

ENTERTAINMENT PROPERTIES TRUST

Form DEF 14A

April 11, 2008

**Table of Contents**

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549  
SCHEDULE 14A  
INFORMATION REQUIRED IN PROXY STATEMENT  
SCHEDULE 14A INFORMATION**

Proxy Statement Pursuant to Section 14(a) of the Securities Exchange Act of 1934  
(Amendment No. )

Filed by the Registrant

Filed by a party other than the Registrant

Check the appropriate box:

Preliminary Proxy Statement

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

Definitive Proxy Statement

Definitive Additional Materials

Soliciting Material Pursuant to §240.14a-12

**ENTERTAINMENT PROPERTIES TRUST**

(Name of Registrant as Specified In Its Charter)

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

Payment of Filing Fee (Check the appropriate box):

No fee required

Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.

1) Title of each class of securities to which transaction applies:

2) Aggregate number of securities to which transaction applies:

3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):

4) Proposed maximum aggregate value of transaction:

5) Total fee paid:

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Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

1) Amount Previously Paid:

- 2) Form, Schedule or Registration Statement No.:
  - 3) Filing Party:
  - 4) Date Filed:
-

**Table of Contents**

**ENTERTAINMENT PROPERTIES TRUST  
30 W. Pershing Road, Suite 201  
Kansas City, Missouri 64108  
NOTICE OF ANNUAL MEETING OF SHAREHOLDERS  
TO BE HELD MAY 7, 2008**

To our shareholders:

The 2008 annual meeting of shareholders of Entertainment Properties Trust will be held at the Leawood Town Centre 20 Theatre, 11701 Nall, Leawood, Kansas 66211, on May 7, 2008 at 10:00 a.m. (local time). At the meeting, our shareholders will vote upon

Proposal 1: The election of two Class II trustees for a three year term, and

Proposal 2: The ratification of the appointment of KPMG LLP as our independent registered public accounting firm for 2008,

and transact any other business that may properly come before the meeting.

All holders of record of our common shares at the close of business on February 15, 2008 are entitled to vote at the meeting or any postponement or adjournment of the meeting.

You are cordially invited to attend the meeting. Whether or not you intend to be present at the meeting, our Board of Trustees asks that you sign, date and return the enclosed proxy card promptly. A prepaid return envelope is provided for your convenience. Your vote is important and all shareholders are encouraged to attend and vote in person or vote by proxy.

Thank you for your support and continued interest in our Company.

BY ORDER OF THE BOARD OF TRUSTEES

Gregory K. Silvers  
*Vice President, Chief Operating Officer, General  
Counsel and Secretary*

Kansas City, Missouri  
April 11, 2008

**Important Notice Regarding the Availability of Proxy Materials for the Shareholders Meeting to Be Held on May 7, 2008** the proxy statement and annual report to shareholders are available at [www.edocumentview.com/EPR](http://www.edocumentview.com/EPR).

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**Table of Contents**

**ENTERTAINMENT PROPERTIES TRUST  
30 W. Pershing Road, Suite 201  
Kansas City, Missouri 64108**

**PROXY STATEMENT**

This proxy statement provides information about the annual meeting of shareholders of Entertainment Properties Trust ( we, us or the Company ) to be held at the Leawood Town Centre 20 Theatre, 11701 Nall, Leawood, Kansas 66211, on May 7, 2008, beginning at 10:00 a.m. (local time), and at any postponement or adjournment of the meeting.

This proxy statement and the enclosed proxy card were first mailed to shareholders on or about April 11, 2008.  
**Important Notice Regarding the Availability of Proxy Materials for the Shareholders Meeting to Be Held on May 7, 2008** the proxy statement and annual report to shareholders are available at [www.edocumentview.com/EPR](http://www.edocumentview.com/EPR).

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**TABLE OF CONTENTS**

<u>ABOUT THE MEETING</u>	1
<u>PROPOSAL 1: ELECTION OF TRUSTEES</u>	4
<u>COMPANY GOVERNANCE</u>	7
<u>EXECUTIVE OFFICERS</u>	12
<u>EXECUTIVE COMPENSATION</u>	13
<u>Compensation Discussion and Analysis</u>	13
<u>Summary Compensation Table</u>	23
<u>Grants of Plan-Based Awards</u>	24
<u>Outstanding Equity Awards at Fiscal Year-End</u>	25
<u>Option Exercises and Stock Vested</u>	26
<u>Potential Payments Upon Termination or Change of Control</u>	27
<u>EQUITY COMPENSATION PLAN INFORMATION</u>	31
<u>COMPENSATION COMMITTEE REPORT</u>	32
<u>AUDIT COMMITTEE REPORT</u>	33
<u>TRANSACTIONS BETWEEN THE COMPANY AND TRUSTEES, OFFICERS OR THEIR AFFILIATES</u>	34
<u>PROPOSAL 2: RATIFICATION OF APPOINTMENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM</u>	35
<u>SECTION 16(a) BENEFICIAL OWNERSHIP REPORTING COMPLIANCE</u>	37
<u>SHARE OWNERSHIP</u>	38
<u>SUBMISSION OF SHAREHOLDER PROPOSALS AND NOMINATIONS</u>	40
<u>OTHER MATTERS</u>	41
<u>MISCELLANEOUS</u>	42

---

**Table of Contents**

**ABOUT THE MEETING**

***What am I voting on?***

The Board of Trustees (also referred to herein as the Board ) is soliciting your vote for:

**The election of two Class II trustees for a three year term, and**

**The ratification of the appointment of KPMG LLP as our independent registered public accounting firm for 2008.**

Our management will report on the performance of the Company during 2007 and respond to questions from shareholders.

***Who is entitled to vote at the meeting?***

Holders of record of our common shares at the close of business on February 15, 2008, are entitled to receive notice of the annual meeting and to vote their common shares held on that date at the meeting or any postponement or adjournment of the meeting.

***How many votes do I have?***

Each common share has one vote. The enclosed proxy card shows the number of common shares you are entitled to vote.

***What constitutes a quorum?***

The presence at the meeting, in person or by proxy, of the holders of a majority of our common shares outstanding on the record date will constitute a quorum, permitting the meeting to proceed. On the record date, 28,069,129 common shares of the Company were outstanding. Proxies received but marked as abstentions and broker non-votes will be included in calculating the number of common shares present at the meeting for the purpose of establishing a quorum.

***How do I vote?***

If you complete and properly sign the enclosed proxy card and return it to us before the meeting, your common shares will be voted as you direct. If you are a shareholder of record and attend the meeting in person, you may deliver your completed proxy card at the meeting. You are also invited to vote in person at the meeting. You may request a ballot when you arrive.

If your shares are held in the name of a bank, broker or other nominee and you wish to vote at the meeting, you must obtain a proxy form from the institution that holds your shares.

If you are a participant in our dividend reinvestment and direct share purchase plan, your plan shares will be voted as you instruct on your proxy card.

**Table of Contents**

***Does EPR have a policy for confidential voting?***

We have a confidential voting policy. Your proxy will be kept confidential and will not be disclosed to third parties, other than our inspector of election and personnel involved in processing the proxy cards and tabulating the vote.

***Can I change my vote after I return my proxy card?***

Yes. Even after you have submitted your proxy, you may change your vote or revoke your proxy at any time before the meeting by sending a written notice of revocation or a duly executed proxy with a later date to the Secretary of the Company. Your proxy will also be revoked if you attend the meeting and vote in person. If you merely attend the meeting but do not vote in person, your previously granted proxy will not be revoked.

***What are the Board's recommendations?***

Unless you give other instructions on your proxy card, the persons named as proxy holders on the proxy card will vote your common shares in accordance with the recommendations of the Board of Trustees. The Board recommends you vote:

***For the election of the two individuals nominated as Class II trustees, and***

***For the ratification of the appointment of KPMG LLP as our independent registered public accounting firm for 2008.***

If any other matter properly comes before the meeting, the proxy holders will vote as recommended by the Board of Trustees or, if no recommendation is given, in their own discretion.

***How many votes are needed to approve each item?***

**Election of Trustee.** The affirmative vote of a plurality of the common shares voted at the meeting is required for the election of the Class II trustees. This means the nominees in Class II receiving the greatest number of votes will be elected. We will not count abstentions in the election of the trustee. If you check **WITHHOLD** under a nominee's name on your proxy card, your shares will be voted against the nominee. You may also vote against a nominee by striking through his name on your proxy card.

**Ratification of appointment of independent registered public accounting firm.** The affirmative vote of a majority of the common shares voted at the meeting is required to ratify the appointment of KPMG LLP as our independent registered public accounting firm for 2008. We will not count abstentions in the ratification of KPMG LLP as our independent registered public accounting firm for 2008.

***How will broker non-votes be counted?***

Broker non-votes (which occur when a broker or other nominee has not received directions from its customers and does not have discretionary authority to vote the customers' shares) will not have the effect of a vote against any proposal.



**Table of Contents**

***What does it mean if I receive more than one proxy card?***

Some of your shares may be held in more than one account. Please date, sign and return all of your proxy cards to ensure all your common shares are voted.

***What if I receive only one set of proxy materials although there are multiple shareholders at my address?***

If you and other residents at your mailing address own common shares in street name, your broker, bank or other nominee may have sent you a notice that your household will receive only one annual report and proxy statement for each company in which you hold shares through that broker, bank or nominee. This practice is called householding. If you did not respond that you did not want to participate in householding, you are deemed to have consented to that process. If these procedures apply to you, your nominee will have sent one copy of our annual report and proxy statement to your address. You may revoke your consent to householding at any time by contacting us at 30 W. Pershing Road, Suite 201, Kansas City, Missouri 64108, (816) 472-1700, Attention: Secretary. If you did not receive an individual copy of our annual report and proxy statement, we will send copies to you if you contact us at the above address or telephone number. If you and other residents at your address have been receiving multiple copies of our annual report and proxy statement and desire to receive only a single copy of these materials, you may contact your broker, bank or other nominee or contact us at the above address or telephone number.

***Are the proxy statement and annual report to shareholders available on the Internet?***

This proxy statement and the annual report to shareholders are available on the Internet at [www.edocumentview.com/EPR](http://www.edocumentview.com/EPR).

**Table of Contents**

**PROPOSAL 1:  
ELECTION OF TRUSTEES**

The Board of Trustees consists of five members and is divided into three classes having three-year terms that expire in successive years. The nominating/company governance committee of the Board of Trustees has nominated Robert J. Druten and David M. Brain to serve as our Class II trustees for a term expiring at the 2011 annual meeting or until their successors are duly elected and qualified. Unless you withhold authority to vote for a nominee or you mark through a nominee's name on your proxy card, the common shares represented by your properly executed proxy will be voted for the election of the nominee for trustee.

Here is a brief description of the backgrounds and principal occupations of two individuals nominated for election as trustees and each trustee whose term of office will continue after the annual meeting.

**Class II Trustees (nominated for a term expiring at the 2011 annual meeting)**

**Robert J. Druten**  
*Trustee since 1997*

Robert J. Druten, 60, is Chairman of our Board of Trustees. In August 2006, Mr. Druten retired as Executive Vice President and Chief Financial Officer and a Corporate Officer of Hallmark Cards Incorporated. Mr. Druten serves on the Boards of Directors of Alliance GP, LLC, the managing general partner of Alliance Holdings GP, L.P., a NASDAQ-listed company indirectly engaged in the production and marketing of coal to utilities and industrial users, Kansas City Southern, a NYSE-listed transportation company, and American Italian Pasta Company, a publicly traded manufacturing company. Mr. Druten also serves as the Chairman of the audit committee and finance committee of Kansas City Southern and serves on the audit committees of Alliance GP, LLC and American Italian Pasta Company. Mr. Druten received a BS in Accounting from The University of Kansas and an MBA from Rockhurst University.

**David M. Brain**  
*Trustee since 1999*

David M. Brain, 52, has served as our President and Chief Executive Officer and as a trustee since October 1999. He served as our Chief Financial Officer from 1997 to 1999 and as our Chief Operating Officer from 1998 to 1999. Mr. Brain acted as a consultant to AMC Entertainment, Inc. in the formation of the Company in 1997. From 1996 until that time he was a Senior Vice President in the investment banking and corporate finance department of George K. Baum & Company, an investment banking firm headquartered in Kansas City, Missouri. Before joining George K. Baum & Company, Mr. Brain was Managing Director of the Corporate Finance Group of KPMG LLP, a practice unit he organized and managed for over 12 years. He received a BA in Economics and an MBA from Tulane University, where he was awarded an academic fellowship.

**Class III Trustees (serving for a term expiring at the 2009 annual meeting)**

**Morgan G. Earnest II**  
*Trustee since 2003*

Morgan G. ( Jerry ) Earnest II, 52, is Executive Vice President and a member of the Board of Directors of Capmark Financial Group, Inc. (formerly GMAC Commercial Mortgage Corporation, or GMACCM ) and is responsible for the co-management of Lending and Originations for both North America and Europe. Previously, Mr. Earnest was responsible for the GMACCM's Specialty Lending Groups, which consisted of the Healthcare, Hospitality and Construction Lending

**Table of Contents**

Divisions. Prior to joining GMACCM, Mr. Earnest was a principal of Lexington Mortgage Company which was acquired by GMACCM in March 1996. Mr. Earnest has an MBA from the Colgate Darden Graduate School of Business Administration, University of Virginia and is a graduate of Tulane University.

**James A. Olson**

*Trustee since 2003*

James A. Olson, 65, is a member of Plaza Belmont Management Group, LLC, manager of the Plaza Belmont private equity funds, which acquire and operate companies in the food manufacturing industry. Prior to joining Plaza Belmont in 1999, Mr. Olson was a partner with Ernst & Young LLP. During his 32 years with Ernst & Young, including six years in Europe, Mr. Olson served as managing director of two of their offices and worked with a number of multinational and domestic clients in a variety of industries. In addition to providing his client companies with the traditional audit services of Ernst & Young, Mr. Olson advised them on their securities offerings, mergers and acquisitions and corporate tax strategies. He is a past president of the Missouri State Board of Accountancy and a member of the American Institute of Certified Public Accountants. Mr. Olson received his BS and MS degrees from St. Louis University. Mr. Olson serves on the Board of Directors and is Chairman of the audit committee of SAIA, Inc., a NASDAQ-listed transportation company, and he serves on the Board of Directors for the American Century Family of Mutual Funds.

**Class I Trustee (serving for a term expiring at the 2010 annual meeting)**

**Barrett Brady**

*Trustee since 2004*

Barrett Brady, 61, is Senior Vice President of Highwoods Properties, Inc., a REIT listed on the NYSE. Mr. Brady served as President and Chief Executive Officer of J.C. Nichols Company, a real estate company headquartered in Kansas City, Missouri, until its acquisition by Highwoods Properties, Inc. in 1998. Before joining J.C. Nichols Company in 1995, Mr. Brady was President and Chief Executive Officer of Dunn Industries, Inc., a major construction contractor. Mr. Brady received a BSBA from Southern Methodist University and an MBA from The University of Missouri. Mr. Brady serves on the Boards of Directors of J.E. Dunn Construction Group, Inc. and North American Savings Bank, FSB. Mr. Brady also serves on the audit committee of J.E. Dunn Construction Group, Inc. and the audit and compensation committees of North American Savings Bank, FSB.

Each of Mr. Druten and Mr. Brain have consented to serve on the Board of Trustees for the applicable term. If either Mr. Druten or Mr. Brain should become unavailable to serve as a trustee (which is not expected), the nominating/company governance committee may designate a substitute nominee. In that case, the persons named as proxies will vote for the substitute nominee designated by the nominating/company governance committee.

***How are trustees compensated?***

Each non-employee trustee receives:

An annual retainer of \$30,000, which may be taken in the form of cash or in common shares valued at 125% of the cash retainer amount

**Table of Contents**

On the date of each annual meeting, equity awards consisting of 625 restricted common shares and options to purchase 2,500 common shares

\$2,000 in cash for each Board meeting he attends

\$1,500 in cash for each committee meeting he attends

Reimbursement for any out-of-town travel expenses incurred in attending Board or committee meetings and other expenses incurred on behalf of the Company

The Chairman of the Board and the Chairmen of the audit, compensation, finance and nominating/company governance committees each receive additional annual retainers of \$10,000, which may be taken in cash or in common shares valued at 125% of the cash retainer amount, provided that the Chairman of the Board does not receive an additional retainer for services as a chairman of a committee. In 2007, each of the non-employee trustees elected to take this additional retainer in the form of common shares. Employees of the Company or its affiliates who are trustees are not paid any additional compensation for their service on the Board.

The restricted common shares granted to non-employee trustees are fully vested upon grant but may not be sold by the non-employee trustees for a period of one year after the grant. The options are fully vested upon grant but may not be exercised by the non-employee trustees for a period of one year after the grant. Options granted to non-employee trustees expire after ten years unless terminated earlier because of a trustee's termination from the Board. All of the options were issued under our 1997 Share Incentive Plan (the Share Incentive Plan), which was replaced in 2007 by our 2007 Equity Incentive Plan.

The following table contains information regarding the compensation earned by non-executive members of the Board of Trustees during 2007:

Name	Fees		Option Awards (1)	Change in Pension Value and Non-Equity Incentive Compensation		All Other Compensation	Total
	Earned or Paid in Cash	Stock Awards (1)		Plan Compensation	Deferred Compensation		
Barrett Brady	\$28,500	\$71,157	\$23,646	\$	\$	\$	\$123,303
Robert J. Druten	29,500	73,242	23,646				126,388
Morgan G. Earnest II	29,500	72,199	23,646				125,345
James A. Olson	29,500	73,242	23,646		3,303		129,691

(1) Represents the amount recognized by the Company for financial statement reporting purposes in accordance with SFAS 123(R) as

the result of  
vesting of  
nonvested  
restricted  
common share  
grants or  
common share  
options during  
2007.

6

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**Table of Contents**

**COMPANY GOVERNANCE**

Our Board of Trustees is committed to effective company governance. We have adopted Company Governance Guidelines, Independence Standards for Trustees and a Code of Business Conduct and Ethics for all officers, employees and trustees. Those documents and the charters of our audit committee, nominating/company governance committee, finance committee and compensation committee may be found at the Company Governance section of our website at [www.eprkc.com](http://www.eprkc.com) and are available in print to any shareholder or interested party who requests them.

***Company Governance Guidelines***

Our Company Governance Guidelines address a number of topics, including the role and responsibilities of our Board, the qualifications of independent trustees, the ability of shareholders and interested parties to communicate directly with the independent trustees, Board committees, separation of the offices of Chairman and Chief Executive Officer, trustee compensation, and management succession. Our nominating/company governance committee reviews our Company Governance Guidelines on a periodic basis to ensure their continued effectiveness.

***Who are our independent trustees and how was that determined?***

Our Company Governance Guidelines and the NYSE's governance rules require that a majority of our trustees be independent. To qualify as independent, our Board must affirmatively determine that a trustee has no material relationship with the Company (either directly or as a partner, shareholder or officer of an organization that has a relationship with the Company). To assist our Board in making this determination, the Board has used our Independence Standards for Trustees as categorical standards to evaluate the independence of our independent trustees. Using those standards, the Board reviewed the independence of Messrs. Druten, Earnest, Olson and Brady. Based upon that review, the Board has affirmatively determined that Messrs. Druten, Earnest, Olson and Brady, who constitute a majority of our Board of Trustees and who serve on our audit (except Mr. Druten), nominating/company governance, finance and compensation committees, have no material relationship with the Company and are thus independent in accordance with our Company governance guidelines and NYSE rules.

The following is a summary of our Independence Standards for Trustees. For a complete description of those standards, please review our Independence Standards for Trustees at the Company Governance section of our website at [www.eprkc.com](http://www.eprkc.com).

**A trustee is not independent if:**

- o The trustee is, or has been within the last 3 years, an employee of the Company, or an immediate family member of the trustee is, or has been within the last 3 years, an executive officer of the Company,
- o The trustee has received, or has an immediate family member who has received, during any 12-month period within the last 3 years, more than \$100,000 in direct compensation from the Company, other than trustee and committee fees and pensions or other forms of deferred compensation (provided such compensation is not contingent on future service),
- o (A) The trustee or an immediate family member is a current partner of the firm that is our internal or external auditor, (B) the trustee is a current employee of the firm,

**Table of Contents**

(C) the trustee has an immediate family member who is a current employee of the firm and who participates in the firm's audit, assurance or tax compliance (but not tax planning) practice, or (D) the trustee or an immediate family member was within the last 3 years (but is no longer) a partner or employee of the firm and personally worked on the Company's audit within that time,

- o The trustee or an immediate family member is, or has been within the last 3 years, employed as an executive officer of another company where any of the Company's present executive officers at the same time serves on that company's compensation committee, or
- o The trustee is a current employee, or an immediate family member is a current executive officer, of a company that has made payments to, or received payments from, the Company for property or services in an amount which, in any of the last 3 years, exceeds the greater of \$1 million or 2% of such other company's consolidated gross revenues.

**A person who is an executive officer or affiliate of an entity that provides non-advisory financial services such as lending, check clearing, maintaining customer accounts, stock brokerage services or custodial and cash management services to the Company or its affiliates may be determined by the Board of Trustees to be independent if the following conditions are satisfied:**

- o The entity does not provide financial advisory services to the Company,
- o The annual interest and/or fees payable to the entity by the Company do not exceed the numerical limitation described above,
- o Any loan provided by the entity is made in the ordinary course of business of the Company and the lender and does not represent the Company's principal source of credit or liquidity,
- o The trustee has no involvement in presenting, negotiating, underwriting, documenting or closing any such non-advisory financial services and is not compensated by the Company, the entity or any of its affiliates in connection with those services,
- o The Board affirmatively determines that the terms of the non-advisory financial services are fair and reasonable and advantageous to the Company and no more favorable to the provider than generally available from other providers,
- o The provider is a recognized financial institution, non-bank commercial lender or securities broker,
- o The trustee abstains from voting as a trustee to approve the transaction, and
- o All material facts related to the transaction and the relationship of the person to the provider are disclosed by the Company in its reports under the Securities Exchange Act of 1934, as amended (the Exchange Act) and proxy statement.

**No person who serves, or whose immediate family member serves, as a partner, member, executive officer or in a comparable position of any firm providing accounting,**

**Table of Contents**

**consulting, legal, investment banking or financial advisory services to the Company, or as a securities analyst covering the Company, shall be considered independent until after the end of that relationship. No person who is, or who has an immediate family member who is, an officer, director, more than 5% shareholder, partner, member, attorney, consultant or affiliate of any tenant of the Company or any affiliate of such tenant shall be considered independent until three years after the end of the tenancy or such relationship.**

***How often did the Board meet during 2007?***

The Board of Trustees met eight times in 2007. No trustee attended less than 95% of the meetings of the Board and committees on which he served. Our trustees discharge their responsibilities throughout the year, not only at Board of Trustee and committee meetings, but also through personal meetings, actions by unanimous written consent and communications with members of management and others regarding matters of interest and concern to the Company.

***Do the independent trustees hold regular executive sessions?***

The independent trustees meet regularly in separate executive sessions without management. Mr. Druten serves as the presiding trustee at those meetings.

***How can shareholders and interested parties communicate directly with the Board?***

Any shareholder or interested party is welcome to send a written communication to the non-management trustees about any matter of interest related to the Company. A shareholder or interested party may communicate with the non-management trustees by either sending a letter to our address listed on the cover page of this proxy statement, or by visiting the Company Governance section of our website at [www.eprkc.com](http://www.eprkc.com), clicking on Procedures for Confidential Anonymous Submissions, and following the instructions for making a confidential submission. Such written or electronic communication will be forwarded directly to the non-management trustees and will not be screened by management. Shareholders may also make proposals and nominate candidates for trustee for consideration at any annual meeting in accordance with the procedures described in Submission of Shareholder Proposals and Nominations below.

***What committees has the Board established?***

The Board of Trustees has established an audit committee, a nominating/company governance committee, a finance committee and a compensation committee. All of our non-management trustees serve on all four committees, except Mr. Druten who does not serve on the audit committee. The Board believes this promotes access to a variety of views on all four committees and helps ensure that all of the committees have a broad perspective on the Company's operations as a whole. The Board has affirmatively determined that all of the committee members are independent, as described above in Who are our independent trustees and how was that determined? The members of our audit committee also meet the additional independence standards prescribed by Exchange Act Rule 10A-3. Each committee has adopted a written charter that governs its duties and responsibilities. Copies of the committee charters may be obtained at the Company Governance section of our website at [www.eprkc.com](http://www.eprkc.com).

***Audit Committee.*** The audit committee oversees the accounting, auditing and financial reporting processes, policies and practices of the Company. The committee is directly responsible for assisting the Board of Trustees in its oversight of the integrity of our financial statements, our compliance with legal



**Table of Contents**

and regulatory requirements, the qualifications and independence of our independent registered public accounting firm, and the performance of management's internal audit function and internal control over financial reporting.

The Board of Trustees has appointed an audit committee consisting of Messrs. Earnest, Olson and Brady. The committee members also meet the additional independence standards of Exchange Act Rule 10A-3. The Board of Trustees has determined that all members of the audit committee are audit committee financial experts, as defined by SEC rules, by virtue of their experience and positions held as described elsewhere in this proxy statement. Mr. Brady serves as the Chairman of the audit committee. The committee met four times in 2007.

The primary responsibility of the audit committee is to assist the Board's oversight of the integrity of the Company's financial statements, the Company's compliance with legal and regulatory requirements, the qualifications and independence of the Company's independent registered public accounting firm, and the performance of the Company's internal audit function and internal control over financial reporting. The independent registered public accounting firm is responsible for auditing the Company's annual financial statements and expressing an opinion on the conformity of those audited financial statements with generally accepted accounting principles. The independent registered public accounting firm is also responsible for auditing the effectiveness of management's internal control over financial reporting and expressing an opinion on the effectiveness of its internal control over financial reporting.

The audit committee has sole authority to engage the independent registered public accounting firm to perform audit services (subject to shareholder ratification), audit-related services, tax services and permitted non-audit services and the authorization of the payment of fees therefor. The independent registered public accounting firm reports directly to the committee and is accountable to the committee.

The audit committee has adopted policies and procedures for the pre-approval of the performance of services by the independent registered public accounting firm on behalf of the Company. Those policies generally provide that: the performance by the firm of any audit services, audit-related services, tax services or other permitted non-audit services, and the related fees, must be specifically pre-approved by the committee or, in the absence of one or more of the committee members, a designated member of the committee

pre-approvals must take into consideration, and be conducted in a manner that promotes, the effectiveness and independence of the firm

each particular service to be approved must be described in detail and be supported by detailed back-up documentation

The audit committee has engaged KPMG LLP as the Company's independent registered public accounting firm to audit the 2008 consolidated financial statements and internal control over financial reporting for 2008, subject to shareholder ratification, and has engaged KPMG to perform specific tax return preparation and compliance, tax consulting and tax planning services during 2008. See Ratification of Appointment of Independent Registered Public Accounting Firm.

The audit committee does not itself prepare financial statements or perform audits, and its members are not auditors or certifiers of the Company's financial statements. The members of the audit committee are not professionally engaged in the practice of accounting and, notwithstanding the

**Table of Contents**

designation of the audit committee members as audit committee financial experts pursuant to SEC rules, are not experts in the field of accounting or auditing, including auditor independence. Members of the audit committee rely without independent verification on the information provided to them and the representations made to them by management, and look to management to provide full and timely disclosure of all material facts affecting the Company. Accordingly, the audit committee's oversight does not provide an independent basis to determine that management has maintained appropriate accounting and financial reporting policies, appropriate internal controls and procedures to ensure compliance with accounting standards and applicable laws and regulations, appropriate disclosure controls and procedures, appropriate internal control over financial reporting, or an appropriate internal audit function, or that the Company's reports and information provided under the Exchange Act are accurate and complete. Furthermore, the audit committee's considerations and discussions referred to above and in its charter do not assure that the audit of the Company's financial statements has been carried out in accordance with Public Company Accounting Oversight Board rules, that the financial statements are free of material misstatement or presented in accordance with generally accepted accounting principles, that there were no significant deficiencies or material weaknesses in the Company's internal control over financial reporting, that the Company's independent registered public accounting firm is in fact independent, or that the matters required to be certified by the Company's Chief Executive Officer and Chief Financial Officer in the Company's annual reports on Form 10-K and quarterly reports on Form 10-Q under the Sarbanes-Oxley Act and related SEC rules have been properly and accurately certified.

***Nominating/Company Governance Committee.*** The Board of Trustees has appointed a nominating/company governance committee consisting of all of the independent trustees. The nominating/company governance committee evaluates and nominates candidates for election to the Board of Trustees and assists the Board in ensuring the effectiveness of our governance policies and practices. Candidates for nomination to the Board are evaluated and recommended on the basis of the value they would add to the Board in light of their integrity, experience, training and judgment, their financial literacy and sophistication and knowledge of corporate and real estate finance, their knowledge of the real estate and/or entertainment industry, their independence from Company management and other factors. The committee will consider nominations made by shareholders in compliance with the procedures described in *Submission of Shareholder Proposals and Nominations* below. The committee will use the same criteria to evaluate nominees recommended in good faith by shareholders as it uses to evaluate its own nominees, but may give greater weight to nominees recommended by holders of more than 5% of our outstanding common shares. Mr. Druten serves as Chairman of the nominating/company governance committee. The committee met two times in 2007.

***Finance Committee.*** The Board of Trustees has appointed a finance committee consisting of all of the independent trustees. The primary purpose of the finance committee is to review the Company's financial policies, strategies and capital structure and take such action and make such reports and recommendations to the Board of Trustees as it deems advisable. Mr. Earnest serves as Chairman of the finance committee. The committee was established in February 2008.

***Compensation Committee.*** The Board of Trustees has appointed a compensation committee consisting of all of the independent trustees. The primary responsibilities of the compensation committee are to (1) review and approve Company goals and objectives relevant to the Chief Executive Officer's compensation, evaluate the Chief Executive Officer's performance in light of those goals and objectives, and determine and approve the Chief Executive Officer's compensation level based on that evaluation, and (2) make recommendations to the Board regarding the compensation of the Company's other executive officers and the independent trustees, as well as incentive compensation and equity-based plans that are subject to Board approval. Mr. Olson serves as Chairman of the compensation committee. The committee met eight times in 2007.

**Table of Contents**

***What is our policy regarding trustee attendance at annual meetings?***

Our trustees are expected to attend each annual meeting of shareholders, although conflict situations can arise from time to time. All of our trustees attended the 2007 annual meeting.

***Family relationships.***

No family relationships exist between any of our trustees or executive officers.

**EXECUTIVE OFFICERS**

Here are our executive officers and some brief information about their backgrounds.

**David M. Brain**, 52, is our President and Chief Executive Officer and a member of our Board. His background is described in Election of Trustees.

**Gregory K. Silvers**, 44, was appointed our Chief Operating Officer in 2006 and has served as our Vice President, Secretary and General Counsel since 1998 and as Chief Development Officer since 2001. From 1994 to 1998, he practiced with the law firm of Stinson Morrison Hecker LLP specializing in real estate law. Mr. Silvers received his JD in 1994 from The University of Kansas.

**Mark A. Peterson**, 44, was appointed our Chief Financial Officer and Treasurer in 2006 and has been a Vice President since 2004. From 1998 to 2004, Mr. Peterson was with American Italian Pasta Company, a publicly traded manufacturing company, most recently serving as Vice President-Accounting and Finance. Mr. Peterson was Chief Financial Officer of JC Nichols Company, a real estate company headquartered in Kansas City, Missouri, from 1995 until its acquisition by Highwoods Properties, Inc. in 1998. Mr. Peterson is a CPA and received a BS in Accounting, with highest honors, from the University of Illinois in 1986.

**Michael L. Hiron**, 37, was appointed our Vice President-Finance in 2006. From 2004 to 2006 Mr. Hiron was a co-founder and principal with Preferred Finance Partners, Inc., a firm that provides corporate financial consulting services. From 2000 to 2004, Mr. Hiron was with American Italian Pasta Company, a publicly traded manufacturing company, most recently serving as Director of Strategic Business Unit Finance. Mr. Hiron is a CPA and received two bachelor's degrees, with highest distinction, from The University of Kansas in 1993.

**Table of Contents**

**EXECUTIVE COMPENSATION**  
**Compensation Discussion and Analysis**

***Executive Summary***

All of our compensation programs for our principal executive officer, principal financial officer and two other executive officers (the Named Executive Officers ) are designed to attract and retain quality executives, motivating them to achieve and rewarding them for superior performance. Our executive compensation programs are administered by the compensation committee, which is authorized to select from among our eligible executives the individuals to whom awards will be granted and to establish the terms and conditions of those awards. No member of the compensation committee is eligible to participate in any compensation program other than as a non-employee trustee of the Company.

As discussed in more detail below, the Company has a basic compensation structure for its executives with three components:

base salary,

annual incentive bonus, payable in cash or equity awards,

long-term incentive equity awards.

The following provides a brief overview of the topics that we discuss in detail in this Compensation Discussion and Analysis:

the philosophy and principles of our executive compensation program,

our compensation setting process,

our compensation program design and implementation, where we discuss (a) the compensation committee's determination of base salary for Named Executive Officers, (b) the committee's determination of annual bonuses under the Company's Annual Incentive Program and the role of equity grants in that program, (c) the committee's determination of equity grants under the Company's Long-Term Incentive Plan, and (d) the Company's 2007 Equity Incentive Plan (which replaced the Share Incentive Plan in 2007),

how the Company's President and Chief Executive Officer is compensated, and

how the Company addresses Internal Revenue Code limits on deductibility of compensation.

As discussed in greater detail below, the Company's performance, as measured against the principal performance factors identified by the compensation committee early in 2007, exceeded median levels of the Company's identified peer group. The committee relied heavily upon those when considering adjustments to the 2008 base salaries and electing to pay maximum levels for the annual bonuses under the Annual Incentive Program. However, with respect to equity grants under the Long-Term Incentive Plan, the committee believes that total shareholder return should play a more prominent

**Table of Contents**

role. Recognizing that the Company's total shareholder return was negative in 2007, the compensation committee elected to make awards under the Long-Term Incentive Plan below maximum levels.

***Overview of our compensation philosophy and principles***

Elements of our compensation for our Named Executive Officers include base salary, annual incentive awards, long-term equity incentive awards, health, disability and life insurance, perquisites and severance benefits. We have adopted these various elements of compensation to attract and retain quality executives, to provide incentives to maximize our funds from operations (FFO), and to provide executives with long-term incentives that align their interests with value creation for our shareholders.

The Company's compensation philosophy has several key objectives:

create a well-balanced and competitive compensation program utilizing base salary, annual incentives and long-term equity-based incentive compensation,

emphasize variable performance-based compensation,

reward executives for performance on measures designed to increase shareholder value,

use nonvested restricted share awards, and to a lesser extent, share options, to ensure that executives are focused on providing appropriate dividend levels and building shareholder value, and

create alignment between the Company's executives and its shareholders by granting equity based incentives.

The compensation committee has generally attempted to set base salary compensation at or slightly below the median of competitive market practices, and emphasized performance-based incentive compensation payable under the Annual Incentive Program and Long-Term Incentive Plan as discussed below in Compensation program design and implementation.

***Compensation setting process***

Historically, it has been the practice of our compensation committee at the beginning of each year, to meet and make decisions regarding our Named Executive Officers' compensation. When making these decisions, the compensation committee considers the performance of the Company and each Named Executive Officer, current industry-based compensation practice information and the history of all the elements of each Named Executive Officer's total compensation over each of the last three fiscal years. Based upon the review of this information, together with recommendations provided by our Chief Executive Officer, Mr. Brain, the compensation committee sets, for each of the Named Executive Officers, the base salary for the new fiscal year, the annual incentive awards for the most recently completed year and the level of long-term incentive awards under our 2007 Equity Incentive Plan. In addition to the input of the Chief Executive Officer, other Named Executive Officers attend meetings of the compensation committee from time to time and provide historical and prospective breakdowns of primary compensation components for each executive officer, and additional context with respect to Company performance. The compensation committee retains the right to make final determinations on all Named Executive Officer compensation.

The compensation committee does not establish fixed or formulaic performance targets with respect to incentive compensation under either the Annual Incentive Program or the Long-Term Incentive

**Table of Contents**

Plan. The compensation committee believes that a subjective approach provides it with the flexibility to address changing market conditions, while still permitting the committee to consider the Company's performance by annually reviewing the performance factors identified by the committee early in each year. The compensation committee determined that incentive amounts paid for 2007 would be based upon an assessment of a combination of the personal performance of the executive and the Company's overall performance as measured by a variety of goals and metrics, such as FFO per share, return on equity, cash available for distribution, total shareholder return, dividend growth and share performance as compared to comparable companies and REIT indices.

The compensation committee determines performance bonuses awarded under the Annual Incentive Program as a percentage of annual base salary. Relevant performance factors are set at the beginning of each year which are then reviewed at the beginning of the following year at which time the actual bonus amount is determined. Similarly, awards under the Long-Term Incentive Plan are calculated as a percentage of annual base salary plus the bonus under the Annual Incentive Program, with relevant performance factors being set at the beginning of each year, which are reviewed at the beginning of the following year when the actual award under the Long-Term Incentive Plan is determined.

The compensation committee retained as its compensation consultant, Watson Wyatt Worldwide, to advise the committee with respect to its review of compensation levels and programs for our Named Executive Officers. Watson Wyatt prepared a benchmarking analysis comparing our senior executive compensation practices to the compensation practices of other comparable publicly traded REITs. The compensation committee believes that the peer group is comparable to the Company based on size as measured by total capitalization and the general concentration by these REITs on retail and consumer focused assets. The peer group used for benchmarking purposes included:

Acadia Realty Trust	Lexington Realty Trust
Caplease Inc.	National Retail Properties, Inc.
Cousins Properties Inc.	Realty Income Corporation
Equity One Inc.	Tanger Factory Outlet Centers, Inc.
Glimcher Realty Trust	Washington Real Estate Investment Trust
Inland Real Estate Corporation	

The benchmarking analysis included an assessment of base salaries, annual incentives, total annual cash compensation, long-term incentives and total direct compensation. This analysis generally indicated that, consistent with the compensation philosophy, the base salaries of the Named Executive Officers were at or slightly below the median base salaries for comparable positions within the peer group organizations. In addition, our compensation practices emphasize variable performance-based incentives.

In determining and analyzing performance factors, the compensation committee utilizes benchmarks provided by management and the committee's compensation consultant, including the following:

Company operations, including revenue, expense control, FFO per share performance, access to capital, debt levels, vacancy levels and resolution, credit quality, acquisition levels, yields and internal rates of return, asset diversification, trading multiples, dividend yields and increases, executive peer evaluations and new initiatives suggested and implemented,

Shareholder returns, including absolute returns and comparative returns versus other REITs and other stock indices and a subjective analysis of the relative risk taken by peer companies, and

**Table of Contents**

REIT compensation levels, including what peer companies are paying for comparable positions, other alternatives for the executive officer, the executive officer's value to the Company, future prospects for the executive officer, how difficult it would be to replace the executive officer and how the executive officer performed versus other years.

**Compensation program design and implementation**

The compensation committee uses the programs described below to meet its compensation objectives for executive officers. The percentage of a Named Executive Officer's total compensation that is comprised by each of the compensation elements is not specifically determined, but instead, is a result of the targeted competitive positioning for each element (i.e., at or slightly below market medians for base salaries, and performance based Annual Incentive Program awards and Long-Term Incentive Plan awards that are competitive with the Company's peer group and incentive performance). Typically, Long-Term Incentive Plan awards comprise a significant portion of a Named Executive Officer's total compensation. This is consistent with the compensation committee's desire to reward long-term performance in a way that is aligned with shareholders' interests. The following table sets forth the amounts of, and the percentages of total compensation represented by, the three principal elements of compensation for each of the Named Executive Officers for 2007:

	Base Salary		Annual Incentive Program		Long-Term Incentive Plan	
	Amount	%	Amount	%	Amount	%
David M. Brain	\$505,000	16.3	\$757,500	24.4	\$1,837,500	59.3
Gregory K. Silvers	365,000	18.3	456,250	22.8	1,175,000	58.9
Mark A. Peterson	275,000	22.2	343,750	27.8	618,750	50.0
Michael L. Hirons	175,000	35.0	157,500	31.5	167,500	33.5

**Base Salary.** Annual base salaries for the executive officers for 2007 were set by the compensation committee at \$505,000 for Mr. Brain, \$365,000 for Mr. Silvers, \$275,000 for Mr. Peterson and \$175,000 for Mr. Hirons. For 2008, the compensation committee established annual base salaries of \$530,250 for Mr. Brain, \$383,250 for Mr. Silvers, \$288,750 for Mr. Peterson and \$183,750 for Mr. Hirons. The salary levels were intended to provide a level of base salary compensation at or slightly below the median of competitive market practices, to permit the emphasis of performance-based incentive compensation payable under the Annual Incentive Program and Long-Term Incentive Plan. Increases for 2008 in base salary for Named Executive Officers were established at 5% for each officer. While the committee was advised that expectations for salary increases in 2008 by comparable REITs are expected to be fairly modest due primarily to general market and economic conditions, the committee determined that a 5% increase was justified based upon the Company's performance and the personal performance of each Named Executive Officer. Based upon information provided by its compensation consultant, the compensation committee has determined that this increase is consistent with the committee's stated philosophy of maintaining salaries at, or slightly below the median of comparable REITs.

**Annual Incentive Program.** The compensation committee establishes relevant performance factors with respect to incentive compensation under the Annual Incentive Program. The compensation committee determines incentive amounts based upon an assessment of a combination of the personal performance of the executive and the Company's overall performance as measured by a variety of goals and metrics. The compensation committee has identified several performance factors that it considers in its determination of performance bonuses under the Annual Incentive Program. In establishing performance factors, the compensation committee strove to ensure that: incentives are aligned with the strategic goals set by the Board; targets are sufficiently ambitious so as to provide a meaningful incentive; and bonus payments, assuming target levels of performance are attained, will be consistent with the

**Table of Contents**

overall compensation program established by the compensation committee. Under this approach, the compensation committee selected three primary quantitative performance factors:

FFO per share growth,

Return on invested capital ( ROIC ), and

Return on average common equity ( ROACE ).

The Board tracks FFO per share growth on a regular basis, and, like many other REITs, considers FFO per share growth to be the most important measure of Company performance. The National Association of Real Estate Investment Trusts developed FFO as a relative non-GAAP financial measure of performance of an equity REIT in order to recognize that income-producing real estate historically has not depreciated on the basis determined under GAAP. FFO is a widely used measure of the operating performance of real estate companies.

ROIC and ROACE are also considered by the compensation committee as important factors for Company performance that, together with FFO per share growth, provide a balanced quantitative approach to the analysis. ROIC and ROACE are measures that gauge the use of capital and deployment of assets.

The compensation committee intends to consider each year a variety of other factors, some of which are more qualitative in nature, to determine the performance bonuses that will be awarded pursuant to the Annual Incentive Program. Included in the factors the committee intends to consider when exercising this discretion is their evaluation of the individual performance of each Named Executive Officer and overall Company performance, including the evaluation of performance factors such as capital formation, debt ratios, expense management, total shareholder returns and dividend rates. After the conclusion of each fiscal year, the compensation committee considers the performance of the Company and each Named Executive Officer, the achievement of these performance factors and the recommendations of our Chief Executive Officer.

In late 2007 and early 2008, the committee reviewed the Company's performance and the factors that the committee articulated in early 2007, and considered the recommendations the Chief Executive Officer provided to the compensation committee for bonuses under the Annual Incentive Program, based on the Company's overall performance as measured against the Company's stated performance factors for 2007 and individual performance for each executive. The compensation committee's evaluation of the personal performances of executive officers is a qualitative approach based upon subjective factors. The committee viewed the personal performance of each of the executive officers very favorably, generally supported by the Company's success with record investment and capital markets activity. Mr. Silvers' favorable performance evaluation reflects, in particular, his critical involvement in the Company's investment activity, which included a record \$428.4 million of investment spending in 2007. The favorable performance evaluations of Messrs. Peterson and Hirons reflect, in large part, the committee's receipt of favorable reports from the audit committee reflecting continued improvements in accounting, reporting and controls of the Company, and their responsibility with respect to the record \$500 million in debt and equity capital formation for the Company in 2007. Mr. Brain's favorable performance evaluation reflects his overall management of and critical involvement with this historically active year.

The compensation committee initially reviewed estimates of the three metrics based on year to date September 2007 actual results plus management's estimates for the fourth quarter. The actual results based on the full year audited numbers were later provided to the committee and no significant deviations were noted from the previous estimates. Based upon this information, the compensation committee's



**Table of Contents**

consultant advised the committee that FFO per share growth (excluding a non-recurring charge for the redemption of the Series A preferred shares, 12.2% annual growth), ROIC (9.6% annual return), and ROACE (excluding the non-recurring charge for the redemption of the Series A preferred shares, 13.5%) would each exceed the median levels of the peer group and would fall within the 75<sup>th</sup> percentile of the peer group, demonstrating very strong performance by the Company and