Risk Factors Comparison 2024-02-15 to 2023-02-17 Form: 10-K

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Various risks and uncertainties could affect our business. Any of the risks described below or elsewhere in this report or our other filings with the SEC could have a material impact on our business, financial condition or results of operations. It is not possible to predict or identify all risk factors. Additional risks and uncertainties not presently known to us or that we currently believe to be immaterial may also impair our business operations. Risk factors summary An investment in our securities involves various risks. Such risks, including those set forth in the summary of material risks in this Item 1A, should be carefully considered before purchasing our securities. Risks Related to Our Business • Risks related to real estate ownership could reduce the value of our properties. • We are dependent on Darden, Brinker, and our other tenants to successfully operate their businesses, make rental payments to us and fulfill their obligations under their respective leases and other contracts with us. • Actual or perceived threats associated with epidemics, pandemics or public health crises, could have a material adverse effect on our and our tenants' businesses. • A significant portion of our restaurant properties are Olive Garden properties. Therefore, we are subject to risks associated with having a highly concentrated property brand base. • We are dependent on the restaurant industry and may be susceptible to the risks associated with it. • Our portfolio has some geographic concentration, which makes us more susceptible to adverse events in these areas. • Our pursuit of investments in, and acquisitions or development of, additional properties may be unsuccessful or fail to meet our expectations and may result in the use of a significant amount of management resources or significant costs. • Inflation may materially and adversely affect us and our tenants. • An increase in market interest rates would increase our tenant' s interest costs on existing and future debt, and could impact our tenant' s ability to refinance existing debt and operate their businesses. • Our tenants' businesses and our business through the operation of Kerrow are subject to government regulations and changes in current or future laws or regulations could restrict their ability to operate both their and our business in the manner currently contemplated. • Our relationship with Darden may adversely affect our ability to do business with third- party restaurant operators and other tenants. • Real estate investments are relatively illiquid and provisions in our lease agreements may adversely impact our ability to sell properties and could adversely impact the price at which we can sell the properties. • Our active management and operation of a restaurant business may expose us to potential liabilities beyond those traditionally associated with REITs. Risks Related to Our Indebtedness • Our level of indebtedness could materially and adversely affect our financial position, including reducing funds available for other business purposes and reducing our operational flexibility, and we may have future capital needs and may not be able to obtain additional financing on acceptable terms. • An increase in market interest rates would increase our interest costs on existing and future debt and could adversely affect our stock price, as well as our ability to refinance existing debt and conduct acquisition activity. • Hedging transactions could have a negative effect on our results of operations. Risks Related to Our Organizational Structure • Our charter restricts the ownership and transfer of our outstanding stock, which may have the effect of delaying, deferring or preventing a transaction or change of control of our company. Additionally, Maryland law and provisions in our charter and bylaws may delay or prevent takeover attempts by third parties and therefore inhibit our stockholders from realizing a premium on their stock. Risks Related to Our Common Stock • The market price and trading volume of our common stock may be volatile and may face negative pressure including as a result of future sales or distributions of our common stock. • We cannot assure shareholders of our ability to pay dividends in the future. Risks Related to Our Taxation as a REIT • If we do not qualify as a REIT, or fail to remain qualified as a REIT, we will be subject to U. S. federal income tax as a regular corporation and could face a substantial tax liability, which would reduce the amount of cash available for distribution to our stockholders. • We could fail to qualify as a REIT if income we receive from Darden and other tenants is not treated as qualifying income. • REIT distribution requirements could adversely affect our ability to execute our business plan. We attempt to mitigate the foregoing risks. However, if we are unable to effectively manage the impact of these and other risks, our ability to meet our investment objectives would be substantially impaired and any of the foregoing risks could materially adversely affect our financial condition, results of operations, and cash flows, our ability to make distributions to our stockholders, or the market price of our common stock. Risks related to real estate ownership could reduce the value of our properties, which could materially and adversely affect us. Our core business is the ownership of real estate that is leased to tenants on a net basis. Accordingly, our performance is subject to risks inherent to the ownership of real estate, including: • inability to collect rent from tenants due to financial hardship, including bankruptcy; • changes in consumer trends and preferences that reduce demand for the products or services of our tenants; • inability to lease at or above the current rental rates, or at all, or sell properties upon expiration or termination of existing leases; • ~~needing to make~~ capital expenditures to renovate vacant properties; • environmental risks related to the presence of hazardous or toxic substances or materials on our properties; • subjectivity of real estate valuations and changes in such valuations over time; • illiquid nature of real estate compared to most other financial assets; • changes in laws and regulations, including those governing real estate usage and zoning; • changes in interest rates and the availability of financing; and • changes in the general economic and business climate. The occurrence of any of the risks described above may cause the value of our real estate to decline, which could materially and adversely affect us. We are dependent on Darden to make payments to us and fulfill its obligations under its leases, as well as to provide services to us under the Franchise Agreements, and an event that materially and adversely affects Darden' s business, financial position or results of operations could materially and adversely affect our business, financial position or results of operations. Currently, Darden is our primary lessee in our lease portfolio and, therefore, is the source of a majority of our revenues. Additionally, because Darden' s leases with us are net leases, we depend on Darden to pay all insurance, taxes, utilities, common area maintenance charges, maintenance and repair expenses and to indemnify, defend and hold us harmless from and against various claims, litigation and liabilities arising in connection with its business, including any environmental liabilities. There can be no assurance that Darden will have sufficient assets, income and access to financing to enable it to satisfy its payment obligations to us under its leases. The inability or unwillingness of Darden to meet its rent obligations to us under any of its leases could materially adversely affect our business, financial position or results of operations, including our ability to pay dividends to our stockholders as required to maintain our status as a REIT. The inability of Darden to satisfy its other obligations under its leases with us, such as the payment of insurance, taxes and utilities could materially and adversely affect the condition of our properties. Since Darden Restaurants, Inc. is a holding company, it is dependent to an extent on distributions from its direct and indirect subsidiaries in order to satisfy the payment obligations under its leases with us, and the ability of Darden to make such distributions may be adversely impacted in the event of the insolvency or bankruptcy of such entities or by covenants in its debt agreements or otherwise that restrict the amount of the distributions that may be made by such entities. For these reasons, if Darden were to experience a material and adverse effect on its business, financial position or results of operations, our business, financial position or results of operations could also be materially and adversely affected. Due to our dependence on rental payments from Darden, we may be limited in our ability to enforce our rights under, or to terminate, our leases with Darden. Failure by Darden to comply with the terms of its leases with us could require us to find other lessees for some or all of the properties and there could be a decrease or cessation of rental payments by Darden. There is no assurance that we would be able to lease any of our properties to other lessees on substantially equivalent or better terms than any of our leases with Darden, or at all, successfully reposition our properties for other uses or sell our properties on terms that are favorable to us. It may be more difficult to find a replacement tenant for a restaurant or retail property than it would be to find a replacement tenant for a general commercial property due to the specialized nature of the business. In addition, our operation of the Kerrow Restaurant Operating Business depends on the provision of services to us by Darden pursuant to the Franchise Agreements. The Franchise Agreements provide that Darden agrees to provide certain franchising services to our subsidiary, Kerrow. The franchising services include licensing the right to use and display certain trademarks, utilize trade secrets and purchase proprietary products from Darden in connection with the operation of the Kerrow Restaurant Operating Business. Other services provided pursuant to the Franchise Agreements are marketing services, training and access to certain LongHorn operating procedures. The Franchise Agreements also contain provisions under which Darden may provide certain technical support for the Kerrow Restaurant Operating Business. Additional information about Darden can be found in Darden' s public filings with the SEC. Darden' s filings with the SEC can be found on the SEC' s Internet website at www. sec. gov. Reference to Darden' s filings with the SEC is solely for the information of investors. We do not intend the SEC' s website to be an active link or to otherwise incorporate the information contained on its website (including Darden' s filings with the SEC) into this report or other filings with the SEC. We are dependent on our major tenants successfully operating their businesses, and a failure to do so could have a material adverse effect on our business, financial position or results of operations. For the year ended December 31, ~~2022~~ **2023** , Darden and Brinker International, Inc. (" Brinker ") constituted approximately ~~54~~ **51** . ~~3~~ **7** % and **7.** 8 ~~. 5~~ %, respectively, of our annual cash base rent. As a result, we are dependent on Darden and Brinker successfully operating their businesses and fulfilling their obligations to us. Their ability to do so depends, in part, on their overall performance and profitability, which are based on many factors, many of which are beyond Darden' s or Brinker' s control. Accordingly, we could be materially and adversely affected if Darden or Brinker does not operate their respective businesses successfully. Actual or perceived threats associated with epidemics, pandemics or public health crises could have a material adverse effect on our and our tenants' businesses, financial condition, results of operations, cash flow, liquidity and ability to access the capital markets and satisfy debt service obligations and make distributions to our stockholders. Epidemics, pandemics or other public health crises that impact economic and market conditions, particularly in markets where our properties are located, and preventative measures taken to alleviate any public health crises, particularly any measures that limit our tenants' ability to engage in in- person interactions with their customers, may have a material adverse effect on our and our tenants' businesses, financial condition, results of operations, liquidity and ability to access capital markets and satisfy our debt service obligations, and make distributions to our stockholders, and may affect our ability as a net- lease real estate investment trust to acquire properties or lease properties to our tenants, who may be unable, as a result of any economic downturn or longer- term changes in consumer demand occasioned by public health crises, to make rental payments when due. Any preventative measures taken to alleviate any public health crises may remain in place for an extended period of time, and, accordingly, we may experience reductions in rents from our tenants. Although we expect to be actively engaged in rent collection efforts related to any uncollected rent, as well as working with certain tenants who request rent deferrals or other lease- related relief, we can provide no assurance that our efforts will be successful. Moreover, to the extent any of these risks and uncertainties adversely impact us in the ways described above or otherwise, they may also have the effect of heightening many of the other risks described under this section " Item 1A. Risk Factors ". As of December 31, ~~2022~~ **2023** , our restaurant properties include ~~312~~ **314** Olive Garden restaurants. As a result, our success, at least in the short- term, is dependent on the continued success of the Olive Garden brand and, to a lesser extent, Darden' s other restaurant brands. We believe that building brand value is critical to increasing demand and building customer loyalty. Consequently, if market recognition or the positive perception of the Olive Garden or other Darden brands is reduced or compromised, the value associated with Olive Garden or other Darden- branded properties in our portfolio may be adversely affected. We are dependent on the restaurant industry and may be susceptible to the risks associated with it, which could materially adversely affect our business, financial position or results of operations. As the owner of properties serving the restaurant industry, we are impacted by the risks associated with the restaurant industry. Therefore, our success is to some degree dependent on the restaurant industry, which could be adversely affected by economic conditions in general, changes in consumer trends and preferences and other factors over which we and any of our tenants in the restaurant industry have no control. As we are subject to risks inherent in substantial investments in a single industry, a decrease in the restaurant business would likely have a greater adverse effect on our revenues than if we owned a more diversified real estate portfolio. The restaurant industry is characterized by a high degree of competition among a large number of participants. Competition is intense between national and regional restaurant chains and locally- owned restaurants in most of the markets where our properties are located. As competing properties are constructed, the lease rates we assess for our properties may be negatively impacted upon renewal or new tenant pricing events. Our properties are located throughout the United States with the highest ~~concentrations~~ - **concentration** located in the ~~states~~ - **state** of Texas ~~and Florida~~ , where 10. **1** ~~5 % and 9. 7~~ % of our annualized base rent was derived as of December 31, ~~2022~~ **2023** ~~, respectively~~ . An economic downturn or other adverse events or conditions such as natural disasters in these areas, or any other area where we may have significant concentration in the future, could result in a material reduction of our cash flows or material losses to our company. We intend to continue to pursue acquisitions of additional properties and seek other strategic opportunities, which may result in the use of a significant amount of management resources or significant costs, including the cost of accessing debt or equity markets, and we may not fully realize the potential benefits of such transactions. In ~~2022~~ **2023** , we acquired ~~115~~ **92** properties and ground leasehold interests for a total investment of $ ~~296~~ **341** . ~~3~~ **1** million, including capitalized transaction costs, which were added to our leasing portfolio. We intend to continue to pursue acquisitions of additional properties and seek acquisitions and other strategic opportunities, including, but not limited to, continuing to expand our tenant base to third parties other than Darden and acquiring non- restaurant properties. Accordingly, we may often be engaged in evaluating potential transactions, potential new tenants and other strategic alternatives. In addition, from time to time, we may engage in discussions that may result in one or more transactions. Although there is uncertainty that any of these discussions will result in definitive agreements or the completion of any transaction, we may devote a significant amount of our management resources to such a transaction, which could negatively impact our operations. We may incur significant costs in connection with seeking acquisitions or other strategic opportunities regardless of whether the transaction is completed and in combining our operations if such a transaction is completed. In addition, properties we acquire may be leased to unrated tenants, and the tools we use to measure credit quality may not be accurate. In the event that we consummate an acquisition or strategic alternative in the future, there is no assurance that we would fully realize the potential benefits of such a transaction. We operate in a highly competitive market and face competition from other REITs, investment companies, private equity and hedge fund investors, sovereign funds, restaurant and retail operators, lenders and other investors, some of whom are significantly larger and have greater resources and lower costs of capital. Increased competition will make it more challenging to identify and successfully capitalize on acquisition opportunities that meet our investment objectives. Our Board of Directors may change our investment objectives at any time without stockholder approval. If we cannot identify and purchase a sufficient quantity of suitable properties at favorable prices or if we are unable to finance acquisitions on commercially favorable terms, our business, financial position or results of operations could be materially and adversely affected. Additionally, the fact that we must distribute 90 % of our REIT taxable income in order to maintain our qualification as a REIT may limit our ability to rely upon rental payments from our leased properties or subsequently acquired properties in order to finance acquisitions and other strategic opportunities. In addition, to pursue acquisitions we may have to access debt or equity markets and if financing is not available on acceptable terms, our ability to pursue further acquisitions might be limited or curtailed. Our pursuit of investments in, and acquisitions or development of, additional properties may be unsuccessful or fail to meet our expectations. Investments in and acquisitions of restaurant, retail and other properties we might seek to acquire entail risks associated with real estate investments generally, including that the investment' s performance will fail to meet expectations, that the cost estimates for necessary property improvements will prove inaccurate or that the tenant, operator or manager will underperform or become insolvent. In addition, we continue to seek to diversify our portfolio by acquiring retail and other properties outside the restaurant industry, which further exposes us to these and other risks given our limited experience with investments in acquisitions of properties in these industries. Real estate development projects present other risks, including construction delays or cost overruns that increase expenses, the inability to obtain required zoning, occupancy and other governmental approvals and permits on a timely basis, the incurrence of significant development costs prior to completion of the project, abandonment of development activities after expending significant resources, and exposure to fluctuations in the general economy due to the significant time lag between commencement and completion of redevelopment projects. ~~In recent months, the consumer price index has increased substantially. Federal policies and recent global events, such as the rising price of oil and the conflict between Russia and Ukraine, may have exacerbated, and may continue to exacerbate, increases in the consumer price index.~~ A sustained or further increase in inflation could have a negative impact on variable- rate debt we and our tenants currently have or that we or our tenants may incur in the future. Our leases typically contain provisions, such as rent escalators, designed to mitigate the adverse impact of inflation on our results of operations. As of December 31, ~~2022~~ **2023** , we had $ ~~105~~ **446** million of variable- rate debt, excluding the impact of interest rates swaps in effect. In addition, the effect of inflation on interest rates could increase our financing costs over time, either through near- term borrowings on our floating- rate line of credit or refinancing of our existing borrowings that may incur higher interest expenses related to the issuance of new debt. We have entered into interest rate swaps to effectively fix $ ~~325~~ **375** million of our variable- rate indebtedness, and we may enter into other hedging transactions. Because tenants are typically required to pay all property operating expenses, increases in property- level expenses at our leased properties generally do not affect us. However, increased operating expenses at vacant properties and the limited number of properties that are not subject to full triple- net leases could cause us to incur additional operating expenses, which could increase our exposure to inflation. Increased costs may also have an adverse impact on our tenants if increases in their operating expenses exceed increases in revenue, which may adversely affect the tenants' ability to pay rent owed to us. Additionally, while our leases typically contain provisions, such as rent escalators, designed to mitigate the adverse impact of inflation on our results of operations, the increases in rent provided by many of our leases may not keep up with the rate of inflation. ~~Athough~~ **Although** our properties have an average annual rent escalation of 1. ~~42~~ **4** % through December 31, ~~2027~~ **2028** , the impact of the current rate of inflation may not be adequately offset by some of our rent escalations, and it is possible that the resetting of rents from our renewal and releasing activities would not fully offset the impact of the current inflation rate. As a result, during inflationary periods in which the inflation rate exceeds the annual rent escalation percentages within our lease contracts, we may not adequately mitigate the impact of inflation, which may adversely affect our business, financial condition, results of operations, and cash flows. In addition, historically, during periods of increasing interest rates, real estate valuations have generally decreased as a result of rising capitalization rates, which tend to be positively correlated with interest rates. Consequently, prolonged periods of higher interest rates may negatively impact the valuation of our portfolio and result in the decline of the quoted trading price of our securities and market capitalization, as well as lower sales proceeds from future dispositions. If we are not able to hire, or if we lose, key management personnel, we may not be able to successfully manage our business and achieve our objectives. Our success depends in large part upon the leadership and performance of our executive management team, particularly William H. Lenehan, our President and Chief Executive Officer, and other key employees and our ability to attract other key personnel to our business. If we are unable to hire, or if we lose the services of, our executive management team or we are not able to hire or we lose other key employees, we may not be able to successfully manage our business or achieve our business objectives. Failure by our tenants to make rental payments to us, because of a deterioration of their financial condition or otherwise, would have a material adverse effect on us. We derive substantially all of our revenue from tenants who lease space from us at our properties. Therefore, our ability to generate cash from operations is dependent on the rents that we are able to charge and collect from our tenants. At any time, our tenants may experience a downturn in their respective businesses that may significantly weaken their financial condition, particularly during periods of economic uncertainty. As a result, our tenants may delay lease commencements, decline to extend or renew leases upon expiration, fail to make rental payments when due, close a number of restaurants or declare bankruptcy. Any of these actions could result in the loss of rental income attributable to the terminated leases and write- downs of certain of our assets. In that event, we may be unable to re- lease the vacated space at attractive rents or at all. The occurrence of any of the situations described above would have a material adverse effect on our results of operations and our financial condition. Bankruptcy laws will limit our remedies if a tenant becomes bankrupt and rejects its leases. If a tenant becomes bankrupt or insolvent, that could diminish the income we receive from that tenant’ s leases. We may not be able to evict a tenant solely because of its bankruptcy. On the other hand, a bankruptcy court might authorize the tenant to terminate its leasehold with us. If that happens, our claim against the bankrupt tenant for unpaid future rent would be an unsecured pre- petition claim subject to statutory limitations, and therefore any amounts received in bankruptcy are likely to be substantially less valuable than the remaining rent we otherwise were owed under the leases. In addition, any claim we have for unpaid past rent could be substantially less than the amount owed. The failure of any of our tenants to fulfill ~~its~~ **their** maintenance obligations may have a materially adverse effect on our ability to operate and grow our business. The failure of any of our tenants to fulfill its maintenance obligations may cause us to incur significant and unexpected expenses to remediate any resulting damage to the property. Furthermore, the failure by Darden, any other tenant or any future tenant to adequately maintain a leased property could adversely affect our ability to timely re- lease the property to a new tenant or otherwise monetize our investment in the property if we are forced to make significant repairs or changes to the property as a result of the tenant’ s neglect. If we incur significant additional expenses or are delayed in being able to pursue returns on our real estate investments, it may have a materially adverse effect on our ability to operate and grow our business and our ability to achieve our strategic objectives. We or our tenants may experience uninsured or underinsured losses, which could result in a significant loss of the capital we have invested in a property, decrease anticipated future revenues or cause us to incur unanticipated expense. Our current lease agreements generally require, and new lease agreements that we enter into are expected to require, that the tenant maintain comprehensive insurance and hazard insurance or self- insure its obligations. However, we cannot **be** ~~assure~~ **assured** ~~you~~ that we will continue to require the same levels of insurance coverage under our lease agreements, that such insurance will be available at a reasonable cost in the future or that the insurance coverage provided will fully cover all losses on our properties upon the occurrence of a catastrophic event, nor can we assure you of the future financial viability of the insurers. Certain types of losses, generally of a catastrophic nature, such as earthquakes, hurricanes and floods, may be uninsurable or not economically insurable by us or by our tenants. Insurance coverage may not be sufficient to pay the full current market value or current replacement cost of a loss. Inflation, changes in building codes and ordinances, environmental considerations and other factors might also make it unfeasible to use insurance proceeds to replace the property after such property has been damaged or destroyed. Under such circumstances, the insurance proceeds received might not be adequate to restore the economic position with respect to such property. While the tenants under our leases generally indemnify, defend and hold us harmless for the foregoing liabilities, there can be no assurance that the respective tenant will have sufficient assets, income or access to financing to enable it to satisfy its payment obligations to us under its lease. Properties in our leasing portfolio and the Kerrow Restaurant Operating Business are located in 47 states, and if one of our properties experiences a loss that is uninsured or that exceeds policy coverage limits, we could lose the capital invested in the damaged property as well as the anticipated future cash flows from the property. If the damaged property is subject to recourse indebtedness, we could continue to be liable for the indebtedness even if the property is irreparably damaged. In addition, even if damage to our properties is covered by insurance, a disruption of business caused by a casualty event may result in loss of revenue for our tenants or us. Any business interruption insurance may not fully compensate them or us for such loss of revenue. If one of our tenants experiences such a loss, it may be unable to satisfy its payment obligations to us under its lease with us. The restaurant industry is subject to extensive federal, state and local and international laws and regulations. The development and operation of restaurants depend to a significant extent on the selection and acquisition of suitable sites, which are subject to building, zoning, land use, environmental, traffic and other regulations and requirements. Our tenants and Kerrow are subject to licensing and regulation by state and local authorities relating to wages and hours, health care, health, sanitation, safety and fire standards, the sale of alcoholic beverages, and information security. Our tenants and Kerrow are also subject to, among other laws and regulations, laws and regulations relating to the preparation and sale of food, including regulations regarding product safety, nutritional content and menu labeling. The impact of current laws and regulations, the effect of future changes in laws or regulations that impose additional requirements and the consequences of litigation relating to current or future laws and regulations, or an insufficient or ineffective response to significant regulatory or public policy issues, could have an adverse effect on our tenants' results of operations, which could also adversely affect our business, results of operations or financial condition as we depend on our tenants for almost the entirety of our revenue. Environmental compliance costs and liabilities associated with real estate properties owned by us may materially impair the value of those investments. As an owner and operator of real property, we are subject to various federal, state and local environmental, health and safety laws and regulations. We may be held primarily or jointly and severally liable for costs relating to the investigation and clean- up of any of our current or former properties at or from which there has been a release or threatened release of hazardous materials as well as other affected properties, regardless of whether we knew of or caused the contamination. In addition to these costs, which are typically not limited by law or regulation and could exceed the property' s value, we or our tenants could be subject to other liabilities, including governmental penalties for violation of environmental, health and safety laws, liabilities for injuries to persons for exposure to hazardous materials, and damages to property or natural resources. Furthermore, some environmental laws can create a lien on the contaminated site in favor of the government for damages and the costs the government incurs in connection with such contamination or can restrict the manner in which a property may be used because of contamination. We also could be liable for the costs of remediating contamination at third party sites, e. g., landfills, where we send waste for disposal without regard to whether we comply with environmental laws in doing so. The presence of contamination or the failure to remediate contamination may adversely affect our ability to sell, develop or lease the real estate or to borrow using the real estate as collateral. In addition, regulations in response to climate change could result in increased compliance and energy costs. Darden is our primary tenant in our lease portfolio, and a majority of our revenues consist of rental payments from Darden. We may be viewed by third- party restaurant operators and other potential tenants or parties to sale- leaseback transactions as being closely affiliated with Darden. As these third- party restaurant operators and other potential transaction parties may compete with Darden within the restaurant industry, our perceived affiliation with Darden could make it difficult for us to attract tenants and other transaction partners beyond Darden, particularly in the restaurant industry. If we are unable to diversify our tenant and transaction partner base further beyond Darden, it may have a materially adverse effect on our ability to operate and grow our business and our ability to achieve our strategic objectives. Properties in our leasing portfolio and the properties leased to Kerrow represent a substantial portion of our total consolidated assets, and these investments are relatively illiquid. As a result, our ability to sell one or more of our properties or other investments in real estate we may make in response to any changes in economic or other conditions may be limited. If we want to sell a property, we cannot assure you that we will be able to dispose of it in the desired time period, or at all, or that the sale price of a property will exceed the cost of our investment in that property. In addition, the properties subject to leases with Darden provide them a right of first offer with respect to our sale of any such property, provided there is no default under the lease, and we are prohibited from selling any of our properties to (i) any nationally recognized casual or fine dining brand restaurant or entity operating the same or (ii) any other regionally recognized casual or fine dining brand restaurant or entity operating the same, with 25 or more units. The existence of these provisions in our leases with Darden, which survive for the full term of the relevant lease, could adversely impact our ability to sell any of the properties and could adversely impact our ability to obtain the highest possible price for any of the properties. If we seek to sell any of our properties, we would not be able to offer the properties to potential purchasers through a competitive bid process or in a similar manner designed to maximize the value obtained without first offering to sell to Darden and we would be restricted in the potential purchasers who could buy the properties, which may adversely impact our ability to sell any of the properties in a timely manner, or at all, or adversely impact the price we can obtain from such sale. We may be subject to liabilities and costs associated with the impacts of climate change. The potential physical impacts of climate change on our properties or operations are highly uncertain and would be particular to the geographic circumstances in areas in which we operate, including Florida, Georgia and Texas. Such impacts may result from increased frequency of natural disasters, changes in rainfall and storm patterns and intensities, water shortages, changing sea levels, rising energy and environmental costs, and changing temperatures. These impacts may adversely impact our business, results of operations and financial condition, including our or our tenants' ability to obtain property insurance on acceptable terms. While the tenants under our leases generally indemnify, defend and hold us harmless for the foregoing liabilities, there can be no assurance that the respective tenant will have sufficient assets, income or access to financing to enable it to satisfy its payment obligations to us under its lease. In addition, laws and regulations targeting climate change could result in stricter energy efficiency standards and increased capital expenditures in order to comply with such regulations, as well as increased operating costs that we may not be able to pass on to our tenants. Any such regulation could impose substantial costs on our tenants, thereby impacting the financial condition of our tenants and their ability to meet their lease obligations and to lease or re- lease our properties. Compliance with the Americans with Disabilities Act and fire, safety and other regulations may require us to make unanticipated expenditures that materially adversely impact our cash flow. All of our properties are required to comply with Title III of the Americans with Disabilities Act, or the ADA. While the tenants to whom we lease properties are obligated by law to comply with the ADA provisions, under the law we are also legally responsible for our properties' ADA compliance. State and local laws may also require modifications to our properties related to access by disabled persons. In addition, we are required to operate our properties in compliance with fire and safety regulations, building codes and other land use regulations, as they may be adopted by governmental agencies and bodies and become applicable to our properties. If required changes involve greater expenditures than anticipated, or if the changes must be made on a more accelerated basis than anticipated, the ability of our tenants to cover costs could be adversely affected and we could be required to expend our own funds to comply with those requirements, which could have a material adverse effect on our cash flow and ability to make distributions to our security holders. While the tenants under our leases generally indemnify, defend and hold us harmless for the foregoing liabilities, there can be no assurance that the respective tenant will have sufficient assets, income or access to financing to enable it to satisfy its payment obligations to us under its lease. In addition to our real estate investment activities, we also manage and operate the Kerrow Restaurant Operating Business, which consists of seven LongHorn Steakhouse restaurants located in the San Antonio, Texas area. Managing and operating the Kerrow Restaurant Operating Business requires us to employ significantly more people than a REIT that does not operate a business of such type and scale. In addition, managing and operating an active restaurant business exposes us to potential liabilities associated with the operation of restaurants. Such potential liabilities are not typically associated with REITs and include potential liabilities for wage and hour violations, guest discrimination, food safety issues including poor food quality, food- borne illness, food tampering, food contamination, workplace injury, cyber- attacks, and violation of " dram shop " laws (providing an injured party with recourse against an establishment that serves alcoholic beverages to an intoxicated party who then causes injury to himself or a third party). In the event that one or more of the potential liabilities associated with managing and operating an active restaurant business materializes, such liabilities could damage the reputation of the Kerrow Restaurant Operating Business as well as the reputation of FCPT, and could adversely affect our financial position and results of operations, possibly to a material degree. We may be vulnerable to security breaches or cyber- attacks which could disrupt our operations and have a material adverse effect on our financial performance and operating results. Security breaches, cyber- attacks, or disruption, of our physical or information technology infrastructure, networks and related management systems could result in, among other things, a breach of our networks and information technology infrastructure, the misappropriation of our or our tenants' proprietary or confidential information, interruptions or malfunctions in our or our tenants' operations, delays or interruptions to our ability to meet tenant needs, breach of our legal, regulatory or contractual obligations, inability to access or rely upon critical business records, unauthorized access to our facilities or other disruptions in our operations. Numerous sources can cause these types of incidents, including: physical or electronic security breaches; viruses, ransomware or other malware; hardware vulnerabilities such as Meltdown and Spectre; accident or human error by our own personnel or third parties; criminal activity or malfeasance (including by our own personnel); fraud or impersonation scams perpetrated against us or our partners or tenants; or security events impacting our third- party service providers or our partners or tenants. Our exposure to cybersecurity threats and negative consequences of cybersecurity breaches will likely increase as we store increasing amounts of tenant data. The Audit and Risk Committee of our Board of Directors oversees our risk management processes related to cybersecurity. As we recognize the increasing volume of cyber attacks, the Audit and Risk Committee meets frequently with our IT personnel and senior management to discuss recent trends in cyber risks and our strategy to defend our IT networks, business and building systems and information against cyber attacks and intrusions. Under the oversight of the Audit and Risk Committee, we employ commercially practical efforts to provide reasonable assurance such attacks are appropriately mitigated. We may be required to expend significant financial resources to protect against or respond to such breaches. Techniques used to breach security change frequently, and are generally not recognized until launched against a target, so we may not be able to promptly detect that a security breach or unauthorized access has occurred. We also may not be able to implement security measures in a timely manner or, if and when implemented, we may not be able to determine the extent to which these measures could be circumvented. As we provide assurances to our tenants that we provide a high level of security, if an actual or perceived security breach occurs, the market' s perception of our security measures could be harmed and we could lose current and potential tenants, and such a breach could be harmful to our brand and reputation. Any breaches that may occur could expose us to increased risk of lawsuits, material monetary damages, potential violations of applicable privacy and other laws, penalties and fines, harm to our reputation and increases in our security and insurance costs, which could have a material adverse effect on our business, financial condition and results of operations. In the event of a breach resulting in loss of data, such as personally identifiable information or other such data protected by data privacy or other laws, we may be liable for damages, fines and penalties for such losses under applicable regulatory frameworks despite not handling the data. We cannot guarantee that any backup systems, regular data backups, security protocols, network protection mechanisms and other procedures currently in place, or that may be in place in the future, will be adequate to prevent network and service interruption, system failure, damage to one or more of our systems or data loss in the event of a security breach or attack. **Further, while we carry cyber liability insurance, such insurance may not be adequate to cover all losses related to such events.** In addition, the regulatory framework around data custody, data privacy and breaches varies by jurisdiction and is an evolving area of law with increasingly complex and rigorous regulatory standards enacted to protect business and personal data in the United States. We may not be able to limit our liability or damages in the event of such a loss. Data protection legislation is becoming increasingly common in the United States at both the federal and state level and may require us to further modify our data processing practices and policies. For example, the California Consumer Privacy Act of 2018, which took effect on January 1, 2020, provides California residents with increased privacy rights and protections with respect to their personal information. Compliance with existing, proposed and recently enacted laws and regulations can be costly; any failure to comply with these regulatory standards could subject us to legal and reputational risks. Misuse of or failure to secure personal information could also result in violation of data privacy laws and regulations, proceedings against the Company by governmental entities or others, fines and penalties, damage to our reputation and credibility and could have a negative impact on our business and results of operations. Failure to maintain effective internal control over financial reporting in accordance with Section 404 of the Sarbanes- Oxley Act could materially and adversely affect our business and the market price of our common stock. Under the Sarbanes- Oxley Act, we must maintain effective disclosure controls and procedures and internal control over financial reporting, which requires significant resources and management oversight. Internal control over financial reporting is complex and may be revised over time to adapt to changes in our business, or changes in applicable accounting rules. We cannot assure you that our internal control over financial reporting will be effective in the future or that a material weakness will not be discovered with respect to a prior period for which we had previously believed that internal controls were effective. Matters impacting our internal controls may cause us to be unable to report our financial data on a timely basis, or may cause us to restate previously issued financial data, and thereby subject us to adverse regulatory consequences, including sanctions or investigations by the SEC, or violations of applicable stock exchange listing rules. There could also be a negative reaction in the financial markets due to a loss of investor confidence in us and the reliability of our financial statements. Confidence in the reliability of our financial statements is also likely to suffer if we or our independent registered public accounting firm reports a material weakness in our internal control over financial reporting. This could materially adversely affect us by, for example, leading to a decline in the market price for our common stock and impairing our ability to raise capital. If our reputation or our tenants' reputation are damaged, our business and operating results may be harmed. Our reputation and our tenants' reputations are important to our business. Our reputation affects our ability to access capital, acquire additional properties and recruit and retain talented employees. Our tenants' reputations affect their ability to continue to operate profitably and make payments under their lease agreements with us on time. There are numerous ways our reputation or our tenants' reputation could be damaged. These include unethical behavior or misconduct, workplace safety incidents, environmental impact, corporate governance issues, data breaches or human rights records. We or our tenants may experience backlash from customers, government entities, advocacy groups, employees, and other stakeholders that disagree with our operating decisions or public policy positions. The proliferation of social media may increase the likelihood, speed, and magnitude of negative events. If our or our tenants' reputation is damaged, it could adversely affect our business, results of operations, financial condition or ability to attract the most highly qualified employees. Third- party expectations relating to environmental, social and governance factors may impose additional costs and expose us to new risks. There is an increasing focus from certain investors and other stakeholders concerning corporate responsibility, specifically related to environmental, social and governance factors. Some investors may use these factors to guide their investment strategies and, in some cases, may choose not to invest in our securities if they believe our policies relating to corporate responsibility are inadequate. Third- party providers of corporate responsibility ratings and reports on companies have increased in number, resulting in varied and in some cases inconsistent standards. In addition, the criteria by which companies' corporate responsibility practices are assessed are evolving, which could result in greater expectations of us and cause us to undertake costly initiatives to satisfy such new criteria. Alternatively, if we elect not to or are unable to satisfy such new criteria or do not meet the criteria of a specific third- party provider, some investors may conclude that our policies with respect to corporate responsibility are inadequate. We may face reputational damage in the event that our corporate responsibility procedures or standards do not meet the standards set by various constituencies. Furthermore, if our competitors' corporate responsibility performance is perceived to be greater than ours, potential or current investors may elect to invest with our competitors instead. In addition, in the event that we communicate certain initiatives and goals regarding environmental, social and governance matters, we could fail, or be perceived to fail, in our achievement of such initiatives or goals, or we could be criticized for the scope of such initiatives or goals. If we fail to satisfy the expectations of investors, tenants and other stakeholders or our initiatives are not executed as planned, our reputation and financial results could be adversely affected. We have entered into the Loan Agreement (as defined below) that provides for borrowings of up to $ 680 million and consists of (1) a revolving credit facility in an aggregate principal amount of $ 250 million and (2) a term loan facility in an aggregate principal amount of $ 430 million comprised of (i) a $ 150 million term credit facility with a maturity date of November 9, 2025, (ii) a $ 100 million term credit facility with a maturity date of November 9, 2026, (iii) a $ 90 million term credit facility with a maturity date of January 9, 2027, and (iv) a $ 90 million term credit facility with a maturity date of January 9, 2028. In addition, the revolving credit and term loan agreement contains an accordion feature allowing the facility to be increased by an additional aggregate amount not to exceed $ 350 million, subject to certain conditions. As of December 31, ~~2022~~ **2023** , the term loan facility is fully drawn and the undrawn revolving credit facility had $ ~~250~~ **234** million remaining capacity. In addition, we have issued $ ~~575~~ **675** million of senior unsecured fixed rate notes (the " Notes "). The Notes consist of $ 50 million of notes due in June 2024 priced at a fixed interest rate of 4. 68 %, $ **50 million of notes due in December 2026 priced at a fixed interest rate of 4. 63 %, $** 75 million of notes due in June 2027 priced at a fixed interest rate of 4. 93 %, $ 50 million of notes due in December ~~2026~~ **2028** priced at a fixed interest rate of 4. ~~63~~ **76** %, $ 50 million of notes due in ~~December~~ **April** ~~2028~~ **2029** priced at a fixed interest rate of ~~4~~ **2** . ~~76~~ **74** %, $ 50 million of notes due in June 2029 priced at a fixed interest rate of 3. 15 %, $ 75 million of notes due in April 2030 priced at a fixed interest rate of 3. 20 %, $ 50 million of notes due in ~~April 2029 priced at a fixed interest rate of 2. 74 %, $ 50 million of notes due in~~ March 2031 priced at a fixed interest rate of 3. 09 %, $ 50 million of notes due in April 2031 priced at a fixed interest rate of 2. 99 %, ~~and~~ $ 75 million of notes due in March 2032 priced at a fixed interest rate of 3. 11 **%, and $ 100 million of notes due in July 2033 priced at a fixed interest rate of 6. 44** %. We may incur additional indebtedness in the future to refinance our existing indebtedness, to finance newly- acquired assets or for other purposes. Our governing documents do not contain any limitations on the amount of debt we may incur and we do not have a formal policy limiting the amount of debt we may incur in the future. Subject to the restrictions, if any, set forth in our debt agreements, our Board of Directors may establish and change our leverage policy at any time without stockholder approval. Any significant additional indebtedness could require a substantial portion of our cash flow to make interest and principal payments due on our indebtedness. Greater demands on our cash resources may reduce funds available to us to pay dividends, make capital expenditures and acquisitions, or carry out other aspects of our business strategy. Increased indebtedness can also limit our ability to adjust rapidly to changing market conditions, make us more vulnerable to general adverse economic and industry conditions and create competitive disadvantages for us compared to other companies with relatively lower debt levels. Increased future debt service obligations may limit our operational flexibility, including our ability to acquire assets, finance or refinance our assets, contribute assets to joint ventures or sell assets as needed. Moreover, our ability to obtain additional financing and satisfy our financial obligations under our indebtedness outstanding from time to time will depend upon our future operating performance, which is subject to then prevailing general economic and credit market conditions, including interest rate levels and the availability of credit generally, and financial, business and other factors, many of which are beyond our control. A worsening of credit market conditions, including rising interest rates, could materially and adversely affect our ability to obtain financing on favorable terms, if at all. We also may be unable to obtain additional financing or financing on favorable terms or our operating cash flow may be insufficient to satisfy our financial obligations under our indebtedness outstanding from time to time. Among other things, although we received an investment grade credit rating of BBB from Fitch Ratings in March 2022 and an investment grade credit rating of Baa3 from Moody' s Investor Service in May 2022, any credit rating downgrade could increase our financing costs and could limit our access to financing sources. If financing is not available when needed, or is available on unfavorable terms, we may be unable to complete acquisitions or otherwise take advantage of business opportunities or respond to competitive pressures, any of which could materially and adversely affect our business, financial condition and results of operations. Covenants in our debt agreements may limit our operational flexibility, and a covenant breach or default could materially and adversely affect our business, financial position or results of operations. The agreements governing our indebtedness contain customary covenants that may limit our operational flexibility. The Loan Agreement (defined below) and the terms of the Notes contain customary affirmative and negative covenants that, among other things, restrict, subject to certain exceptions, the incurrence of debt, the incurrence of secured debt, the ability of FCPT OP and the guarantors to enter into mergers, consolidations, sales of assets and similar transactions, limitations on distributions and other restricted payments, and limitations on transactions with affiliates and customary reporting obligations. In addition, we are required to comply with the following financial covenants: (1) total indebtedness to consolidated capitalization value not to exceed 60 %; (2) mortgage- secured leverage ratio not to exceed 40 %; (3) minimum fixed charge coverage ratio of 1. 50 to 1. 00; (4) maximum unencumbered leverage ratio not to exceed 60 %; and (5) minimum unencumbered interest coverage ratio of 1. 75 to 1. 00. As of December 31, ~~2022~~ **2023** , we are in compliance with our existing financial covenants. The Loan Agreement and the terms of the Notes contain customary events of default including, without limitation, payment defaults, violation of covenants and other performance defaults, defaults on payment of indebtedness and monetary obligations, bankruptcy- related defaults, judgment defaults, REIT status default and the occurrence of certain change of control events. Breaches of certain covenants may result in defaults and cross- defaults under certain of our other indebtedness, even if we satisfy our payment obligations to the respective obligee. Covenants that limit our operational flexibility, as well as covenant breaches or defaults under our debt instruments, could materially and adversely affect our business, financial position or results of operations, or our ability to incur additional indebtedness or refinance existing indebtedness. An increase in market interest rates would increase our interest costs on existing and future debt and could adversely affect our stock price, as well as our ability to refinance existing debt and conduct acquisition activity. As of December 31, ~~2022~~ **2023** , our $ 680 million Loan Agreement bore interest at a variable rate on any amount drawn and outstanding. As of December 31, ~~2022~~ **2023** , $ ~~430~~ **446** million was outstanding under such agreement, and we may borrow an additional $ ~~250~~ **234** million on the revolving credit facility or incur additional variable rate debt in the future, including through the exercise of the accordion feature pursuant to the Loan Agreement. Interest rates are highly sensitive to many factors that are beyond our control, including general economic conditions and policies of various governmental and regulatory agencies and, in particular, the Federal Reserve Board. If the Federal Reserve Board increases the federal funds rate, overall interest rates will likely rise. Interest rate increases would increase our interest costs for any new debt and our variable rate debt obligations pursuant to the Loan Agreement, which could, in turn, make the financing of any acquisition more expensive as well as lower our current period earnings. Rising interest rates could limit our ability to refinance existing debt when it matures or cause us to pay higher interest rates upon refinancing. In addition, an increase in interest rates could decrease the access third parties have to credit, thereby decreasing the amount they are willing to pay to lease our assets and consequently limiting our ability to reposition our portfolio promptly in response to changes in economic or other conditions. Furthermore, the dividend yield on our common stock, as a percentage of the price of such common stock, will influence the price of such common stock. Thus, an increase in market interest rates may lead prospective purchasers of our common stock to expect a higher dividend yield, which could adversely affect the market price of our common stock. In addition, decreases in interest rates may lead to additional competition for the acquisition of real estate due to a reduction in desirable alternative income- producing investments. Increased competition for the acquisition of real estate may lead to a decrease in the yields on real estate we have targeted for acquisition. In such circumstances, if we are not able to offset the decrease in yields by obtaining lower interest costs on our borrowings, our results of operations will be adversely affected. We have entered into hedging transactions with respect to interest rate exposure on our term loan and we may enter into other hedging transactions, with respect to one or more of our assets or other liabilities. The use of hedging transactions involves certain risks, including: (1) the possibility that the market will move in a manner or direction that would have resulted in a gain for us had a hedging transaction not been used, in which case our performance would have been better had we not engaged in the hedging transaction; (2) the risk of an imperfect correlation between the risk sought to be hedged and the hedging transaction used; (3) the potential illiquidity for the hedging instrument used, which may make it difficult for us to close out or unwind a hedging transaction; (4) the possibility that our counterparty fails to honor its obligations; and (5) the possibility that we may have to post collateral to enter into hedging transactions, which we may lose if we are unable to honor our obligations. Our election to be subject to tax as a REIT also limits our income sources, and the hedging strategies available to us are more limited than those available to companies that are not REITs. In order for us to qualify as a REIT, not more than 50 % in value of our outstanding shares of stock may be owned, beneficially or constructively, by five or fewer individuals at any time during the last half of each taxable year after the first year for which we elect to be subject to tax and qualify as a REIT. Additionally, at least 100 persons must beneficially own our stock during at least 335 days of a taxable year (other than the first taxable year for which we elect to be subject to tax and qualify as a REIT). Our charter, with certain exceptions, authorizes our Board of Directors to take such actions as are necessary or advisable to preserve our qualification as a REIT. Our charter also provides that, unless exempted by the Board of Directors, no person may own more than 9. 8 % in value or in number, whichever is more restrictive, of the outstanding shares of our common stock or more than 9. 8 % in value of the aggregate of the outstanding shares of all classes and series of our stock. The constructive ownership rules are complex and may cause shares of stock owned directly or constructively by a group of related individuals or entities to be constructively owned by one individual or entity. These ownership limits could delay or prevent a transaction or a change in control of us that might involve a premium price for shares of our stock or otherwise be in the best interests of our stockholders. The acquisition of less than 9. 8 % of our outstanding stock by an individual or entity could cause that individual or entity to own constructively in excess of 9. 8 % in value of our outstanding stock, and thus violate our charter' s ownership limit. Our charter also prohibits any person from owning shares of our stock that would result in our being " closely held " under Section 856 (h) of the Internal Revenue Code of 1986, as amended (the " Code ") or otherwise cause us to fail to qualify as a REIT. In addition, our charter provides that (i) no person shall beneficially own shares of stock to the extent such beneficial ownership of stock would result in us failing to qualify as a " domestically controlled qualified investment entity " within the meaning of Section 897 (h) of the Code, and (ii) no person shall beneficially or constructively own shares of stock to the extent such beneficial or constructive ownership would cause us to own, beneficially or constructively, more than a 9. 9 % interest (as set forth in Section 856 (d) (2) (B) of the Code) in a tenant of our real property. Subject to certain exceptions, rents received or accrued by us from a tenant will not be treated as qualifying rent for purposes of the REIT gross income requirements if we or a beneficial or constructive owner of 10 % or more of our stock beneficially or constructively owns 10 % or more of the total combined voting power of all classes of the tenant' s stock entitled to vote or 10 % or more of the total value of all classes of the tenant' s stock. Any attempt to own or transfer shares of our stock in violation of these restrictions may result in the transfer being automatically void. Our charter also provides that shares of our capital stock acquired or held in excess of the ownership limit will be transferred to a trust for the benefit of a charitable beneficiary that we designate, and that any person who acquires shares of our capital stock in violation of the ownership limit will not be entitled to any dividends on the shares or be entitled to vote the shares or receive any proceeds from the subsequent sale of the shares in excess of the lesser of the market price on the day the shares were transferred to the trust or the amount realized from the sale. We or our designee will have the right to purchase the shares from the trustee at this calculated price as well. A transfer of shares of our capital stock in violation of the limit may be void under certain circumstances. Our 9. 8 % ownership limitation may have the effect of delaying, deferring or preventing a change in control, including an extraordinary transaction (such as a merger, tender offer or sale of all or substantially all of our assets) that might provide a premium price for our stockholders. Our charter and bylaws contain, and Maryland law contains, provisions that may deter coercive takeover practices and inadequate takeover bids and encourage prospective acquirors to negotiate with our Board of Directors, rather than to attempt a hostile takeover. Our charter and bylaws, among other things, (1) contain transfer and ownership restrictions on the percentage by number and value of outstanding shares of our stock that may be owned or acquired by any stockholders; (2) permit the Board of Directors, without further action of the stockholders, to increase or decrease the authorized number of shares, issue additional shares, classify or reclassify unissued shares, and issue and fix the terms of one or more classes or series of preferred stock, which may have rights senior to those of the common stock; (3) establish certain advance notice procedures for stockholder proposals and director nominations; and (4) provide that special meetings of stockholders may only be called by the company or upon written request of ten percent in voting power of our outstanding common stock. Under Maryland law, any written consent of our stockholders must be unanimous. In addition, Maryland law allows a Maryland corporation with a class of equity securities registered under the Exchange Act to amend its charter without stockholder approval to effect a reverse stock split at a ratio of not more than ten shares of stock into one share of stock in any twelve- month period. The ownership by our executive officers and directors of common stock, options or other equity awards of Darden may create, or may create the appearance of, conflicts of interest. As a result of his former positions with Darden, Mr. Lenehan owns common stock, including restricted stock, in both Darden and FCPT. In addition, there is no restriction on our executive officers and directors acquiring Darden common stock in the future, and, therefore, this ownership of common stock of both Darden and FCPT may be significant. Equity interests in Darden may create, or appear to create, conflicts of interest when any such director or executive officer is faced with decisions that could benefit or affect the equity holders of Darden in ways that do not benefit or affect us in the same manner. As of December 31, ~~2022~~ **2023** , no other executive officer or director of FCPT owns common stock of Darden. The market price of our common stock may be volatile in the future. In addition, the trading volume in our common shares may fluctuate and cause significant price variations to occur. It is not possible to accurately predict how investors in our common stock will behave. Any disposition by a significant stockholder of our common stock, or the perception in the market that such dispositions could occur, may cause the price of our common stock to fall. Any such decline could impair our ability to raise capital through future sales of our common stock. Furthermore, our common stock may not qualify for investment indices, including indices specific to REITs, and any such failure may discourage new investors from investing in our common stock. If and when additional funds are raised through the issuance of equity securities, including our common stock, our stockholders may experience significant dilution. Our current dividend rate is $ 1. ~~36~~ **3650** per share per annum. We may pay a portion of our dividends in common stock. In no event will the annual dividend be less than 90 % of our REIT taxable income on an annual basis, determined without regard to the dividends paid deduction and excluding any net capital gains. Our ability to pay dividends may be adversely affected by a number of factors, including the risk factors described in this Annual Report on Form 10- K. Dividends will be authorized by our Board of Directors and declared by us based upon a number of factors, including actual results of operations, restrictions under Maryland law or applicable debt covenants, our financial condition, our taxable income, the annual distribution requirements under the REIT provisions of the Code, our operating expenses and other factors our directors deem relevant. We cannot assure shareholders that we will achieve investment results that will allow us to make a specified level of cash dividends or year- to- year increases in cash dividends in the future. Furthermore, while we are required to pay dividends in order to maintain our REIT status (as described below in the risk factor " REIT distribution requirements could adversely affect our ability to execute our business plan "), we may elect not to maintain our REIT status, in which case we would no longer be required to pay such dividends. Moreover, even if we do elect to maintain our REIT status, after completing various procedural steps, we may elect to comply with the applicable distribution requirements by distributing, under certain circumstances, a portion of the required amount in the form of shares of our common stock in lieu of cash. If we elect not to maintain our REIT status or to satisfy any required distributions in shares of common stock in lieu of cash, such action could negatively affect our business and financial condition as well as the market price of our common stock. No assurance can be given that we will pay any dividends on shares of our common stock in the future. We believe that we were organized and have operated and we intend to continue to operate in a manner that will enable us to qualify as a REIT for U. S. federal income tax purposes commencing with our taxable year ended December 31, 2016. Qualification as a REIT involves the application of highly technical and complex provisions of the Code, for which only limited judicial and administrative authorities exist. Even a technical or inadvertent violation could jeopardize our REIT qualification. The determination of various factual matters and circumstances not entirely within our control may affect our ability to qualify as a REIT. Our qualification as a REIT depends on our satisfaction of certain asset, income, organizational, distribution, stockholder ownership and other requirements on a continuing basis. Our ability to satisfy the asset requirements depends upon our analysis of the fair market values of our assets, some of which are not susceptible to a precise determination, and for which we do not obtain independent appraisals. Our compliance with the REIT income and asset requirements also depends upon our ability to successfully manage the composition of our income and assets on an ongoing basis. Moreover, the proper classification of one or more of our investments may be uncertain in some circumstances, which could affect the application of the REIT qualification requirements. In addition, our ability to satisfy the requirements to qualify as a REIT may depend in part on the actions of third parties over which we have no control or only limited influence. Accordingly, there can be no assurance that the Internal Revenue Service (the " IRS ") will not contend that our investments violate the REIT requirements. If we were to fail to qualify as a REIT in any taxable year, we would be subject to U. S. federal income tax on our taxable income at the regular corporate rate, and distributions to stockholders would not be deductible by us in computing our taxable income. Any such corporate tax liability could be substantial and would reduce the amount of cash available for distribution to our stockholders, which in turn could have an adverse impact on the value of, and trading prices for, our common stock. Unless entitled to relief under certain provisions of the Code, we also would be disqualified from taxation as a REIT for the four taxable years following the year during which we initially ceased to qualify as a REIT. Under applicable provisions of the Code, we will not be treated as a REIT unless we satisfy various requirements, including requirements relating to the sources of our gross income. Rents received or accrued by us from Darden and other tenants will not be treated as qualifying rent for purposes of these requirements if our leases are not respected as true leases for U. S. federal income tax purposes and are instead treated as service contracts, joint ventures or other types of arrangements. If our leases are not respected as true leases for U. S. federal income tax purposes, we may fail to qualify as a REIT. In addition, subject to certain exceptions, rents received or accrued by us from Darden will not be treated as qualifying rent for purposes of the REIT gross income requirements if we or a beneficial or constructive owner of 10 % or more of our stock beneficially or constructively owns 10 % or more of the total combined voting power of all classes of Darden stock entitled to vote or 10 % or more of the total value of all classes of Darden stock. Our charter provides for restrictions on ownership and transfer of our shares of stock, including restrictions on such ownership or transfer that would cause the rents received or accrued by us from Darden to be treated as non- qualifying rent for purposes of the REIT gross income requirements. Nevertheless, there can be no assurance that such restrictions will be effective in ensuring that rents received or accrued by us from Darden will not be treated as qualifying rent for purposes of REIT qualification requirements. Dividends payable by REITs do not qualify for the reduced tax rates available for some dividends. The maximum U. S. federal income tax rate applicable to income from " qualified dividends " payable by non- REIT " C " corporations to certain non- corporate U. S. stockholders is currently 23. 8 % (taking into account the 3. 8 % Medicare tax applicable to net investment income). Dividends payable by REITs, however, generally are not qualified dividends. Effective for taxable years beginning after December 31, 2017 and before January 1, 2026, non- corporate U. S. stockholders may deduct 20 % of their dividends from REITs (excluding qualified dividend income and capital gains dividends). For non- corporate U. S. stockholders in the top marginal tax bracket of 37 %, the deduction for REIT dividends yields an effective U. S. federal income tax rate of 29. 6 % on REIT dividends, which is higher than the 20 % tax rate on qualified dividend income paid by " C " corporations. This does not adversely affect the taxation of REITs; however, the more favorable rates applicable to regular corporate qualified dividends could cause certain non- corporate investors to perceive investments in REITs to be relatively less attractive than investments in the stocks of non- REIT " C " corporations that pay dividends, which could adversely affect the value of the shares of REITs, including our common stock. We generally must distribute annually at least 90 % of our REIT taxable income, determined without regard to the dividends paid deduction and excluding any net capital gains, in order for us to qualify as a REIT (assuming that certain other requirements are also satisfied). To the extent that we satisfy this distribution requirement and qualify for taxation as a REIT but distribute less than 100 % of our REIT taxable income, determined without regard to the dividends paid deduction and including any net capital gains, we will be subject to U. S. federal corporate income tax on our undistributed net taxable income. In addition, we will be subject to a 4 % nondeductible excise tax if the actual amount that we distribute to our stockholders in a calendar year is less than a minimum amount specified under U. S. federal tax laws. We intend to continue to make distributions to our stockholders to comply with the REIT requirements of the Code. Currently our funds from operations are generated primarily by rents paid under our lease agreements. From time to time, we may generate taxable income greater than our cash flow as a result of differences in timing between the recognition of taxable income and the actual receipt of cash or the effect of nondeductible capital expenditures, the creation of reserves or required debt or amortization payments. Further, income must be accrued for U. S. federal income tax purposes no later than when such income is taken into account as revenue in our financial statements, subject to certain exceptions, which could also create mismatches between REIT taxable income and the receipt of cash attributable to such income. If we do not have other funds available in these situations, we could be required to borrow funds on unfavorable terms, sell assets at disadvantageous prices or distribute amounts that would otherwise be invested in future acquisitions to make distributions sufficient to enable us to pay out enough of our taxable income to satisfy the REIT distributions requirement and to avoid U. S. federal corporate income tax and the 4 % excise tax in a particular year. These alternatives could increase our costs or reduce our equity or adversely impact our ability to raise short and long- term debt. Furthermore, the REIT distribution requirements may increase the financing needed to fund capital expenditures, further growth and expansion initiatives. Thus, compliance with the REIT requirements may hinder our ability to grow, which could adversely affect the value of our common stock. Even if we qualify as a REIT, we may face other tax liabilities that reduce our cash flow. Even if we qualify for taxation as a REIT, we may be subject to certain U. S. federal, state, and local taxes on our income and assets, including taxes on any undistributed income and state or local income, property and transfer taxes. Moreover, if we have net income from " prohibited transactions, " that income will be subject to a 100 % tax. In general, prohibited transactions are sales or other dispositions of property held primarily for sale to customers in the ordinary course of business. The determination as to whether a particular sale is a prohibited transaction depends on the facts and circumstances related to that sale. While we will undertake sales of assets if those assets become inconsistent with our long- term strategic or return objectives, we do not believe that those sales should be considered prohibited transactions, but there can be no assurance that the IRS would not contend otherwise. The need to avoid prohibited transactions could cause us to forego or defer sales of properties that might otherwise be in our best interest to sell. In addition, any net taxable income earned directly by our TRSs will be subject to U. S. federal, state, and local corporate- level income taxes and we may incur a 100 % excise tax on transactions with a TRS if they are not conducted on an arm' s- length basis. Any of these taxes would decrease cash available for distribution to our stockholders. Complying with the REIT requirements may cause us to forego otherwise attractive acquisition and business opportunities or liquidate otherwise attractive investments. To qualify as a REIT for U. S. federal income tax purposes, we must ensure that, at the end of each calendar quarter, at least 75 % of the value of our assets consists of cash, cash items, government securities and " real estate assets " (as defined in the Code). The remainder of our investments (other than government securities, qualified real estate assets and securities issued by a TRS) generally cannot include more than 10 % of the outstanding voting securities of any one issuer or more than 10 % of the total value of the outstanding securities of any one issuer. In addition, in general, no more than 5 % of the value of our total assets (other than government securities, qualified real estate assets and securities issued by a TRS) can consist of the securities of any one issuer, no more than 20 % of the value of our total assets can be represented by securities of one or more TRSs and no more than 25 % of the value of our assets can be represented by certain debt instruments issued by " publicly offered REITs. " If we fail to comply with these requirements at the end of any calendar quarter, we must correct the failure within thirty days after the end of the calendar quarter or qualify for certain statutory relief provisions to avoid losing our REIT qualification and suffering adverse tax consequences. As a result, we may be required to liquidate or forego otherwise attractive investments. These actions could have the effect of reducing our income and amounts available for distribution to our stockholders. In addition to the asset tests set forth above, to qualify as a REIT we must continually satisfy tests concerning, among other things, the sources of our income, the amounts we distribute to our stockholders and the ownership of our stock. We may be unable to pursue investments that would be otherwise advantageous to us in order to satisfy the source- of- income or asset- diversification requirements for qualifying as a REIT. Thus, compliance with the REIT requirements may hinder our ability to make certain attractive investments. We may acquire properties or portfolios of properties through tax deferred contribution transactions, which could result in stockholder dilution and limit our ability to sell or refinance such assets. We have in the past and may in the future acquire properties or portfolios of properties through tax deferred contribution transactions in exchange for partnership units in an operating partnership, which could result in stockholder dilution through the issuance of operating partnership units that, under certain circumstances, may be exchanged for shares of our common stock. This acquisition structure may have the effect of, among other things, reducing the amount of tax depreciation we could deduct over the tax life of the acquired properties, and may require that we agree to restrictions on our ability to dispose of, or refinance the debt on, the acquired properties in order to protect the contributors' ability to defer recognition of taxable gain. Similarly, we may be required to incur or maintain debt we would otherwise not incur so we can allocate the debt to the contributors to maintain their tax bases. These restrictions could limit our ability to sell or refinance an asset at a time, or on terms, that would be favorable absent such restrictions. See " Our tax protection agreement could limit our ability to sell or otherwise dispose of certain properties. " We may pay dividends on our common stock in common stock and / or cash. Our stockholders may sell shares of our common stock to pay tax on such dividends, placing downward pressure on the market price of our common stock. In connection with our qualification as a REIT, we are required to annually distribute to its stockholders at least 90 % of our REIT taxable income, determined without regard to the deduction for dividends paid and excluding net capital gain. Although we do not currently intend to do so, in order to satisfy this requirement, we are permitted, subject to certain conditions and limitations, to make distributions that are in part payable in shares of our common stock. Taxable stockholders receiving such distributions will be required to report dividend income as a result of such distribution for both the cash and stock components of the distribution and even though we distributed no cash or only nominal amounts of cash to such shareholder. If we make any taxable dividend payable in cash and common stock, taxable stockholders receiving such dividends will be required to include the full amount of the dividend as ordinary income to the extent of our current and accumulated earnings and profits, as determined for U. S. federal income tax purposes. As a result, stockholders may be required to pay income tax with respect to such dividends in excess of the cash dividends received. If a U. S. stockholder sells shares of our stock that it receives as a dividend in order to pay this tax, the sales proceeds may be less than the amount included in income with respect to the dividend, depending on the market price of the stock at the time of the sale. Furthermore, with respect to certain non- U. S. stockholders, we may be required to withhold U. S. federal income tax with respect to such dividends, including in respect of all or a portion of such dividend that is payable in our stock. If, in any taxable dividend payable in cash and stock, a significant number of our stockholders determine to sell shares of our stock in order to pay taxes owed on dividends, it may be viewed as economically equivalent to a dividend reduction and put downward pressure on the market price of our stock. The ability of our Board of Directors to revoke our REIT election without stockholder approval may cause adverse consequences to our stockholders. Our charter provides our Board of Directors with the power, under certain circumstances, to revoke or otherwise terminate our REIT election and cause us to be taxed as a regular corporation, without the approval of our stockholders. If we cease to qualify as a REIT, we would become subject to U. S. federal income tax on our net taxable income and we generally would no longer be required to distribute any of our net taxable income to our stockholders, which may have adverse consequences on our total return to our stockholders. In connection with the acquisition of ~~ten~~ **four** properties from U. S. Restaurant Properties, Inc. (" USRP ") ~~in November 2016 and four additional properties from USRP~~ in January 2017, in exchange for FCPT OP units, we entered into a tax protection agreement with affiliates of USRP. The tax protection agreement provides that, if we dispose of any of those ~~14~~ **four** properties in a taxable transaction through ~~November 2023 for the initial ten properties or~~ January 2024 ~~for the additional four properties~~, we will indemnify the USRP partners for their tax liabilities attributable to the built- in gain that existed with respect to those properties as of the time of the acquisition of those properties in ~~November 2016 or~~ January 2017 ~~, respectively~~ (and tax liabilities incurred as a result of the reimbursement payment). Consequently, although it otherwise may be in our best interest to sell one of those properties, these obligations may make it prohibitive for us to do so. Legislative or other actions affecting REITs could have a negative effect on us. The rules dealing with U. S. federal income taxation are constantly under review by persons involved in the legislative process and by the IRS and the Treasury Department. Changes to the tax laws, with or without retroactive application, could adversely affect our investors or us. We cannot predict how changes in the tax laws might affect our investors or us. New legislation, Treasury Regulations, administrative interpretations or court decisions could significantly and negatively affect our ability to qualify as a REIT, the U. S. federal income tax consequences of such qualification or the U. S. federal income tax consequences of an investment in us. Also, the law relating to the tax treatment of other entities, or an investment in other entities, could change, making an investment in such other entities more attractive relative to an investment in a REIT.