

FEDERAL REALTY INVESTMENT TRUST

Form S-3ASR

May 07, 2018

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As filed with the Securities and Exchange Commission on May 7, 2018

Registration No. 333-

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-3

REGISTRATION STATEMENT

*UNDER*

*THE SECURITIES ACT OF 1933*

FEDERAL REALTY INVESTMENT TRUST

(Exact name of registrant as specified in its charter)

Maryland  
(State or other jurisdiction of  
incorporation or organization)

52-0782497  
(I.R.S. Employer  
Identification No.)

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**1626 East Jefferson Street**

**Rockville, Maryland 20852**

**Telephone: (301) 998-8100**

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

**Dawn M. Becker, Executive Vice President, General Counsel and Secretary**

**Federal Realty Investment Trust**

**1626 East Jefferson Street**

**Rockville, Maryland 20852**

**Telephone: (301) 998-8100**

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

*Copies to:*

**Justin J. Bintrim, Esq.**

**Pillsbury Winthrop Shaw Pittman LLP**

**1200 Seventeenth Street, N.W.**

**Washington, D.C. 20036**

**(202) 663-8000**

**Approximate date of commencement of proposed sale of the securities to the public:** From time to time following the effective date of this registration statement.

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box.

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If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

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

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

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

Large accelerated filer

Accelerated filer

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

Smaller reporting company

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act.

### CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered (1)	Amount to be Registered	Proposed	Proposed	Amount of Registration Fee
		Maximum Offering Price Per Unit	Maximum Aggregate Offering Price	
Debt Securities				
Common Shares, \$0.01 par value				

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Preferred Shares, \$0.01 par value	(2)	(2)	(2)	(2)
Depository Shares (3)				
Warrants				

- (1) Offered securities registered hereunder may be sold separately, together or as units with other offered securities registered hereunder.
- (2) An indeterminate aggregate offering price or number of securities of each identified class is being registered as may from time to time be offered at indeterminate prices. Separate consideration may or may not be received for securities that are issuable on exercise, conversion or exchange of other securities. In accordance with Rules 456(b) and 457(r) under the Securities Act, the registrant is deferring payment of the entire registration fee.
- (3) Each depository share will be issued under a deposit agreement and will be evidenced by a depository receipt.

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**PROSPECTUS**

**Debt Securities, Common Shares, Preferred Shares, Depositary Shares and Warrants**

We may from time to time offer, in one or more series, separately or together, the following:

our debt securities, which may be either senior debt securities or subordinated debt securities;

our common shares of beneficial interest;

our preferred shares of beneficial interest;

our preferred shares of beneficial interest represented by depositary receipts; and

warrants to purchase our common or preferred shares.

Our common shares are listed on the New York Stock Exchange under the symbol FRT.

We will offer our securities in amounts, at prices and on terms to be determined at the time we offer such securities. When we sell a particular series of securities, we prepare a prospectus supplement describing the offering and the terms of that series of securities. Such terms may include limitations on direct or beneficial ownership and restrictions on transfer of our securities being offered that we believe are appropriate to preserve our status as a real estate investment trust for federal income tax purposes.

The applicable prospectus supplement will also contain information, where applicable, about certain United States federal income tax considerations relating to the securities covered by such prospectus supplement.

We may offer our securities directly, through agents we may designate from time to time, or to or through underwriters or dealers. If any agents or underwriters are involved in the sale of any of our securities, their names and any applicable purchase price, fee, commission or discount arrangement between or among them will be set forth or will be calculable from the information set forth in the applicable prospectus supplement. None of our securities may be sold without delivery of the applicable prospectus supplement describing the method and terms of the offering of such class or series of the securities.

**Investing in our securities involves risks. See Risk Factors on page 3 of this prospectus.**

**Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.**

**The date of this prospectus is May 7, 2018.**

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**ABOUT THIS PROSPECTUS**

This prospectus is part of a registration statement that we filed with the Securities and Exchange Commission, or the SEC, using a shelf registration process. Under this shelf process, we may sell any combination of the securities described in this prospectus either separately or in units, in one or more offerings. Our prospectus provides you with a general description of these securities. Each time we sell securities, we will provide a prospectus supplement that will contain specific information about all of the terms of that offering. Our prospectus supplement may also add, update or change information contained in this prospectus. Before purchasing any securities, you should read both this prospectus and the applicable prospectus supplement and any applicable free writing prospectus, together with additional information described under the heading **Where You Can Find More Information**.

References to we, us, our or ours refer to Federal Realty Investment Trust and its directly or indirectly owned subsidiaries, unless the context otherwise requires. The term you refers to a prospective investor.

**FORWARD-LOOKING STATEMENTS**

This prospectus contains and incorporates forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, or the Securities Act, Section 21E of the Securities Exchange Act of 1934, as amended, or the Exchange Act, and the Private Securities Litigation Reform Act of 1995. Also, documents that we incorporate by reference into this prospectus, including documents that we subsequently file with the SEC, will contain forward-looking statements. When we refer to forward-looking statements or information, sometimes we use words such as may, will, could, should, plans, intends, expects, believes, estimates, anticipates and other similar words. These forward-looking statements are based on our current expectations and assumptions about our future performance, the industry and the economy. These forward-looking statements are not guarantees of future performance and are subject to risks and uncertainties. Factors in this prospectus and in any prospectus supplement describe risks that may affect these statements but are not all-inclusive, particularly with respect to possible future events. Many things can happen that can cause actual results to be different from those we describe. Given these uncertainties, readers are cautioned not to place undue reliance on these forward-looking statements. We also make no promise to update any of the forward-looking statements, or to publicly release the results if we revise any of them.



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*The following summary is qualified in its entirety by the more detailed information and consolidated financial statements and notes thereto contained elsewhere in or incorporated by reference into this prospectus.*

**The Trust**

We are an equity real estate investment trust ( REIT ) specializing in the ownership, management, and redevelopment of high quality retail and mixed-use properties located primarily in densely populated and affluent communities in strategically selected metropolitan markets in the Northeast and Mid-Atlantic regions of the United States, California, and South Florida. As of March 31, 2018, we owned or had a majority interest in community and neighborhood shopping centers and mixed-use properties which are operated as 104 predominantly retail real estate projects comprising approximately 24.2 million square feet. In total, the real estate projects were 94.8% leased and 93.3% occupied at March 31, 2018. We have paid quarterly dividends to our shareholders continuously since our founding in 1962 and have increased our dividends per common share for 50 consecutive years.

We have qualified for taxation as a REIT pursuant to the Internal Revenue Code of 1986, as amended, or the Code, since we were founded, and we intend to operate in a manner that will allow us to maintain such qualification.

We were founded in 1962 as a REIT under the laws of the District of Columbia and re-formed as a real estate investment trust in the state of Maryland in 1999. Our principal executive offices are located at 1626 East Jefferson Street, Rockville, Maryland 20852. Our telephone number is (301) 998-8100. Our website address is [www.federalrealty.com](http://www.federalrealty.com). The information contained on our website is not a part of this prospectus and is not incorporated herein by reference.

**Ratios of Earnings to Fixed Charges and Combined Fixed Charges and Preferred Share Dividends**

The following table sets forth our historical ratios of earnings to fixed charges and combined Fixed Charges and preferred share dividends for the periods indicated:

	<b>For the Three Months</b>					
	<b>Ended March 31,</b>	<b>For the Years Ended December 31,</b>				
	<b>2018</b>	<b>2017</b>	<b>2016</b>	<b>2015</b>	<b>2014</b>	<b>2013</b>
Ratio of earnings to fixed charges	2.6	2.4	2.8	2.3	2.1	1.9
Ratio of earnings to combined fixed charges and preferred share dividends	2.5	2.3	2.8	2.3	2.1	1.9

The ratio of earnings to fixed charges is computed by dividing earnings by fixed charges. In computing the ratio of earnings to fixed charges: (a) earnings consist of income from continuing operations before income or loss from equity investees plus distributed income of equity investees and fixed charges (excluding capitalized interest) less noncontrolling interests of subsidiaries with no fixed charges; and (b) fixed charges consist of interest expense including amortization of debt premiums and discounts and issuance costs (including capitalized interest), prepayment charges and the estimated portion of rents payable by us representing interest.

The ratio of earnings to combined fixed charges and preferred share dividends is computed by dividing earnings by the total of fixed charges and preferred share dividends. In computing the ratio of earnings to combined fixed charges and preferred share dividends: (a) earnings consist of income from continuing operations before income or loss from

equity investees plus distributed income of equity investees and fixed charges (excluding capitalized interest) less noncontrolling interests of subsidiaries with no fixed charges; (b) fixed charges consist of interest expense including amortization of debt premiums and discounts and issuance costs (including capitalized interest), prepayment charges and the estimated portion of rents payable by us representing interest; and (c) preferred share dividends consist of preferred share dividends and preferred share redemption costs.

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**RISK FACTORS**

Investing in our securities involves risks. Before making an investment decision, please consider the risks described under the caption "Risk Factors" in our Annual Report on Form 10-K for the fiscal year ended December 31, 2017, on file with the SEC, which is incorporated herein by reference, in addition to any risks and additional information included in this prospectus, in an applicable prospectus supplement and in any subsequent filing with the SEC that is incorporated herein by reference. The risks and uncertainties we have described are those we believe to be the principal risks that could affect us, our business or our industry, and which could result in a material adverse impact on our financial condition, results of operation or the market price of our securities. However, additional risks and uncertainties not currently known to us or that we currently deem immaterial may affect our business operations and the market price of our securities.

**USE OF PROCEEDS**

Unless otherwise specified in the applicable prospectus supplement, we will use the net proceeds from the sale of securities for one or more of the following:

repayment of debt;

acquisition of additional properties;

funding our development and redevelopment pipeline;

redemption of preferred shares; and

working capital and general corporate purposes.

**DESCRIPTION OF DEBT SECURITIES**

We will prepare and distribute a prospectus supplement that describes the specific terms of the debt securities. In this section of the prospectus, we describe the general terms we expect all debt securities to have. We also identify some of the specific terms that will be described in a prospectus supplement. Although we expect that any debt securities we offer with this prospectus will have the general terms we describe in this section, our debt securities may have terms that are different from or inconsistent with the general terms we describe here. Therefore, you should read the prospectus supplement carefully.

**General Terms of Debt Securities**

Unless we say otherwise in a prospectus supplement, debt securities we offer through this prospectus:

will be our general, direct and unsecured obligations; and

may be either senior debt securities or subordinated debt securities.

Senior debt securities will rank equally with all of our other unsecured and unsubordinated obligations. Subordinated debt securities will be subordinate and junior in right of payment to all of our present and future senior debt in the manner we describe in a prospectus supplement.

We may incur additional debt, subject to limitations in the agreements governing our credit and other debt facilities and other notes we may have issued.

Unless we say otherwise in a prospectus supplement:

debt securities we offer through this prospectus will not limit the amount of other debt that we may incur;

you will not have any protection if we engage in a highly leveraged transaction, a restructuring, a transaction involving a change in control, or a merger or similar transaction that may adversely affect holders of the debt securities; and

we will not list the debt securities on any securities exchange.

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### **The Indentures**

Any debt securities we offer through this prospectus will be issued under one or more indentures, including the senior indenture between us and U.S. Bank National Association, successor to Wachovia Bank National Association, formerly First Union National Bank, as trustee. We have filed with the SEC the senior indenture that is an exhibit to the registration statement that includes this prospectus. The senior indenture describes the general terms of senior debt securities we may issue. The general terms of any subordinated debt securities that we may issue will be included in a subordinated indenture, which will also include additional terms describing the subordination provisions of these securities. The senior indenture is subject to the Trust Indenture Act of 1939, as amended.

Unless we say otherwise in a prospectus supplement, each indenture does not or will not include all the terms of debt securities we may issue through this prospectus. If we issue debt securities through this prospectus, our Board of Trustees, or any committee thereof, will establish the additional terms for each series of debt securities. The additional terms will be either established pursuant to, and set forth in, a supplemental indenture, or established pursuant to a resolution of our Board of Trustees, or any committee thereof, and set forth in an officer's certificate. Each indenture describes or will describe the additional terms that may be established and we summarize the additional terms that may be established under Additional Terms of Debt Securities, below.

We have summarized the provisions of the senior indenture and any subordinated indenture that we may enter into below. The summary is not complete. You should read the senior indenture and any other indenture that we may enter into for provisions that may be important to you. The extent, if any, to which the provisions of the base senior indenture or any other base indenture that we may enter into apply to particular debt securities will be described in the prospectus supplement relating to those securities. You should read the prospectus supplement for more information regarding any particular issuance of debt securities.

### **Additional Terms of Debt Securities**

As described above, the terms of a particular series of debt securities we offer through this prospectus will be established by our Board of Trustees, or any committee thereof, when we issue the series. We will describe the terms of the series in a prospectus supplement. Unless we say otherwise in a prospectus supplement, each indenture provides or will provide that the terms that may be established include the following:

***Title.*** The title of the debt securities offered.

***Amount.*** Any limit upon the total principal amount of the series of debt securities offered.

***Maturity.*** The date or dates on which the principal of and premium, if any, on the offered debt securities will mature or the method of determining such date or dates.

***Interest Rate.*** The rate or rates (which may be fixed or variable) at which the offered debt securities will bear interest, if any, or the method of calculating such rate or rates.

***Interest Accrual.*** The date or dates from which interest will accrue or the method by which such date or dates will be determined.

***Interest Payment Dates.*** The date or dates on which interest will be payable and the record date or dates to determine the persons who will receive payment, and the basis upon which interest shall be calculated if other than that of a 360-day year of twelve 30-day months.

***Place of Payment.*** The place or places where principal of, premium, if any, and interest, on the offered debt securities will be payable or at which the offered debt securities may be surrendered for registration of transfer or exchange.

***Optional Redemption.*** The period or periods within which, the price or prices at which, the currency or currencies (if other than in U.S. dollars), including currency unit or units, in which, and the other terms and conditions upon which, the offered debt securities may be redeemed, in whole or in part, at our option, if we have that option.

***Mandatory Redemption.*** The obligation, if any, we have to redeem or repurchase the offered debt securities pursuant to any sinking fund or similar provisions or upon the happening of a specified event or

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at the option of a holder; and the period or periods within which, the price or prices at which, the currency or currencies (if other than in U.S. dollars), including currency unit or units, in which, and the other terms and conditions upon which, such offered debt securities shall be redeemed or purchased, in whole or in part.

***Denominations.*** The denominations in which the offered debt securities are authorized to be issued.

***Currency.*** The currency or currency unit in which the offered debt securities may be denominated and/or the currency or currencies, including currency unit or units, in which principal of, premium, if any, and interest, if any, on the offered debt securities will be payable and whether we or the holders of the offered debt securities may elect to receive payments in respect of the offered debt securities in a currency or currency unit other than that in which the offered debt securities are stated to be payable.

***Indexed Principal.*** If the amount of principal of, or premium, if any, or interest on, the offered debt securities may be determined with reference to an index or pursuant to a formula or other method, the manner in which such amounts will be determined.

***Payment on Acceleration.*** If other than the principal amount, the amount which will be payable upon declaration of the acceleration of the maturity or the method by which such portion shall be determined.

***Special Rights.*** Provisions, if any, granting special rights to the holders of the offered debt securities if certain specified events occur.

***Modifications to Indentures.*** Any addition to, or modification or deletion of, any event of default or any of the covenants specified in the indenture with respect to the offered debt securities.

***Tax Gross-Up.*** The circumstances, if any, under which we will pay additional amounts on the offered debt securities held by non-U.S. persons for taxes, assessments or similar charges.

***Registered or Bearer Form.*** Whether the offered debt securities will be issued in registered or bearer form or both.

***Dates of Certificates.*** The date as of which any offered debt securities in bearer form and any temporary global security representing outstanding securities are dated, if other than the original issuance date of the offered debt securities.

***Forms.*** The forms of the securities and interest coupons, if any, of the series.

**Registrar and Paying Agent.** If other than the trustee under the applicable indenture, the identity of the registrar and any paying agent for the offered debt securities.

**Defeasance.** Any means of defeasance or covenant defeasance that may be specified for the offered debt securities.

**Global Securities.** Whether the offered debt securities are to be issued in whole or in part in the form of one or more temporary or permanent global securities and, if so, the identity of the depositary or its nominee, if any, for the global security or securities and the circumstances under which beneficial owners of interests in the global security may exchange those interests for certificated debt securities to be registered in the names of or to be held by the beneficial owners or their nominees.

**Documentation.** If the offered debt securities may be issued or delivered, or any installment of principal or interest may be paid, only upon receipt of certain certificates or other documents or satisfaction of other conditions in addition to those specified in the applicable indenture, the form of those certificates, documents or conditions.

**Payees.** If other than as provided in the applicable indenture, the person to whom any interest on any registered security of the series will be payable and the manner in which, or the person to whom, any interest on any bearer securities of the series will be payable.

**Definitions.** Any definitions for the offered debt securities of that series that are different from or in addition to the definitions included in the applicable indenture, including, without limitation, the definition of unrestricted subsidiary to be used for such series.



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***Subordination.*** In the case of any subordinated indenture that we may enter into, the relative degree to which the offered debt securities shall be senior to or junior to other debt securities, whether currently outstanding or to be offered in the future, and to other debt, in right of payment.

***Guarantees.*** Whether the offered debt securities are guaranteed and, if so, the identity of the guarantors and the terms of the offered guarantees (including whether and the extent to which the guarantees are subordinated to other debt of the guarantors).

***Conversion.*** The terms, if any, upon which the offered debt securities may be converted or exchanged into or for our common shares, preferred shares or other securities or property, including, without limitation, the initial conversion price or rate, the conversion period, any adjustment of the applicable conversion price and any requirements relative to the reservation of such shares for purposes of conversion.

***Restrictions.*** Any restrictions on the registration, transfer or exchange of the offered debt securities.

***Other Terms.*** Any other terms not inconsistent with the terms of the applicable indenture pertaining to the offered debt securities or which may be required or advisable under U.S. laws or regulations or advisable, as we determine, in connection with marketing of securities of the series.

## **Form of Securities and Related Matters**

***Registered or Bearer Form.*** Debt securities may be offered in either registered or bearer form.

If the debt securities are in registered form, we may treat the person named in the register as the owner of the debt securities for all purposes, including payment, exchange and transfer.

If we issue debt securities in bearer form, we will issue those debt securities only to non-U.S. persons and may treat the bearer of the securities as the owner for all purposes, including payment, exchange and transfer. If we issue debt securities in bearer form, we will describe special offering restrictions and material U.S. federal income tax considerations relating to the offered debt securities in a prospectus supplement.

***Denominations.*** Unless we say otherwise in a prospectus supplement, we will issue debt securities in denominations of:

U.S. \$1,000 (or multiples of \$1,000) if we issue the debt securities in registered form; and

U.S. \$5,000 (or multiples of \$5,000) if we issue debt securities in bearer form.

***Payment Currencies and Indexed Securities.*** We may offer debt securities for which:

the purchase price is payable in a currency other than U.S. dollars;

the securities are denominated in a currency other than U.S. dollars; or

the principal or interest of, or any other amount due on, the offered debt securities in a currency other than U.S. dollars.

The other currency may be a currency unit composed of various currencies. Payments on debt securities may also be based on an index.

***Payment, Transfer and Exchange.*** Unless we say otherwise in a prospectus supplement, the office for paying principal, interest and other amounts on the debt securities is U.S. Bank National Association, 214 North Tryon Street, 27<sup>th</sup> Floor, Charlotte, North Carolina 28202. We will notify you of any change in the office's location. At our option, however, we may make any interest payments on debt securities issued in registered form by:

mailing checks to you at the address as it appears in the applicable register for the series of debt securities; or

wire transfer of immediately available funds to an account you maintain located in the United States.

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Unless we say otherwise in a prospectus supplement, we will pay interest to the person whose name is in the register at the close of business on the regular record date for such interest.

Unless we say otherwise in a prospectus supplement, payment of interest on bearer securities may be made by transfer to an account you maintain with a bank located outside the United States.

Unless we say otherwise in a prospectus supplement, you may transfer or exchange debt securities issued in registered form at an office or agency that we designate. You may transfer or exchange debt securities without service charge, although we may require you to pay any related tax or other governmental charge.

## **Global Securities**

We may issue debt securities of a series in the form of one or more fully registered global securities. Each registered global security will:

be registered in the name of a depositary or a nominee for the depositary;

be deposited with the depositary or nominee or a custodian therefor; and

bear a legend regarding the restrictions on exchanges and registration of transfer and any such other appropriate matters.

Global securities may be issued in either registered or bearer form and in either temporary or permanent form. The specific terms and procedures, including the specific terms of the depositary arrangement, with respect to any portion of a series of debt securities will be described in a prospectus supplement.

## **Certain Covenants**

Unless we say otherwise in a prospectus supplement, each indenture contains or will contain the following covenants. Any additional material covenants applicable to any series of debt securities will be set forth in a prospectus supplement.

***Existence.*** Except as permitted under Consolidation, Merger or Sale of Assets, we will do or cause to be done all things necessary to preserve and keep in full force and effect our corporate existence, rights (charter and statutory) and franchises; provided, however, we are not required to preserve any right or franchise if we determine that the preservation of the right or franchise is no longer desirable in the conduct of our business.

***Maintenance of Properties.*** We will cause all of our material properties used or useful in the conduct of our business to be maintained and kept in good condition, repair and working order and supplied with all necessary equipment and will cause to be made all necessary repairs, renewals, replacements, betterments and improvements of our material properties to be made, all as in our judgment may be necessary so that the business carried on at, or in connection with, our material properties may be properly and advantageously conducted at all times.

***Payment of Taxes and Other Claims.*** We will pay or discharge or cause to be paid or discharged, before they shall become delinquent:

all taxes, assessments and governmental charges levied or imposed upon us or upon our income, profits or property, and

all lawful claims for labor, materials and supplies which, if unpaid, might by law become a lien upon our property;

provided, however, that we shall not be required to pay or discharge or cause to be paid or discharged any such tax, assessment, charge or claim whose amount, applicability or validity is being contested in good faith.

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***Provision of Financial Information.*** Whether or not we are subject to Section 13 or 15(d) of the Exchange Act, we will, within 15 days of each of the respective dates by which we would have been required to file annual reports, quarterly reports and other documents with the SEC if we were so subject:

transmit by mail to all holders of debt securities, as their names and addresses appear in the register, without cost to such holders, copies of the annual reports, quarterly reports and other documents that we would have been required to file with the SEC pursuant to Section 13 or 15(d) of the Exchange Act if we were subject to Section 13 or 15(d);

file with the trustee copies of the annual reports, quarterly reports and other documents that we would have been required to file with the SEC pursuant to Section 13 or 15(d) of the Exchange Act if we were subject to Section 13 or 15(d); and

promptly, upon written request and payment of the reasonable cost of duplication and delivery, supply copies of those documents to any prospective holder.

**Consolidation, Merger or Sale of Assets**

We may consolidate with, or sell, lease or convey all or substantially all of our assets, or merge with or into any other corporation, association, partnership, company or business trust, each of which we refer to herein as an entity, provided that we satisfy all of the following conditions:

either

we must be the continuing entity, or

the surviving entity must be an entity duly organized and validly existing under U.S. laws, any state or the District of Columbia, and the surviving entity must assume, by a supplemental indenture in a form reasonably satisfactory to the trustee, all obligations under the applicable debt securities and the related indenture;

immediately after giving effect to such transactions, no default or event of default under the debt securities shall have occurred and be continuing; and

we or the surviving entity has delivered, or caused to be delivered, to the trustee, in form and substance reasonably satisfactory to the trustee, an officers' certificate and an opinion of counsel, each to the effect that each consolidation, merger, transfer, sale, assignment, lease or other transaction and the supplemental indenture relating to such transaction comply with the provisions of the applicable indenture and that all conditions precedent provided for in the indenture relating to the transaction have been met.

## Subordination

**Generally.** Unless we say otherwise in a prospectus supplement, the payment of principal, premium, if any, and interest on subordinated debt securities will be subordinated, or junior, to the prior payment in full of all or any of our present and future senior debt. This means that we must pay all present and future senior debt before we pay amounts due to holders of subordinated debt securities if we liquidate, dissolve, reorganize or go through a similar process. After making these payments, we may not have sufficient assets remaining to pay the amounts due to holders of subordinated debt securities or equity securities.

Unless we say otherwise in a prospectus supplement, senior debt will be defined as the principal of and interest on, or substantially similar payments to be made by us in respect of, the following, whether outstanding at the date of execution of any subordinated indenture or thereafter incurred, created or assumed:

indebtedness for money borrowed or represented by purchase-money obligations;

indebtedness evidenced by notes, debentures, or bonds, or other securities issued under the provisions of an indenture, fiscal agency agreement or other instrument;

our obligations as lessee under leases of property whether made as part of any sale and leaseback transaction to which we are a party or otherwise;

indebtedness of partnerships and joint ventures which is included in our consolidated financial statements;

indebtedness, obligations and liabilities of others in respect of which we are liable, contingently or otherwise, for payment or advances of money or property, or as guarantor, endorser or otherwise, or which we have agreed to purchase or otherwise acquire; and

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any binding commitment to fund any real estate investment or to fund any investment in any entity making a real estate investment, in each case other than

any such indebtedness, obligation or liability of a type described or referred to in the bullets above as to which, in the instrument creating or evidencing the same or pursuant to which the same is outstanding, it is provided that such indebtedness, obligation or liability is not superior in right of payment to the subordinated debt securities or ranks pari passu with the subordinated debt securities;

any such indebtedness, obligation or liability which is subordinated to our indebtedness to substantially the same extent as or to a greater extent than the subordinated debt securities are subordinated to our indebtedness; and

the subordinated debt securities.

Unless we say otherwise in a prospectus supplement, there will be no restrictions in any subordinated indenture upon the creation of additional senior debt.

***Payment Blockage for Payment Defaults.*** Unless we say otherwise in a prospectus supplement, if we have defaulted in the payment of any senior debt, we may not:

pay any principal, premium, if any, or interest on subordinated debt securities; or

purchase, redeem, defease, or otherwise acquire any subordinated debt securities.

This prohibition will not affect any payment we have already made to defease debt securities, as described under Defeasance or Covenant Defeasance of Indentures, below.

We must resume payment on our subordinated debt securities, and make any payments we have missed, when one of the following has occurred:

the senior debt has been discharged or paid in full;

the holders of senior debt have waived payment; or

the payment default has otherwise been cured or ceased to exist.

***Payment Blockage for Non-Payment Defaults.*** Unless we say otherwise in a prospectus supplement, we will also be prohibited from paying any amounts or distributing any assets if:

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we have defaulted on senior debt in a way that does not involve a failure to pay amounts but accelerates payment; and

we and the trustee for the subordinated debt securities have received written notice of this default.

Unless we say otherwise in a prospectus supplement, we will be required to suspend payments and distributions on our subordinated debt securities starting when we receive notice of the applicable default. We may resume payments on our subordinated debt securities, and make any payments we have missed, upon the earliest of:

the date that is 179 days after receipt of notice (unless we have previously been required to pay all amounts owing on the applicable senior debt);

the date the default and all other similar defaults as to which notice has been given shall have been cured, waived or shall have ceased to exist;

the date the applicable senior debt (and all other senior debt as to which notice has been given) shall have been discharged or paid in full; and

the date on which we or the trustee receives written notice from the representative of holders of senior debt or the holders of at least a majority of the senior debt terminating the blockage period.



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Any number of notices of non-payment defaults may be given, but during any 365-day consecutive period only one blockage period may commence, and the period may not exceed 179 days. No non-payment default with respect to senior debt that existed or was continuing on the date a blockage period for our subordinated debt securities commenced may be made the basis of another blockage period for those securities whether or not within a period of 365 consecutive days, unless at least 90 consecutive days have elapsed since the default was cured or waived.

## **Default Provisions**

***Events of Default.*** Unless we say otherwise in a prospectus supplement, each of the following is an event of default as to any of our senior or subordinated debt securities:

1. A default in the payment of any interest or any additional amounts on any debt security of that series or of any coupon appertaining thereto when it becomes due and payable, if the default continues for a period of 30 days.
2. A default in the payment of the principal of (or premium, if any, on) any debt security of that series at its maturity (upon acceleration, optional or mandatory redemption, required purchase or otherwise).
3. A default in the deposit of any sinking fund payment as required by the terms of any debt security of that series.
4. A default in the performance, or a breach, of any covenant or agreement by us under the applicable indenture (other than a default in the performance, or a breach of a covenant or agreement which is specifically dealt with in clause (1) through (8) hereof) if such default or breach continues for a period of 60 days after written notice has been given, by registered or certified mail:
  - (a) to us by the trustee; or
  - (b) to us and the trustee by the holders of at least 25% in aggregate principal amount of the outstanding debt securities of the series.
5. The occurrence of one or more defaults under any bond, debenture, note or other evidence of indebtedness for money borrowed by us (including obligations under leases required to be capitalized on the balance sheet of the lessee under generally accepted accounting principles but not including any indebtedness or obligations for which recourse is limited to property purchased) in an aggregate principal amount in excess of \$25,000,000 or under any mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidenced any indebtedness for money borrowed by us (including such leases but not including such indebtedness or obligations for which recourse is limited to property purchased) in an aggregate principal amount in excess of \$25,000,000, whether such indebtedness now exists or shall hereafter be created, if the default has resulted in such indebtedness becoming or being declared due and payable prior to the date on which it would otherwise have become due and payable or in the acceleration of such obligations, without such acceleration having been rescinded or annulled.
6. The entry by a court of competent jurisdiction under any applicable bankruptcy law that:
  - (a) is for relief against us or any of our significant subsidiaries in an involuntary case,
  - (b) appoints a receiver in respect of us or any of our significant subsidiaries or for all or substantially all of the property of any of us; or

(c) orders our liquidation or the liquidation of any of our significant subsidiaries, and the order or decree remains unstayed and in effect for 90 days.

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7. We or any of our significant subsidiaries do any of the following:

- (a) commence a voluntary case or proceeding under any applicable bankruptcy law;
- (b) consent to the entry of a decree or order for relief in respect of us or any of our significant subsidiaries in an involuntary case or proceeding under any applicable bankruptcy law;
- (c) consent to the appointment of a receiver in respect of us or any of our significant subsidiaries for all or substantially all of our or its property; or
- (d) makes a general assignment for the benefit of our creditors or the creditors of any of our significant subsidiaries.

8. Any other event of default provided with respect to the debt securities of that series.

***Waiver of Default.*** Unless we say otherwise in a prospectus supplement, holders of not less than a majority of the debt securities of a series may waive any past default except for:

a payment default; or