

SUMMIT PROPERTIES INC
Form 8-K
October 06, 2004

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934

Date of report (Date of earliest event reported): September 1, 2004

SUMMIT PROPERTIES INC.

(Exact name of Registrant as specified in charter)

Maryland
(State or other jurisdiction
of incorporation)

001-12792
(Commission file number)

56-1857807
(IRS employer
identification no.)

309 East Morehead Street, Suite 200, Charlotte, NC 28202

(Address of principal executive offices) (Zip code)

(704) 334-3000

(Registrant's telephone number, including area code)

Edgar Filing: SUMMIT PROPERTIES INC - Form 8-K

N/A

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (*see* General Instruction A.2. below):

Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Item 1.01 Entry into a Material Definitive Agreement.

Summit Properties Inc. (the Company) has entered into (i) Retention Bonus Agreements with Keith L. Downey, Randall M. Ell, Todd Farrell and Michael G. Malone and (ii) an Executive Severance Agreement with Michael G. Malone. These agreements were entered into and executed by the respective officers in September 2004, effective as of May 26, 2004, the date on which the agreements were approved by the Company's Board of Directors. Each of the Retention Bonus Agreements provides that the Company will pay retention bonuses of \$950,000, \$950,000, \$950,000 and \$400,000 to Messrs. Downey, Ell, Farrell and Malone, respectively, provided such Executive Officer is still employed by the Company eleven months following a change in control of the Company, or such Executive Officer's employment with the Company terminates under certain circumstances within six months before or eleven months after a change in control of the Company, including by the Executive Officer for good reason or by the Company without cause.

The Executive Severance Agreement with Mr. Malone provides for the payment of severance benefits equal to three times his annual base salary and cash bonus in the event of the termination of Mr. Malone's employment under certain circumstances following a change in control of the Company or a combination transaction involving a consolidation or merger. In the event that any payment under the Retention Bonus Agreements or the Executive Severance Agreement (the Retention and Severance Payments), would be subject to the excise tax imposed under Section 4999 of the Internal Revenue Code, or any interest or penalties with respect to such excise tax (collectively, the Excise Tax), the agreements provide for an additional payment such that the Executive Officer, after deduction of any Excise Tax on the Retention and Severance Payments and any federal, state and local income tax, employment tax and Excise Tax on such additional payment, will receive an amount equal to the Retention and Severance Payments.

For additional information, reference is made to the Retention Bonus Agreements and the Executive Severance Agreement, which are attached hereto as Exhibits 10.1 through 10.5 and are incorporated herein by reference. The foregoing description is qualified in its entirety by reference to the Retention Bonus Agreements and the Executive Severance Agreement attached hereto as Exhibits 10.1 through 10.5.

Item 9.01 Financial Statements and Exhibits.

(c) Exhibits.

| <u>Exhibit Number</u> | <u>Title</u> |
|---------------------------|--|
| 10.1 | Retention Bonus Agreement dated May 26, 2004, between Summit and Keith L. Downey. |
| 10.2 | Retention Bonus Agreement dated May 26, 2004, between Summit and Randall M. Ell. |
| 10.3 | Retention Bonus Agreement dated May 26, 2004 between Summit and Todd Farrell. |
| 10.4 | Retention Bonus Agreement dated May 26, 2004 between Summit and Michael G. Malone. |
| 10.5 | Executive Severance Agreement dated May 26, 2004 between Summit and Michael G. Malone. |

[Remainder of page left blank intentionally]

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

SUMMIT PROPERTIES INC.

Date: October 5, 2004

By: /s/ Gregg D. Adzema
Name: Gregg D. Adzema
Title: Executive Vice President and Chief Financial Officer

EXHIBIT INDEX

| Exhibit Number | Title |
|---------------------------|--|
| 10.1* | Retention Bonus Agreement dated May 26, 2004, between Summit and Keith L. Downey. |
| 10.2* | Retention Bonus Agreement dated May 26, 2004, between Summit and Randall M. Ell. |
| 10.3* | Retention Bonus Agreement dated May 26, 2004 between Summit and Todd Farrell. |
| 10.4* | Retention Bonus Agreement dated May 26, 2004 between Summit and Michael G. Malone. |
| 10.5* | Executive Severance Agreement dated May 26, 2004 between Summit and Michael G. Malone. |

* Filed herewith.