of Contents****Entertainment Properties Trust**

Continued Schedule III Real Estate and Accumulated Depreciation

December 31, 2008

(Dollars in thousands)

| Description                   | Market | Encumbrance | Initial cost |              |   | Gross Amount at December 31, 2008 |              |                              | Accumulated Depreciation | Date acquired | Useful life |
|-------------------------------|--------|-------------|--------------|--------------|---|-----------------------------------|--------------|------------------------------|--------------------------|---------------|-------------|
|                               |        |             | Land         | Improvements | Buildings, Equipment & Subsequent acquisition | Land                              | Improvements | Buildings, Equipment & Total |                          |               |             |
| Subtotal from previous page   | n/a    | \$ 862,971  | 318,477      | 1,061,912    | 96,898  | 321,080                           | 1,156,206    | 1,477,286                    | 200,051                  | n/a           | n/a         |
| Huntsville 18                 | AL     | 7,039       | 3,508        | 14,802       |   | 3,508                             | 14,802       | 18,310                       | 863                      | 8/06          | 40 years    |
| Cityplace 14                  | MI     |             | 5,125        | 12,216       |   | 5,125                             | 12,216       | 17,341                       | 636                      | 12/06         | 40 years    |
| Bayou 15                      | FL     | 5,484       | 5,316        | 15,099       |   | 5,316                             | 15,099       | 20,415                       | 755                      | 12/06         | 40 years    |
| Havens Wine Cellars           | CA     | 4,765       | 2,527        | 4,873        | 656   | 2,527                             | 5,529        | 8,056                        | 456                      | 12/06         | 40 years    |
| Grand Theatre 16              | LA     | 10,635      |              | 11,499       |   |                                   | 11,499       | 11,499                       | 575                      | 12/06         | 40 years    |
| Rack & Riddle Winery          | CA     | 12,640      | 1,015        | 5,724        | 15,359  | 1,015                             | 21,083       | 22,098                       | 684                      | 04/07         | 40 years    |
| City Center                   | NY     | 118,917     | 28,201       | 130,022      |   | 28,201                            | 130,022      | 158,223                      | 5,418                    | 05/07         | 40 years    |
| Pier Park Grand 16            | FL     | 6,570       | 6,486        | 11,156       |   | 6,486                             | 11,156       | 17,642                       | 442                      | 05/07         | 40 years    |
| Kalispell Stadium 14          | MT     | 3,420       | 2,505        | 7,323        |   | 2,505                             | 7,323        | 9,828                        | 244                      | 07/07         | 40 years    |
| Austell Promenade             | GA     |             | 1,596        |              |   | 1,596                             |              | 1,596                        |                          | 08/07         | n/a         |
| EOS Estate Winery             | CA     |             | 1,576        | 19,725       | 2,179   | 2,316                             | 21,164       | 23,480                       | 880                      | 08/07         | 40 years    |
| Cosentino Wineries            | CA     |             | 7,370        | 13,431       |   | 5,249                             | 15,552       | 20,801                       | 1,115                    | 08/07         | 40 years    |
| Four Seasons Station Grand 18 | NC     | 4,942       |              | 12,606       |   |                                   | 12,606       | 12,606                       | 341                      | 11/07         | 40 years    |

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|                                    |                 |             |         |           |         |         |           |           |         |         |       |
|------------------------------------|-----------------|-------------|---------|-----------|---------|---------|-----------|-----------|---------|---------|-------|
| Crotched Mountain                  | Bennington, NJ  |             | 404     |           |         | 404     |           | 404       | 02/08   | n/a     |       |
| Buena Vista                        | Sonoma, CA      | 39,272      | 30,405  | 30,171    |         | 30,405  | 30,171    | 60,576    | 948     | 06/08   | years |
| Covey Run                          | Sunnyside, WA   | 2,715       | 112     | 3,944     |         | 112     | 3,944     | 4,056     | 49      | 06/08   | years |
| Gary Farrell                       | Healdsburg, CA  | 4,212       | 2,135   | 4,209     |         | 2,135   | 4,209     | 6,344     | 53      | 06/08   | years |
| Geyser Peak                        | Geyserville, CA | 28,514      | 14,353  | 31,131    |         | 14,353  | 31,131    | 45,484    | 512     | 06/08   | years |
| Caneros                            | Sonoma, CA      |             | 2,772   |           |         | 2,772   |           | 2,772     |         | 06/08   | n/a   |
| Glendora 12                        | Glendora, CA    |             |         | 10,878    |         |         | 10,878    | 10,878    | 56      | 10/08   | years |
| Mortgage Note Related Encumbrances |                 | 150,272     |         |           |         |         |           |           |         | n/a     | n/a   |
| Development Property               |                 |             | 30,835  |           |         | 30,835  |           | 30,835    |         | Various | n/a   |
| Total                              |                 | \$1,262,368 | 464,718 | 1,400,721 | 115,092 | 465,940 | 1,514,590 | 1,980,530 | 214,078 |         |       |

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**Entertainment Properties Trust**

Schedule III Real Estate and Accumulated Depreciation (continued)

Reconciliation

(Dollars in thousands)

December 31, 2008

Real Estate:

Reconciliation:

|  |              |
|--|--------------|
| Balance at beginning of the year                                 | \$ 1,849,229 |
| Acquisition and development of rental properties during the year | 132,168      |
| Disposition of rental properties during the year                 | (867)        |
| Balance at close of year   | \$ 1,980,530 |

Accumulated Depreciation

Reconciliation:

|                                  |            |
|----------------------------------|------------|
| Balance at beginning of the year | \$ 177,607 |
| Depreciation during the year     | 36,471     |
| Balance at close of year         | \$ 214,078 |

See accompanying report of independent registered public accounting firm.

**Table of Contents****Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure**

None

**Item 9A. Controls and Procedures**

As of the end of the period covered by this report, we carried out an evaluation, under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, of the effectiveness of the design and operation of our disclosure controls and procedures, as such term is defined in Rules 13a-15(e) and 15d-15(e) of the Exchange Act. Based upon that evaluation, our Chief Executive Officer and Chief Financial Officer concluded that as of the end of the period covered by this report our disclosure controls and procedures were effective to ensure that information required to be disclosed by us in reports we file or submit under the Exchange Act is (1) recorded, processed, summarized and reported within the time periods specified in Securities and Exchange Commission rules and forms, and (2) accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, to allow timely decisions regarding required disclosure. Our disclosure controls were designed to provide reasonable assurance that the controls and procedures would meet their objectives. Our management, including the Chief Executive Officer and Chief Financial Officer, does not expect that our disclosure controls will prevent all error and all fraud. A control system, no matter how well designed and operated, can provide only reasonable assurance of achieving the designed control objectives and management is required to apply its judgment in evaluating the cost-benefit relationship of possible controls and procedures. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, within the Company have been detected. These inherent limitations include the realities that judgments in decision-making can be faulty, and that breakdowns can occur because of simple error or mistake. Additionally, controls can be circumvented by the individual acts of some persons, by collusions of two or more people, or by management override of the control. Because of the inherent limitations in a cost-effective, maturing control system, misstatements due to error or fraud may occur and not be detected. There have not been any changes in the Company's internal control over financial reporting (as defined in Rule 13a-15(f) and 15d-15(f) under the Exchange Act) during the fourth quarter of the fiscal year to which this report relates that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting.

**Management's Report on Internal Control Over Financial Reporting**

Our management is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Rules 13a-15(f) and 15d-15(f) of the Exchange Act. Under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, we conducted an evaluation of the effectiveness of our internal control over financial reporting based on the framework in *Internal Control - Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on our evaluation under the framework in *Internal Control - Integrated Framework*, our management concluded that our internal control over financial reporting was effective as of December 31, 2008. KPMG, LLP, the independent registered public accounting firm that audited the consolidated financial statements included in this Annual Report on Form 10-K, has issued an attestation report on our internal control over financial reporting.

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Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements, errors or fraud. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of or compliance with the policies or procedures may deteriorate.

**Report of Independent Registered Public Accounting Firm**

The Board of Trustees and Shareholders

Entertainment Properties Trust:

We have audited Entertainment Properties Trust's (the Company) internal control over financial reporting as of December 31, 2008, based on criteria established in *Internal Control - Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). The Company's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Management's Report on Internal Control over Financial Reporting. Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit.

We conducted our audit 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 effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audit also included performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2008, based on criteria established in *Internal Control - Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission.

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We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheets of the Company as of December 31, 2008 and 2007, and the related consolidated statements of income, shareholders' equity and comprehensive income, and cash flows for each of the years in the three-year period ended December 31, 2008, and our report dated February 23, 2009 expressed an unqualified opinion on those consolidated financial statements.

/s/ KPMG LLP

KPMG LLP

Kansas City, Missouri

February 23, 2009

**Item 9B. Other Information**

None.

**PART III**

**Item 10. Directors, Executive Officers and Corporate Governance**

The Company's definitive Proxy Statement for its Annual Meeting of Shareholders to be held on May 13, 2009 (the Proxy Statement), contains under the captions Election of Trustees, Company Governance, Executive Officers, and

Section 16(a) Beneficial Ownership Reporting Compliance the information required by Item 10 of this Annual Report on Form 10-K, which information is incorporated herein by this reference.

We have adopted a Code of Business Conduct and Ethics that applies to our Chief Executive Officer, Chief Financial Officer, and all other officers, employees and trustees. The Code may be viewed on our website at [www.eprkc.com](http://www.eprkc.com) and is available in print to any person who requests it.

**Item 11. Executive Compensation**

The Proxy Statement contains under the captions Election of Trustees, Executive Compensation, and Compensation Committee Report, the information required by Item 11 of this Annual Report on Form 10-K, which information is incorporated herein by this reference.

**Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters**

The Proxy Statement contains under the captions Share Ownership and Equity Compensation Plan Information the information required by Item 12 of this Annual Report on Form 10-K, which information is incorporated herein by this reference.

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**Item 13. Certain Relationships and Related Transactions, and Director Independence**

The Proxy Statement contains under the caption Transactions Between the Company and Trustees, Officers or their Affiliates the information required by Item 13 of this Annual Report on Form 10-K, which information is incorporated herein by this reference.

**Item 14. Principal Accounting Fees and Services**

The Proxy Statement contains under the caption Ratification of Appointment of Independent Registered Public Accounting Firm the information required by Item 14 of this Annual Report on Form 10-K, which information is incorporated herein by this reference.

**PART IV**

**Item 15. Exhibits and Financial Statement Schedules**

(1) *Financial Statements:*

Report of Independent Registered Public Accounting Firm

Consolidated Balance Sheets as of December 31, 2008 and 2007

Consolidated Statements of Income for the years ended December 31, 2008, 2007 and 2006

Consolidated Statements of Changes in Shareholders Equity for the years ended December 31, 2008, 2007 and 2006

Consolidated Statements of Comprehensive Income for the years ended December 31, 2008, 2007 and 2006

Consolidated Statements of Cash Flows for the years ended December 31, 2008, 2007, and 2006.

Notes to Consolidated Financial Statements

(2) *Financial Statement Schedules:*

Schedule II Valuation and Qualifying Accounts

Schedule III Real Estate and Accumulated Depreciation

(3) *Exhibits*

The exhibits listed in the Exhibit Index immediately preceding the exhibits are filed as part of this Annual Report on Form 10-K or incorporated by reference as indicated below.



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**SIGNATURES**

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

ENTERTAINMENT PROPERTIES TRUST

Dated: February 23, 2009

By /s/ David M. Brain  
David M. Brain, President Chief Executive  
Officer  
(Principal Executive Officer)

Dated: February 23, 2009

By /s/ Mark A. Peterson  
Mark A. Peterson, Vice President Chief  
Financial  
Officer (Principal Financial Officer and  
Principal Accounting Officer)

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated:

| <b>Signature and Title</b>   | <b>Date</b>       |
|--|-------------------|
| /s/ Robert J. Druten<br>Robert J. Druten, Chairman of the Board  | February 23, 2009 |
| /s/ David M. Brain<br>David M. Brain, President, Chief Executive Officer<br>(Principal Executive Officer) and Trustee  | February 23, 2009 |
| /s/ Mark A. Peterson<br>Mark A. Peterson, Vice-President and Chief<br>Financial Officer (Principal Financial Officer and<br>Principal<br>Accounting Officer) | February 23, 2009 |
| /s/ Morgan G. Earnest, II<br>Morgan G. Earnest, II, Trustee  | February 23, 2009 |
| /s/ James A. Olson<br>James A. Olson, Trustee  | February 23, 2009 |
| /s/ Barrett Brady  | February 23, 2009 |



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**Exhibit Index**

The Company has incorporated by reference certain exhibits as specified below pursuant to Rule 12b-32 under the Exchange Act

- 3.1 Amended and Restated Declaration of Trust of the Company, which is attached as Exhibit 3.2 to the Company's Form 8-K (Commission File No. 001-13561) filed on June 7, 1999, is hereby incorporated by reference as Exhibit 3.1
- 3.2 Amendment to Amended and Restated Declaration of Trust of the Company, which is attached as Exhibit 3.1 to the Company's Form 8-K (Commission File No. 001-13561) filed on January 11, 2005, is hereby incorporated by reference as Exhibit 3.2
- 3.3 Amendment to Amended and Restated Declaration of Trust of Entertainment Properties Trust filed December 19, 2006, which is attached as Exhibit 3.1 to the Company's Form 8-K (Commission File No. 001-13561) filed December 21, 2006, is hereby incorporated by reference as Exhibit 3.3
- 3.4 Amendment to Amended and Restated Declaration of Trust of Entertainment Properties Trust filed May 1, 2007, which is attached as Exhibit 3.1 to the Company's Form 8-K (Commission File No. 001-13561) filed May 4, 2007, is hereby incorporated by reference as Exhibit 3.4
- 3.5 Articles Supplementary designating the powers, preferences and rights of the 9.50% Series A Cumulative Redeemable Preferred Shares, which is attached as Exhibit 4.4 to the Company's Form 8-A12B (Commission File No. 001-13561) filed on May 24, 2002, is hereby incorporated by reference as Exhibit 3.5
- 3.6 Articles Supplementary designating the powers, preferences and rights of the 7.75% Series B Cumulative Redeemable Preferred Shares, which is attached as Exhibit 4.6 to the Company's Form 8-A12BA (Commission File No. 001-13561) filed on January 14, 2005, and to the Company's Form 8-K filed on January 14, 2005, is hereby incorporated by reference as Exhibit 3.6
- 3.7 Articles Supplementary designating the powers, preferences and rights of the 5.75% Series C Cumulative Convertible Preferred Shares, which is attached as Exhibit 3.2 to the Company's Form 8-K (Commission File No. 001-13561) filed December 21, 2006, is hereby incorporated by reference as Exhibit 3.7
- 3.8 Articles Supplementary designating the powers, preferences and rights of the 7.375% Series D Cumulative Redeemable Preferred Shares, which is attached as Exhibit 3.2 to the Company's Form 8-K (Commission File No. 001-13561) filed May 4, 2007, is hereby incorporated by reference as Exhibit 3.8
- 3.9 Articles Supplementary designating powers, preferences and rights of the 9.0% Series E cumulative convertible preferred shares, which is attached as Exhibit 3.1 to the Company's Form 8-K (Commission File No. 001-13561) filed on April 2, 2008, is hereby incorporated by reference as Exhibit 3.9.

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- 3.10 Bylaws of the Company, which are attached as Exhibit 3.2 to the Company's Form 8-K (Commission File No. 001-13561) filed on December 11, 2008, are hereby incorporated by reference as Exhibit 3.10.
- 4.1 Form of share certificate for common shares of beneficial interest of the Company, which is attached as Exhibit 4.5 to the Company's Registration Statement on Form S-11, as amended, (Registration No. 333-35281), is hereby incorporated by reference as Exhibit 4.1
- 4.2 Form of 9.50% Series A Cumulative Redeemable Preferred Share Certificate, which is attached as Exhibit 4.5 to the Company's Form 8-A12B (Commission File No. 001-13561) filed on May 24, 2002, is hereby incorporated by reference as Exhibit 4.2
- 4.3 Form of 7.75% Series B Cumulative Redeemable Preferred Share Certificate, which is attached as Exhibit 4.7 to the Company's Form 8-A12B (Commission File No. 001-13561) filed on January 12, 2005, is hereby incorporated by reference as Exhibit 4.3
- 4.4 Form of 5.75% Series C Cumulative Convertible Preferred Shares Certificate, which is attached as Exhibit 4.1 to the Company's Form 8-K (Commission File No. 001-13561) filed December 21, 2006, is hereby incorporated by reference as Exhibit 4.4
- 4.5 Form of 7.375% Series D Cumulative Redeemable Preferred Shares Certificate, which is attached as Exhibit 4.1 to the Company's Form 8-K (Commission File No. 001-13561) filed May 4, 2007, is hereby incorporated by reference as Exhibit 4.5
- 4.6 Form of 9.00% Series E Cumulative Convertible Preferred Shares, which is attached as Exhibit 4.1 to the Company's Form 8-K (Commission File No. 001-13561) filed on April 2, 2008, is incorporated by reference as Exhibit 4.6.
- 4.7 Amended and Restated Master Credit Agreement dated January 31, 2006 among 30 West Pershing, LLC, Entertainment Properties Trust, EPR Hialeah, Inc., WestCol Center, LLC, EPT Melbourne, Inc. and KeyBank National Association as Administrative Agent and Lender, KeyBanc Capital Markets as Sole Lead Arranger and Sole Book Manager, Royal Bank of Canada as Syndication Agent, JP Morgan Chase Bank, N.A. as Documentation Agent and the other Lenders party thereto, which is attached as Exhibit 10.1 to the Company's Form 8-K/A (Commission File No. 001-13561) filed March 15, 2006, is hereby incorporated by reference as Exhibit 4.7
- 4.8 Amendment No. 1 to Amended and Restated Master Credit Agreement dated April 18, 2007 among 30 West Pershing, LLC, EPR Hialeah, Inc., WestCol Center, LLC, EPT Melbourne, Inc., Entertainment Properties Trust and the Lenders, KeyBank National Association as Administrative Agent and KeyBanc Capital Markets as Sole Lead Arranger and Sole Book Manager, which is attached as Exhibit 10.1 to the Company's Form 8-K (Commission File No. 001-13561) filed April 20, 2007, is hereby incorporated by reference as Exhibit 4.8
- 4.9 Master Credit Agreement, dated as of October 26, 2007, among Entertainment Properties Trust, EPT 301, LLC, KeyBank National Association, as Administrative Agent and Lender, KeyBanc Capital Markets, as Sole Lead Arranger and Sole Book Manager, and the other lenders party thereto and Morgan Stanley Bank, as documentation agent

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thereto, which is attached as Exhibit 4.1 to the Company's Form 8-K (Commission File No. 001-13561) filed on October 31, 2007, is hereby incorporated by reference as Exhibit 4.9

- 4.10 Collateral Pledge and Security Agreement, dated as of October 26, 2007, by and between Entertainment Properties Trust and KeyBank National Association, individually and as administrative agent for itself and the lenders under the Master Credit Agreement dated October 26, 2007, which is attached as Exhibit 4.2 to the Company's Form 8-K (Commission File No. 001-13561) filed on October 31, 2007, is hereby incorporated by reference as Exhibit 4.10
- 4.11 Registration Rights Agreement among Entertainment Properties Trust, Whitby Centrum Limited Partnership, Oakville Centrum Limited Partnership, Kanata Centrum Limited Partnership, Courtney Square Limited Partnership and 2041197 Ontario Ltd., dated February 24, 2004, which is attached as Exhibit 10.10 to the Company's Form 8-K/A (Commission File No. 001-13561) filed on March 16, 2004, is hereby incorporated by reference as Exhibit 4.11
- 4.12 Agreement Regarding Ownership Limit Waiver between the Company and Cohen & Steers Capital Management, Inc., which is attached as Exhibit 4.7 to the Company's Form 8-K (Commission File No. 001-13561) filed on January 19, 2005, is hereby incorporated by reference as Exhibit 4.12
- 4.13 Agreement Regarding Ownership Limit Waiver between the Company and ING Clarion Real Estate Securities, which is attached as Exhibit 4.1 to the Company's Form 8-K (Commission File No. 001-13561) filed on May 14, 2007, is hereby incorporated by reference as Exhibit 4.13
- 10.1 Mississauga Entertainment Centrum Agreement dated November 14, 2003 among Courtney Square Ltd., EPR North Trust and Entertainment Properties Trust, which is attached as Exhibit 10.1 to the Company's Form 8-K (Commission File No. 001-13561) filed March 15, 2004, is hereby incorporated by reference as Exhibit 10.1
- 10.2 Oakville Entertainment Centrum Agreement dated November 14, 2003 among Penex Winston Ltd., EPR North Trust and Entertainment Properties Trust, which is attached as Exhibit 10.2 to the Company's Form 8-K (Commission File No. 001-13561) filed March 15, 2004, is hereby incorporated by reference as Exhibit 10.2
- 10.3 Whitby Entertainment Centrum Agreement dated November 14, 2003 among Penex Whitby Ltd., EPR North Trust and Entertainment Properties Trust, which is attached as Exhibit 10.3 to the Company's Form 8-K (Commission File No. 001-13561) filed March 15, 2004, is hereby incorporated by reference as Exhibit 10.3
- 10.4 Kanata Entertainment Centrum Agreement dated November 14, 2003 among Penex Kanata Ltd., Penex Main Ltd., EPR North Trust and Entertainment Properties Trust, which is attached as Exhibit 10.4 to the Company's Form 8-K (Commission File No. 001-13561) filed March 15, 2004, is hereby incorporated by reference as Exhibit 10.4
- 10.5 Amending Agreements among Courtney Square Ltd., EPR North Trust and Entertainment Properties Trust, which are attached as Exhibit 10.5 to the Company's

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Form 8-K (Commission File No. 001-13561) filed March 15, 2004, are hereby incorporated by reference as Exhibit 10.5

- 10.6 Amending Agreements among Penex Winston Ltd., EPR North Trust and Entertainment Properties Trust, which are attached as Exhibit 10.6 to the Company's Form 8-K (Commission File No. 001-13561) filed March 15, 2004, are hereby incorporated by reference as Exhibit 10.6
- 10.7 Amending Agreements among Penex Whitby Ltd., EPR North Trust and Entertainment Properties Trust, which are attached as Exhibit 10.7 to the Company's Form 8-K (Commission File No. 001-13561) filed March 15, 2004, are hereby incorporated by reference as Exhibit 10.7
- 10.8 Amending Agreements among Penex Kanata Ltd., Penex Main Ltd., EPR North Trust and Entertainment Properties Trust, which are attached as Exhibit 10.8 to the Company's Form 8-K (Commission File No. 001-13561) filed March 15, 2004, are hereby incorporated by reference as Exhibit 10.8
- 10.9 Note Purchase Agreement dated February 24, 2004 among Entertainment Properties Trust and Courtney Square Limited Partnership, Whitby Centrum Limited Partnership, Oakville Centrum Limited Partnership and Kanata Centrum Limited Partnership, which is attached as Exhibit 10.9 to the Company's Form 8-K (Commission File No. 001-13561) filed March 15, 2004, is hereby incorporated by reference as Exhibit 10.9
- 10.10 Form of Indemnification Agreement entered into between the Company and each of its trustees and officers, which is attached as Exhibit 10.8 to Amendment No. 1, filed October 28, 1997, to the Company's Registration Statements on Form S-11 (Registration No. 333-35281), is hereby incorporated by reference as exhibit 10.10
- 10.11 Form of Indemnification Agreement, which is attached as Exhibit 10.2 to the Company's Form 8-K (Commission File No. 001-13561) filed on May 14, 2007, is hereby incorporated by reference as Exhibit 10.11
- 10.12 Deferred Compensation Plan for Non-Employee Trustees, which is attached as Exhibit 10.10 to Amendment No. 2, filed November 5, 1997, to the Company's Registration Statement on Form S-11 (Registration No. 333-35281), is hereby incorporated by reference as Exhibit 10.12
- 10.13 Annual Incentive Program, which is attached as Exhibit 10.11 to Amendment No. 2, filed November 5, 1997, to the Company's Registration Statement on Form S-11 (Registration No. 333-35281), is hereby incorporated by reference as Exhibit 10.13
- 10.14 First Amended and Restated 1997 Share Incentive Plan included as Appendix D to the Company's definitive proxy statement filed April 8, 2004 (Commission File No. 001-13561), is hereby incorporated by reference as Exhibit 10.14
- 10.15 Form of 1997 Share Incentive Plan Restricted Shares Award Agreement, which is attached as Exhibit 10.14 to the Company's Form 10-K (Commission File No. 001-13561) filed February 28, 2007, is hereby incorporated by reference as Exhibit 10.15

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- 10.16 Form of Option Certificate Issued Pursuant to Entertainment Properties Trust 1997 Share Incentive Plan, which is attached as Exhibit 10.15 to the Company's Form 10-K (Commission File No. 001-13561) filed February 28, 2007, is hereby incorporated by reference as Exhibit 10.16
- 10.17 2007 Equity Incentive Plan, which is attached as Exhibit 10.1 to the Company's Registration Statement on Form S-8 (Registration No. 333-142831) filed on May 11, 2007, is hereby incorporated by reference as Exhibit 10.17
- 10.18 Form of 2007 Equity Incentive Plan Nonqualified Share Option Agreement for Employee Trustees, which is attached as Exhibit 10.2 to the Company's Registration Statement on Form S-8 (Registration No. 333-142831) filed on May 11, 2007, is hereby incorporated by reference as Exhibit 10.18
- 10.19 Form of 2007 Equity Incentive Plan Nonqualified Share Option Agreement for Non-Employee Trustees, which is attached as Exhibit 10.3 to the Company's Registration Statement on Form S-8 (Registration No. 333-142831) filed on May 11, 2007, is hereby incorporated by reference as Exhibit 10.19
- 10.20 Form of 2007 Equity Incentive Plan Restricted Shares Agreement for Employees, which is attached as Exhibit 10.4 to the Company's Registration Statement on Form S-8 (Registration No. 333-142831) filed on May 11, 2007, is hereby incorporated by reference as Exhibit 10.20
- 10.21 Form of 2007 Equity Incentive Plan Restricted Shares Agreement for Non-Employee Trustees, which is attached as Exhibit 10.5 to the Company's Registration Statement on Form S-8 (Registration No. 333-142831) filed on May 11, 2007, is hereby incorporated by reference as Exhibit 10.21
- 10.22\* Employment Agreement, entered into as of February 28, 2007, by Entertainment Properties Trust and David M. Brain, which is attached as Exhibit 10.16 to the Company's Form 10-K (Commission File No. 001-13561) filed February 28, 2007, is hereby incorporated by reference as Exhibit 10.22
- 10.23\* Employment Agreement, entered into as of February 28, 2007, by Entertainment Properties Trust and Gregory K. Silvers, which is attached as Exhibit 10.17 to the Company's Form 10-K (Commission File No. 001-13561) filed February 28, 2007, is hereby incorporated by reference as Exhibit 10.23
- 10.24\* Employment Agreement, entered into as of February 28, 2007, by Entertainment Properties Trust and Mark A. Peterson, which is attached as Exhibit 10.18 to the Company's Form 10-K (Commission File No. 001-13561) filed February 28, 2007, is hereby incorporated by reference as Exhibit 10.24
- 10.25\* Employment Agreement, entered into as of February 28, 2007, by Entertainment Properties Trust and Michael L. Hirons, which is attached as Exhibit 10.19 to the Company's Form 10-K (Commission File No. 001-13561) filed February 28, 2007, is hereby incorporated by reference as Exhibit 10.25
- 10.26 Form of Loan Agreement, dated as of June 29, 1998, between EPT DownREIT II, Inc.,

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as Borrower, and Archon Financial, L.P., as Lender, which is attached as Exhibit 10.15 to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 1998 (Commission File No. 001-13561), is hereby incorporated by reference as Exhibit 10.26

- 10.27 Limited Partnership Interest Purchase Agreement, dated October 27, 2003, among EPT New Roc GP, Inc., EPT New Roc, LLC, LRC Industries, Inc., DKH New Roc Associates, L.P., LC New Roc Inc. and New Roc Associates, L.P., which is attached as Exhibit 10.1 to the Company's Form 8-K dated October 27, 2003 and filed November 12, 2003 (Commission File No. 001-13561), is hereby incorporated by reference as Exhibit 10.27
- 10.28 Second Amended and Restated Agreement of Limited Partnership of New Roc Associates, L.P., which is attached as Exhibit 10.2 to the Company's Form 8-K filed November 12, 2003 (Commission File No. 001-13561), is hereby incorporated by reference as Exhibit 10.28
- 10.29 Loan Agreement, dated February 27, 2003, among Flik, Inc., as Borrower, EPT DownREIT, Inc., as Indemnitor, and Secore Financial Corporation, as Lender, which is attached as Exhibit 10.21 to the Company's Form 8-K filed March 4, 2003 (Commission File No. 001-13561), is hereby incorporated by reference as Exhibit 10.29
- 10.30 Agreement with Fred L. Kennon which is attached as Exhibit 10.1 to the Company's Form 10-Q (Commission File No. 001-13561) filed August 3, 2006, is hereby incorporated by reference as Exhibit 10.30
- 10.31 Entertainment Properties Trust 2007 Equity Incentive Plan, as amended, which is attached as Exhibit 10.1 to the Company's Registration Statement on Form S-8 (Commission File No. 333-142831) filed May 11, 2007, is hereby incorporated by reference as Exhibit 10.31
- 12.1 Computation of Ratio of Earnings to Fixed Charges is attached hereto as Exhibit 12.1
- 12.2 Computation of Ratio of Earnings to Combined Fixed Charges and Preferred Distributions is attached hereto as Exhibit 12.2
- 21 The list of the Company's Subsidiaries is attached hereto as Exhibit 21
- 23 Consent of KPMG LLP is attached hereto as Exhibit 23
- 31.1 Certification of David M. Brain pursuant to Rule 13a-14(a) or 15d-14(a) of the Securities Exchange Act, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 is attached hereto as Exhibit 31.1
- 31.2 Certification of Mark A. Peterson pursuant to Rule 13a-14(a) or 15d-14(a) of the Securities Exchange Act, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 is attached hereto as Exhibit 31.2
- 32.1 Certification by Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, is attached hereto as Exhibit 32.1



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32.2 Certification by Chief Financial Officer pursuant to 18 USC 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, is attached hereto as Exhibit 32.2

\* Management  
Contracts

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