

# HIGHWOODS PROPERTIES INC

## FORM S-3/A

(Securities Registration Statement (simplified form))

Filed 2/6/1998

Address	3100 SMOKETREE CT STE 600 RALEIGH, North Carolina 27604
Telephone	919-872-4924
CIK	0000921082
Industry	Real Estate Operations
Sector	Services
Fiscal Year	12/31

# SECURITIES AND EXCHANGE COMMISSION

## WASHINGTON, DC 20549

Amendment No. 1

To

### FORM S-3

#### REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

## HIGHWOODS PROPERTIES, INC.

(Exact Name of Registrant as Specified in Its Charter)

Maryland  
(State of Incorporation)

56-1871668  
(I.R.S. Employer Identification No.)

3100 Smoketree Court, Suite 600  
Raleigh, North Carolina 27604  
(919) 872-4924

(Address, including zip code, and telephone number, including area code,  
of agent for service)

With Copies to:

Ronald P. Gibson, President  
Highwoods Properties, Inc.  
3100 Smoketree Court, Suite 600  
Raleigh, North Carolina 27604  
(919) 872-4924

Brad S. Markoff, Esq.  
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3605 Glenwood Avenue, Suite 310  
Raleigh, North Carolina 27612  
(919) 420-2210

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

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

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

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

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

If delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box. ☐

#### Calculation of Registration Fee

Title of Each Class of Securities to be Registered	Amount to be Registered	Proposed Maximum Offering Price per Unit(1)	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
Common Stock	3,090,141	\$35.4375	\$109,506,872	\$33,184
Warrants(2)	1,479,290	\$35.4375	\$ 52,422,340	\$15,886

(1) Computed pursuant to Rule 457(c) under the Securities Act of 1933, as amended, solely for the purpose of calculating the registration fee on the basis of the average high and low prices of the Registrant's common stock reported on the New York Stock Exchange on December 29, 1997.

(2) Includes the resale of up to 1,444,290 shares of Common Stock issuable upon exercise of 1,444,290 Warrants, which Warrants may be deemed to be held by affiliates of the Company.

The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the Registration Statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

# PROSPECTUS

**HIGHWOODS PROPERTIES, INC.  
3,090,141 SHARES OF COMMON STOCK  
and  
1,479,290 WARRANTS**

All of the shares of common stock, par value \$.01 per share (the "Common Stock"), and warrants to purchase shares of Common Stock (the "Warrants") of Highwoods Properties, Inc. (the "Company") offered hereby (the "Securities") are being offered by the Selling Stockholders. See "Selling Stockholders." The Company will not receive any of the proceeds from the sale of the Securities offered hereby; however, the Company has agreed to bear certain expenses of registration of the Securities under the Federal and state securities laws.

**SEE "RISK FACTORS" AT PAGE 5 FOR CERTAIN FACTORS RELEVANT TO AN INVESTMENT**

## **IN THE SECURITIES.**

The Common Stock is listed on the New York Stock Exchange (the "NYSE") under the symbol "HIW." To ensure that the Company retains its status as a real estate investment trust ("REIT"), ownership by any person is limited to 9.8% of the outstanding shares of Common Stock, with certain exceptions. The Warrants are not listed on an exchange.

The Selling Stockholders from time to time may offer and sell the Securities held by them directly, indirectly through brokers or dealers or in a distribution by one or more underwriters on a firm commitment or best efforts basis, in the over-the-counter market, on any national securities exchange on which the Securities are listed or traded, in privately negotiated transactions or otherwise, at market prices prevailing at the time of sale, at prices related to such prevailing market prices or at negotiated prices. To the extent required, the names of any agent or broker-dealer and applicable commissions or discounts and any other required information with respect to any particular offer will be set forth in an accompanying Prospectus Supplement. See "Plan of Distribution."

The Selling Stockholders and any agents or broker-dealers that participate with the Selling Stockholders in the distribution of the Securities may be deemed to be "underwriters" within the meaning of the Securities Act of 1933, as amended (the "Securities Act"), and any commission received by them and any profit on the resale of the Securities may be deemed to be underwriting commissions or discounts under the Securities Act. See "Plan of Distribution" for a description of certain indemnification arrangements between the Company and the Selling Stockholders.

**THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES  
AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION NOR HAS THE  
SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION  
PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS. ANY  
REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.**

The date of this Prospectus is February 10, 1998.

## AVAILABLE INFORMATION

The Company is subject to the information requirements of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and in accordance therewith files reports, proxy statements and other information with the Securities and Exchange Commission (the "Commission"). Such reports, proxy statements and other information may be inspected and copied, at prescribed rates, at the public reference facilities of the Commission at 450 Fifth Street, N.W., Washington, DC 25049, Room 1024, and at the Commission's New York regional office at Seven World Trade Center, New York, New York 10048 and at the Commission's Chicago regional office at Citicorp Center, 500 W. Madison Street, Chicago, Illinois 60661. Such information, when available, also may be accessed through the Commission's electronic data gathering, analysis and retrieval system ("EDGAR") via electronic means, including the Commission's home page on the Internet (<http://www.sec.gov>). The Common Stock of the Company is listed on the NYSE, and such material can also be inspected and copied at the offices of the NYSE, 20 Broad Street, New York, New York 10005.

The Company has filed with the Commission a registration statement on Form S-3 (the "Registration Statement") under the Securities Act, with respect to the Securities registered hereby. This prospectus ("Prospectus"), which constitutes a part of the Registration Statement, does not contain all of the information set forth in the Registration Statement and in the exhibits and schedules thereto. For further information with respect to the Company and such Common Stock, reference is hereby made to such Registration Statement, exhibits and schedules. The Registration Statement may be inspected without charge at, or copies obtained upon payment of prescribed fees from, the Commission and its regional offices at the locations listed above. Any statements contained herein concerning a provision of any document are not necessarily complete, and, in each instance, reference is made to the copy of such document filed as an exhibit to the Registration Statement or otherwise filed with the Commission. Each such statement is qualified in its entirety by such reference.

## INCORPORATION OF CERTAIN DOCUMENTS BY REFERENCE

The following documents filed by the Company with the Commission pursuant to the Exchange Act are incorporated herein by reference and made a part hereof:

- a. The Company's annual report on Form 10-K for the year ended December 31, 1996;
- b. The description of the Common Stock of the Company included in the Company's Registration Statement on Form 8-A, dated May 16, 1994;
- c. The Company's Current Reports on Form 8-K, dated April 1, 1996 (as amended on June 3, 1996 and June 18, 1996), April 29, 1996 (as amended on June 3, 1996 and June 18, 1996) (except for the financial statements of AP Fontaine III Partners, L.P. for the period from October 28, 1993 (date of inception) through December 31, 1993, and the combined balance sheet of Southeast Realty Corp., AP Southeast Portfolio Partners, L.P. and AP Fontaine III Partners, L.P., which are not incorporated herein), January 9, 1997 (as amended on February 7, 1997 and March 10, 1997), February 12, 1997, August 27, 1997 (as amended on September 23, 1997), September 18, 1997, September 25, 1997, October 1, 1997, October 4, 1997, November 17, 1997, and December 22, 1997; and
- d. The Company's quarterly reports on Form 10-Q for the periods ended March 31, 1997, June 30, 1997 and September 30, 1997.

All documents filed by the Company with the Commission pursuant to Sections 13(a) and 13(c) of the Exchange Act and any definitive proxy statements so filed pursuant to Section 14 of the Exchange Act and any reports filed pursuant to Section 15(d) of the Exchange Act after the date of this Prospectus and prior to the termination of the offering of the Securities shall be deemed to be incorporated by reference into this Prospectus and to be a part hereof from the date of filing of such documents. Any statement contained in a document incorporated by reference herein shall

be deemed to be modified or superseded for the purposes of this Prospectus to the extent that a statement contained herein or in any other subsequently filed document which is incorporated by reference herein modifies or supersedes such earlier statement. Any such statements modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Prospectus.

The Company will furnish without charge upon written or oral request to each person to whom a copy of this Prospectus is delivered, including any beneficial owner, a copy of any or all of the documents specifically incorporated herein by reference (not including the exhibits to such documents, unless such exhibits are specifically incorporated by reference in such documents). Requests should be made to: Investor Relations, 3100 Smoketree Court, Suite 600, Raleigh, North Carolina 27604. The Company's telephone number is (919) 872-4924.

## **THE COMPANY**

The Company is a self-administered and self-managed real estate investment trust ("REIT") that began operations through a predecessor in 1978. The Company owns a portfolio of 480 in-service office and industrial properties (the "Properties") encompassing approximately 31.0 million rentable square feet. The Properties consist of 341 office properties and 139 industrial properties (including 73 service centers), located in 19 markets in North Carolina, Florida, Tennessee, Virginia, Georgia, South Carolina, Maryland and Alabama. As of September 30, 1997, the Properties were approximately 91% leased to approximately 3,200 tenants.

In addition, the Company has 33 properties (26 office properties and seven industrial properties (collectively, the "Development Projects")) under development in North Carolina, Virginia, Tennessee, Maryland and South Carolina, which will encompass approximately 3.1 million square feet. The Company also owns approximately 800 acres (and has agreed to purchase an additional 337 acres) of land for future development (collectively, the "Development Land"). The Development Land is zoned and available for office and/or industrial development, substantially all of which has utility infrastructure already in place.

The Company conducts substantially all of its activities through, and all of the Properties are held directly or indirectly by, Highwoods/Forsyth Limited Partnership (the "Operating Partnership"). The Company is the sole general partner of the Operating Partnership and owns 82% of the common partnership interests (the "Common Units") in the Operating Partnership. The remaining Common Units are owned by limited partners (including certain officers and directors of the Company). Each Common Unit may be redeemed by the holder thereof for the cash value of one share of Common Stock or, at the Company's option, one share (subject to certain adjustments) of Common Stock. With each such exchange, the number of Common Units owned by the Company and, therefore, the Company's percentage interest in the Operating Partnership, will increase.

In addition to owning the Properties, the Development Projects and the Development Land, the Company provides leasing, property management, real estate development, construction and miscellaneous tenant services for its properties as well as for third parties. The Company conducts its third-party fee-based services through Highwoods/ Tennessee Properties, Inc., a wholly owned subsidiary of the Company, and Highwoods Services, Inc., a wholly owned subsidiary of the Operating Partnership.

The Company was formed in Maryland in 1994. The Company's executive officers are located at 3100 Smoketree Court, Suite 600, Raleigh, North Carolina 27604, and its telephone number is (919) 872-4924. The Company also maintains regional offices in Winston-Salem, Greensboro and Charlotte, North Carolina; Richmond, Virginia; Nashville and Memphis, Tennessee; Atlanta, Georgia; and Tampa and Boca Raton, Florida.

## **RISK FACTORS**

THIS PROSPECTUS CONTAINS FORWARD-LOOKING STATEMENTS. THESE STATEMENTS ARE IDENTIFIED BY WORDS SUCH AS "EXPECT," "ANTICIPATE," "SHOULD" AND WORDS OF SIMILAR IMPORT. ACTUAL RESULTS MAY DIFFER SIGNIFICANTLY FROM THOSE PROJECTED IN THE FORWARD-LOOKING STATEMENTS. FACTORS THAT MIGHT CAUSE SUCH A DIFFERENCE INCLUDE, BUT ARE NOT LIMITED TO, THOSE DISCUSSED BELOW UNDER "RISK FACTORS." AN INVESTMENT IN THE COMMON STOCK INVOLVES VARIOUS RISKS. THE FOLLOWING INFORMATION, IN CONJUNCTION WITH THE OTHER INFORMATION CONTAINED IN THIS PROSPECTUS, SHOULD BE CAREFULLY CONSIDERED BY PROSPECTIVE PURCHASERS OF THE SHARES.

### **Geographic Concentration**

The Company's revenues and the value of its Properties may be affected by a number of factors, including the local economic climate (which may be adversely affected by business layoffs, downsizing, industry slowdowns, changing demographics and other factors) and local real estate conditions (such as oversupply of or reduced demand for office, industrial and other competing commercial properties). The Properties are located in 18 southeastern markets, and, based on September 1997 results, approximately 34% of the total annualized rental revenue is represented by Properties located in North Carolina and approximately 35% of the total annualized rental revenue is represented by Properties located in Florida. The Company's performance and its ability to make distributions to stockholders is therefore dependent on the economic conditions in the Southeast, particularly in North Carolina and Florida. There can be no assurance as to the continued growth of the southeastern economy.

### **Tax Consequences upon Sale or Refinancing of Properties**

Holders of Common Units may suffer adverse tax consequences upon the sale or refinancing of any of the Company's properties; therefore, such holders, including certain of the Company's officers and directors, and the Company may have different objectives regarding the appropriate pricing and timing of any sale or refinancing of such properties. Although the Company, as the sole general partner of the Operating Partnership, has the exclusive authority as to whether and on what terms to sell or refinance an individual property, those members of the Company's management and Board of Directors who hold Common Units may influence the Company not to sell or refinance certain properties even though such sale or refinancing might otherwise be financially advantageous to the Company.

### **Limitations on Acquisition and Change in Control**

**Ownership Limit.** The Company's Articles of Incorporation prohibit ownership of more than 9.8% of the outstanding Common Stock by any person. Such restriction is likely to have the effect of precluding acquisition of control of the Company by a third party without consent of the Board of Directors even if a change in control were in the interest of stockholders.

**Required Consent of the Operating Partnership for Significant Corporate Action.** The Company may not engage in certain change of control transactions without the approval of the holders of a majority of the outstanding Common Units. Should the Company ever own less than a majority of the outstanding Common Units, this voting requirement might limit the possibility for acquisition or change in the control of the Company. The Company owns approximately 82% of the Common Units.

**Staggered Board.** The Board of Directors of the Company has three classes of directors, the terms of which will expire in staggered, three-year intervals. The staggered terms for directors may affect the stockholders' ability to change control of the Company even if a change in control were in the stockholders' interest.

**Operating Partnership Agreement.** The Operating Partnership Agreement was recently amended to clarify the provisions relating to limited partners' redemption rights in the event of certain changes of control of the Company.

Because these provisions require an acquiror to make provision under certain circumstances to maintain the Operating Partnership structure and maintain a limited partner's right to continue to hold Common Units with future redemption rights, the amendment could have the effect of discouraging a third party from making an acquisition proposal for the Company.

**Shareholders Rights Plan.** On October 4, 1997, the Company's Board of Directors adopted a Shareholders Rights Plan and declared a distribution of one preferred share purchase right (a "Right") for each outstanding share of Common Stock. The Rights were issued on October 16, 1997 to each shareholder of record on such date. The Rights have certain anti-takeover effects. The Rights will cause substantial dilution to a person or group that attempts to acquire the Company on terms not approved by the Company's Board of Directors. The Rights should not interfere with any merger or other business combination approved by the Board of Directors since the Rights may be redeemed by the Company for \$.01 per Right prior to the time that a person or group has acquired beneficial ownership of 15% or more of the Common Stock.

### **Adverse Impact on Distributions of Failure to Qualify as a REIT**

The Company and the Operating Partnership intend to operate in a manner so as to permit the Company to remain qualified as a REIT under the Internal Revenue Code of 1986, as amended (the "Code"). Although the Company believes that it will operate in such a manner, no assurance can be given that the Company will remain qualified as a REIT. If in any taxable year the Company were to fail to qualify as a REIT, the Company would not be allowed a deduction for distributions to stockholders in computing taxable income and would be subject to Federal income tax (including any applicable alternative minimum tax) on its taxable income at regular corporate rates.

### **Real Estate Investment Risks**

**General Risks.** Real property investments are subject to varying degrees of risk. The yields available from equity investments in real estate depend in large part on the amount of income generated and expenses incurred. If the Company's properties do not generate revenues sufficient to meet operating expenses, including debt service, tenant improvements, leasing commissions and other capital expenditures, the Company may have to borrow additional amounts to cover fixed costs, and the Company's cash flow and ability to make distributions to its stockholders will be adversely affected.

The Company's revenues and the value of its properties may be adversely affected by a number of factors, including the national economic climate; the local economic climate; local real estate conditions; the perceptions of prospective tenants of the attractiveness of the property; the ability of the Company to provide adequate management, maintenance and insurance; and increased operating costs (including real estate taxes and utilities). In addition, real estate values and income from properties are also affected by such factors as applicable laws, including tax laws, interest rate levels and the availability of financing.

**Competition.** Numerous office and industrial properties compete with the Company's properties in attracting tenants to lease space. Some of these competing properties are newer or better located than some of the Company's properties. Significant development of office or industrial properties in a particular area could have a material effect on the Company's ability to lease space in its properties and on the rents charged.

**Bankruptcy and Financial Condition of Tenants.** At any time, a tenant of the Company's properties may seek the protection of the bankruptcy laws, which could result in the rejection and termination of such tenant's lease and thereby cause a reduction in the cash flow available for distribution by the Company. Although the Company has not experienced material losses from tenant bankruptcies, no assurance can be given that tenants will not file for bankruptcy protection in the future or, if any tenants file, that they will affirm their leases and continue to make rental payments in a timely manner. In addition, a tenant from time to time may experience a downturn in its business, which may weaken its financial condition and result in the failure to make rental payments when due. If tenant leases are not



affirmed following bankruptcy or if a tenant's financial condition weakens, the Company's income may be adversely affected.

**Renewal of Leases and Re-letting of Space.** The Company will be subject to the risks that upon expiration of leases for space located in its properties, the leases may not be renewed, the space may not be re-let or the terms of renewal or re-letting (including the cost of required renovations) may be less favorable than current lease terms. If the Company were unable to promptly re-let or renew the leases for all or a substantial portion of this space or if the rental rates upon such renewal or re-letting were significantly lower than expected rates, then the Company's cash flow and ability to make expected distributions to stockholders may be adversely affected.

**Illiquidity of Real Estate.** Equity real estate investments are relatively illiquid. Such liquidity will tend to limit the ability of the Company to vary its portfolio promptly in response to changes in economic or other conditions. In addition, the Code limits the Company's ability to sell properties held for fewer than four years, which may affect the Company's ability to sell properties without adversely affecting returns to holders of Common Stock.

**Changes in Laws.** Because increases in income, service or transfer taxes are generally not passed through to tenants under leases, such increases may adversely affect the Company's cash flow and its ability to make distributions to stockholders. The Properties are also subject to various Federal, state and local regulatory requirements, such as requirements of the Americans with Disabilities Act and state and local fire and life safety requirements. Failure to comply with these requirements could result in the imposition of fines by governmental authorities or awards of damages to private litigants. The Company believes that the Properties are currently in compliance with all such regulatory requirements. However, there can be no assurance that these requirements will not be changed or that new requirements will not be imposed which would require significant unanticipated expenditures by the Company and which could have an adverse effect on the Company's cash flow and expected distributions.

### **Risk of Development, Construction and Acquisition Activities**

The Company intends to actively continue development and construction of office and industrial properties, including development on the Development Land. Risks associated with the Company's development and construction activities, including activities relating to the Development Land, may include: abandonment of development opportunities; construction costs of a property exceeding original estimates, possibly making the property uneconomical; occupancy rates and rents at a newly completed property may not be sufficient to make the property profitable; financing may not be available on favorable terms for development of a property; and construction and lease-up may not be completed on schedule, resulting in increased debt service expense and construction costs. In addition, new development activities, regardless of whether or not they are ultimately successful, typically require a substantial portion of management's time and attention. Development activities are also subject to risks relating to the inability to obtain, or delays in obtaining, all necessary zoning, land-use, building, occupancy, and other required governmental permits and authorizations.

The Company intends to actively continue to acquire office and industrial properties. Acquisitions of office and industrial properties entail risks that investments will fail to perform in accordance with expectations. Estimates of the costs of improvements to bring an acquired property up to standards established for the market position intended for that property may prove inaccurate. In addition, there are general investment risks associated with any new real estate investment.

### **Financing Risks**

**Debt Financing.** The Company and the Operating Partnership are subject to the risks associated with debt financing, including the risk that the cash provided by operating activities will be insufficient to meet required payments of principal and interest, the risk of rising interest rates on floating rate debt, the risk that the Company and the Operating Partnership will not be able to prepay or refinance existing indebtedness (which generally will not have been fully amortized at maturity) or that the terms of such refinancing will not be as favorable as the terms of existing

indebtedness. If refinancing of such indebtedness could not be secured on acceptable terms, the Company and/or the Operating Partnership might be forced to dispose of properties upon disadvantageous terms, which might result in losses and might adversely affect the cash flow available for distribution to equity holders or for debt service. An inability to secure refinancing could also cause the Company to issue equity securities when its valuation is low, which could adversely affect the market price of such securities. In addition, if a property or properties are mortgaged to secure payment of indebtedness and the Company is unable to meet mortgage payments, the mortgage securing the property could be foreclosed upon by, or the property could be otherwise transferred to, the mortgagee with a consequent loss of income and asset value to the Company.

**Risk of Rising Interest Rates.** The Company and the Operating Partnership have incurred and expect in the future to incur floating rate indebtedness in connection with the acquisition and development of properties as well as for other purposes. Also, additional indebtedness that the Company and the Operating Partnership incur under the existing revolving credit facility bears interest at a floating rate. Accordingly, increases in interest rates would increase interest costs (to the extent that the related indebtedness was not protected by interest rate protection arrangements).

### **Possible Environmental Liabilities**

Under various Federal, state and local laws, ordinances and regulations, such as the Comprehensive Environmental Response Compensation and Liability Act, or "CERCLA," and common law, an owner or operator of real estate is liable for the costs of removal or remediation of certain hazardous or toxic substances on or in such property as well as certain other costs, including governmental fines and injuries to persons and property. Such laws often impose such liability without regard to whether the owner or operator knew of, or was responsible for, the presence of such hazardous or toxic substances. The presence of such substances, or the failure to remediate such substances properly, may adversely affect the owner's or operator's ability to sell or rent such property or to borrow using such property as collateral. Persons who arrange for the disposal or treatment of hazardous or toxic substances may also be liable for the costs of removal or remediation of such substances at a disposal or treatment facility, whether or not such facility is owned or operated by such person. Certain environmental laws impose liability for release of asbestos-containing materials ("ACM"), and third parties may seek recovery from owners or operators of real property for personal injuries associated with ACM. A number of the Properties contain ACM or material that is presumed to be ACM. In connection with the ownership and operation of its properties, the Company may be liable for such costs. In addition, it is not unusual for property owners to encounter on-site contamination caused by off-site sources, and the presence of hazardous or toxic substances at a site in the vicinity of a property could require the property owner to participate in remediation activities in certain cases or could have an adverse effect on the value of such property. In a few situations, contamination from adjacent properties has migrated onto property owned by the Company; however, based on current information, management of the Company does not believe that any significant remedial action is necessary at these affected sites.

As of the date hereof, substantially all of the Properties had been subjected to a Phase I environmental assessment. These assessments have not revealed, nor is management of the Company aware of, any environmental liability that it believes would have a material adverse effect on the Company's results of operations, liquidity or financial position taken as a whole. This projection, however, could prove to be incorrect depending on certain factors. For example, the Company's assessments may not reveal all environmental liabilities, or may underestimate the scope and severity of environmental conditions observed, with the result that there may be material environmental liabilities of which the Company is unaware, or material environmental liabilities may have arisen after the assessments were performed of which the Company is unaware. In addition, assumptions regarding groundwater flow and the existence and source of contamination are based on available sampling data, and there are no assurances that the data is reliable in all cases. Moreover, there can be no assurance that (i) future laws, ordinances or regulations will not impose any material environmental liability or (ii) the current environmental condition of the Properties will not be affected by tenants, by the condition of land or operations in the vicinity of the Properties, or by third parties unrelated to the Company.

Some tenants use or generate hazardous substances in the ordinary course of their respective businesses. These tenants are required under their leases to comply with all applicable laws and are responsible to the Company for any damages resulting from the tenants' use of the property. The Company is not aware of any material environmental problems resulting from tenants' use or generation of hazardous substances. There are no assurances that all tenants will comply with the terms of their leases or remain solvent and that the Company may not at some point be responsible for contamination caused by such tenants.

## **USE OF PROCEEDS**

This Prospectus relates to Securities being offered and sold for the accounts of the Selling Securityholders. The Company will not receive any proceeds from the sale of the Securities but will pay all expenses related to the registration of the Securities.

## **DESCRIPTION OF CAPITAL STOCK OF THE COMPANY**

### **General**

The authorized capital stock of the Company consists of 110,000,000 shares of capital stock, \$.01 par value, of which 100,000,000 shares are classified as Common Stock and 10,000,000 shares are classified as preferred stock ("Preferred Stock"). The following description of the terms and provisions of the shares of capital stock of the Company and certain other matters does not purport to be complete and is subject to and qualified in its entirety by reference to the applicable provisions of Maryland law and the Company's Articles of Incorporation and Bylaws, as amended.

### **Common Stock**

Each holder of Common Stock is entitled to one vote at stockholder meetings for each share of Common Stock held. Neither the Articles of Incorporation nor the Bylaws provide for cumulative voting for the election of directors. Subject to the prior rights of any series of Preferred Stock that may be classified and issued, holders of Common Stock are entitled to receive, pro rata, such dividends as may be declared by the Board of Directors out of funds legally available therefor, and also are entitled to share, pro rata, in any other distributions to stockholders. The Company currently pays regular quarterly dividends to holders of Common Stock. Holders of Common Stock do not have any preemptive rights or other rights to subscribe for additional shares.

The Common Stock is listed for trading on the New York Stock Exchange (the "NYSE").

### **Series A Preferred Shares**

The following description of the Company's 8 5/8% Series A Cumulative Redeemable Preferred Shares, par value \$.01 per share (the "Series A Preferred Shares"), is in all respects subject to and qualified in its entirety by reference to the applicable provisions of the Company's Articles of Incorporation, including the Articles Supplementary applicable to the Series A Preferred Shares. The Company is authorized to issue 143,750 Series A Preferred Shares, 125,000 of which were issued and outstanding as of the date hereof.

With respect to the payment of dividends and amounts upon liquidation, the Series A Preferred Shares rank pari passu with the Series B Preferred Shares (discussed below) and with any other equity securities of the Company the terms of which provide that such equity securities rank on a parity with the Series A Preferred Shares and rank senior to the Common Stock and any other equity securities of the Company which by their terms rank junior to the Series A Preferred Shares. Dividends on the Series A Preferred Shares are cumulative from the date of original issue and are payable quarterly on or about the last day of February, May, August and November of each year commencing May 31, 1997, at the rate of 8 5/8% of the liquidation preference per annum (equivalent to \$86.25 per annum per share). Dividends on the Series A Preferred Shares will accrue whether or not the Company has earnings, whether or not there are funds legally available for the payment of such dividends and whether or not such dividends are declared. The Series

A Preferred Shares have a liquidation preference of \$1,000 per share, plus an amount equal to any accrued and unpaid dividends.

The Series A Preferred Shares are not redeemable prior to February 12, 2027. On and after February 12, 2027, the Series A Preferred Shares will be redeemable for cash at the option of the Company, in whole or in part, at \$1,000 per share, plus any accrued and unpaid dividends thereon to the date fixed for redemption. The redemption price (other than the portion thereof consisting of accrued and unpaid dividends) is payable solely out of the sale proceeds of other capital stock of the Company, which may include other series of Preferred Stock, and from no other source.

If dividends on the Series A Preferred Shares are in arrears for six or more quarterly periods, whether or not such quarterly periods are consecutive, holders of the Series A Preferred Shares (voting separately as a class with all other series of Preferred Stock upon which like voting rights have been conferred and are exercisable) will be entitled to vote for the election of two additional directors to serve on the Board of Directors of the Company until all dividend arrearages have been paid.

The Series A Preferred Shares are not convertible or exchangeable for any other property or securities of the Company. The Series A Preferred Shares are subject to certain restrictions on ownership intended to preserve the Company's status as a REIT for Federal income tax purposes.

### **Series B Preferred Shares**

The following description of the Company's 8% Series B Cumulative Redeemable Preferred Shares, par value \$.01 per share (the "Series B Preferred Shares"), is in all respects subject to and qualified in its entirety by reference to the applicable provisions of the Company's Articles of Incorporation, including the Articles Supplementary applicable to the Series B Preferred Shares. The Company is authorized to issue 6,900,000 Series B Preferred Shares, all of which were issued and outstanding as of the date hereof.

With respect to the payment of dividends and amounts upon liquidation, the Series B Preferred Shares rank *pari passu* with the Series A Preferred Shares and with any other equity securities of the Company the terms of which provide that such equity securities rank on a parity with the Series B Preferred Shares and rank senior to the Common Stock and any other equity securities of the Company which by their terms rank junior to the Series B Preferred Shares. Dividends on the Series B Preferred Shares are cumulative from the date of original issue and are payable quarterly on March 15, June 15, September 15 and December 15 of each year commencing December 15, 1997, at the rate of 8% of the \$25 liquidation preference per annum (equivalent to \$2.00 per annum per share). Dividends on the Series B Preferred Shares will accrue whether or not the Company has earnings, whether or not there are funds legally available for the payment of such dividends and whether or not such dividends are declared. The Series B Preferred Shares have a liquidation preference of \$25 per share, plus an amount equal to any accrued and unpaid dividends.

The Series B Preferred Shares are not redeemable prior to September 25, 2002. On and after September 25, 2002, the Series B Preferred Shares will be redeemable for cash at the option of the Company, in whole or in part, at \$25 per share, plus any accrued and unpaid dividends thereon to the date fixed for redemption. The redemption price (other than the portion thereof consisting of accrued and unpaid dividends) is payable solely out of the sale proceeds of other capital stock of the Company, which may include other series of preferred stock, and from no other source.

If dividends on the Series B Preferred Shares are in arrears for six or more quarterly periods, whether or not such quarterly periods are consecutive, holders of the Series B Preferred Shares (voting separately as a class with all other series of preferred stock upon which like voting rights have been conferred and are exercisable) will be entitled to vote for the election of two additional directors to serve on the Board of Directors of the Company until all dividend arrearages have been paid.

The Series B Preferred Shares are not convertible or exchangeable for any other property or securities of the Company. The Series B Preferred Shares are subject to certain restrictions on ownership intended to preserve the Company's status as a REIT for Federal income tax purposes.

## **Preferred Stock**

Under the Company's Articles of Incorporation, the Board of Directors may issue, without any further action by the stockholders, shares of capital stock in one or more series having such preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends, qualifications and terms and conditions of redemption as the Board of Directors may determine and as may be evidenced by Articles Supplementary to the Articles of Incorporation adopted by the Board of Directors.

Through its power to establish the preferences and rights of additional series of capital stock without further stockholder vote, the Board of Directors may afford the holders of any series of senior capital stock preferences, powers and rights, voting or otherwise, senior to the rights of holders of Common Stock. The issuance of any such senior capital stock could have the effect of delaying or preventing a change in control of the Company.

## **Warrants**

Beginning October 1, 2002, each Warrant entitles the holder thereof to purchase, at a purchase price per share of \$32.50, subject to adjustments relating to stock splits or the issuance of stock dividends, rights, options, warrants, convertible or exchangeable securities or distributions of securities (the "Purchase Price"), a number of shares of Common Stock less than or equal to the number of shares of such Common Stock so stated in each such Warrant. Alternatively, the holder of a Warrant may, at his election, opt to receive a number of shares of Common Stock equal to the quotient of (i) the value of the Warrant(s) exercised, where such value is calculated as the product of (a) the number of shares covered by the exercise of such Warrant(s) times (b) the excess of the fair market value per share of Common Stock over the Purchase Price divided by (ii) the fair value of a single share of Common Stock. The Warrants have not been approved for listing on any national securities exchange.

## **Classification of Board of Directors; Removal of Directors; Other Provisions**

The Company's Articles of Incorporation provide for the Board of Directors to be divided into three classes of directors, with each class to consist as nearly as possible of an equal number of directors. At each annual meeting of stockholders, the class of directors to be elected at such meeting will be elected for a three-year term, and the directors in the other two classes will continue in office. Because holders of Common Stock will have no right to cumulative voting for the election of directors, at each annual meeting of stockholders, the holders of a majority of the shares of Common Stock will be able to elect all of the successors of the class of directors whose term expires at that meeting.

The Articles of Incorporation also provide that, except for any directors who may be elected by holders of a class or series of capital stock other than Common Stock, directors may be removed only for cause and only by the affirmative vote of stockholders holding at least two-thirds of the votes entitled to be cast for the election of directors. Vacancies on the Board of Directors may be filled by the affirmative vote of the remaining directors.

These provisions may make it more difficult and time-consuming to change majority control of the Board of Directors of the Company and, thus, may reduce the vulnerability of the Company to an unsolicited proposal for the takeover of the Company or the removal of incumbent management. The Company's officers and directors are and will be indemnified under Maryland law, the Articles of Incorporation of the Company and the agreement of limited partnership of the Operating Partnership (the "Operating Partnership Agreement") against certain liabilities, including liabilities under the Securities Act. Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers or persons controlling the Company, the Company has been informed that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

## Certain Provisions Affecting Change of Control

**General.** Pursuant to the Company's Articles of Incorporation and the Maryland General Corporation Law (the "MGCL"), the Company cannot merge into or consolidate with another corporation or enter into a statutory share exchange transaction in which it is not the surviving entity or sell all or substantially all of the assets of the Company unless the Board of Directors adopts a resolution declaring the proposed transaction advisable and a majority of stockholders entitled to vote thereon (voting together as a single class) approve the transaction. In addition, the Operating Partnership Agreement requires that any such merger or sale of all or substantially all of the assets of the Operating Partnership be approved by a majority of the holders of Common Units (including Common Units owned by the Company).

**Maryland Business Combination and Control Share Statutes.** The MGCL establishes special requirements with respect to business combinations between Maryland corporations and interested stockholders unless exemptions are applicable. Among other things, the law prohibits for a period of five years a merger and other specified or similar transactions between a company and an interested stockholder and requires a super majority vote for such transactions after the end of the five-year period. The Company's Articles of Incorporation contain a provision exempting the Company from the requirements and provisions of the Maryland business combination statute. There can be no assurance that such provision will not be amended or repealed at any point in the future.

The MGCL also provides that control shares of a Maryland corporation acquired in a control share acquisition have no voting rights except to the extent approved by a vote of two-thirds of the votes entitled to be cast on the matter, excluding shares owned by the acquiror or by officers or directors who are employees of the Company. The control share acquisition statute does not apply to shares acquired in a merger, consolidation or share exchange if the Company is a party to the transaction, or to acquisitions approved or exempted by the Articles of Incorporation or bylaws of the Company. The Company's bylaws contain a provision exempting from the control share acquisition statute any and all acquisitions by any person of the Company's stock. There can be no assurance that such provision will not be amended or repealed, in whole or in part, at any point in the future.

The Company's Articles of Incorporation (including the provision exempting the Company from the Maryland business combination statute) may not be amended without the affirmative vote of at least a majority of the shares of capital stock outstanding and entitled to vote thereon voting together as a single class, provided that certain provisions of the Articles of Incorporation may not be amended without the approval of the holders of two-thirds of the shares of capital stock of the Company outstanding and entitled to vote thereon voting together as a single class. The Company's bylaws may be amended by the Board of Directors or a majority of the shares cast of capital stock entitled to vote thereupon at a duly constituted meeting of stockholders.

If either of the foregoing exemptions in the Articles of Incorporation or bylaws is amended, the Maryland business combination statute or the control share acquisition statute could have the effect of discouraging offers to acquire the Company and of increasing the difficulty of consummating any such offer.

**Ownership Limitations and Restrictions on Transfers.** For the Company to remain qualified as a REIT under the Code, not more than 50% in value of its outstanding shares of capital stock may be owned, directly or indirectly, by five or fewer individuals (defined in the Code to include certain entities) during the last half of a taxable year, and such shares must be beneficially owned by 100 or more persons during at least 335 days of a taxable year of 12 months or during a proportionate part of a shorter taxable year. To ensure that the Company remains a qualified REIT, the Articles of Incorporation provide that no holder (other than persons approved by the directors at their option and in their discretion) may own, or be deemed to own by virtue of the attribution provisions of the Code, more than 9.8% (the "Ownership Limit") of the issued and outstanding capital stock of the Company. The Board of Directors may waive the Ownership Limit if evidence satisfactory to the Board of Directors and the Company's tax counsel is presented that the changes in ownership will not jeopardize the Company's status as a REIT.

If any stockholder purports to transfer shares to a person and either the transfer would result in the Company failing to qualify as a REIT, or the stockholder knows that such transfer would cause the transferee to hold more than the Ownership Limit, the purported transfer shall be null and void, and the stockholder will be deemed not to have transferred the shares. In addition, if any person holds shares of capital stock in excess of the Ownership Limit, such person will be deemed to hold the excess shares in trust for the Company, will not receive distributions with respect to such shares and will not be entitled to vote such shares. The person will be required to sell such shares to the Company for the lesser of the amount paid for the shares or the average closing price for the 10 trading days immediately preceding the redemption or to sell such shares at the direction of the Company, in which case the Company will be reimbursed for its expenses in connection with the sale and will receive any amount of such proceeds that exceeds the amount such person paid for the shares. If the Company repurchases such shares, it may pay for the shares with Common Units. The foregoing restrictions on transferability and ownership will not apply if the Board of Directors and the stockholders (by the affirmative vote of the holders of two-thirds of the outstanding shares of capital stock entitled to vote on the matter) determine that it is no longer in the best interests of the Company to continue to qualify as a REIT.

All certificates representing shares of capital stock bear a legend referring to the restrictions described above.

Every beneficial owner of more than 5% (or such lower percentage as required by the Code or regulations thereunder) of the issued and outstanding shares of capital stock must file a written notice with the Company no later than January 30 of each year, containing the name and address of such beneficial owner, the number of shares of Common Stock and/or Preferred Stock owned and a description of how the shares are held. In addition, each stockholder shall be required upon demand to disclose to the Company in writing such information as the Company may request in order to determine the effect of such stockholder's direct, indirect and constructive ownership of such shares on the Company's status as a REIT.

These ownership limitations could have the effect of precluding acquisition of control of the Company by a third party unless the Board of Directors and the stockholders determine that maintenance of REIT status is no longer in the best interest of the Company.

**Operating Partnership Agreement.** The Operating Partnership Agreement requires that any merger (unless the surviving entity contributes substantially all of the assets of the Operating Partnership for Common Units) or sale of all or substantially all of the assets of the Operating Partnership be approved by a majority of the holders of Common Units (including Common Units owned by the Company). The Operating Partnership Agreement also contains provisions relating to a limited partner's redemption right in the event of certain changes of control of the Company and under certain circumstances allows for limited partners to continue to hold Common Units in the Operating Partnership following such a change of control, thereby maintaining the tax basis in their Common Units. The covered changes of control (each, a "Trigger Event") are: (i) a merger involving the company in which the Company is not the surviving entity; (ii) a merger involving the Company in which the Company is the survivor but all or part of the Company's shares are converted into securities of another entity or the right to receive cash; and (iii) the transfer by the Company to another entity of substantially all of the assets or earning power of the Company or the Operating Partnership.

Upon occurrence of a Trigger Event, the rights of a limited partner to receive a share of the Company's common stock (a "REIT Share") or cash equal to the fair market value of a REIT Share upon redemption of a Common Unit is converted into the right to receive a share (a "Replacement Share") or cash equal to the fair market value thereof of the acquiror or a parent of the acquiror. If the acquiror does not have publicly traded securities and a parent of the acquiror does, the publicly traded equity securities of the parent entity with the highest market capitalization will be the Replacement Shares. If neither the acquiror nor any parent has publicly traded equity securities, the Replacement Shares will be the equity securities of the entity with the highest market capitalization. The number of Replacement Shares to be received by a limited partner (or to be used to calculate the cash payment due) upon a redemption of Common Units shall be equal to the number of REIT Shares issuable prior to the Trigger Event multiplied by (i) the number of Replacement Shares the holder of a single REIT Share would have received as a result of the Trigger Event or, if the Replacement Shares have not been publicly traded for one year, (ii) a fraction, the numerator of which is the Average

Trading Price (as defined in the Operating Partnership Agreement) of a REIT Share as of the Trigger Event and the denominator of which is the Average Trading Price of a Replacement Share as of the Trigger Event.

If the acquiror in a Trigger Event is a REIT, it must make provision to preserve an operating partnership structure with terms no less favorable to the limited partners than currently in place. In addition, the Operating Partnership Agreement provides that, if a distribution of cash or property is made in respect of a Replacement Share, the Operating Partnership will distribute the same amount in respect of a Common Unit as would have been received by a limited partner had such partner's Common Units been redeemed for Replacement Shares prior to such distribution.

Because the Operating Partnership Agreement requires an acquiror to make provision under certain circumstances to maintain the Operating Partnership structure and maintain a limited partner's right to continue to hold Common Units with future redemption rights, the terms of the Operating Partnership Agreement could also have the effect of discouraging a third party from making an acquisition proposal for the Company.

These provisions of the Operating Partnership Agreement may only be waived or amended upon the consent of limited partners holding at least 75% of the Common Units (excluding those held by the Company).

**Shareholders Rights Plan.** On October 4, 1997, the Company's Board of Directors adopted a Shareholders Rights Plan and declared a distribution of one preferred share purchase right (a "Right") for each outstanding share of Common Stock. The Rights were issued on October 16, 1997 to each shareholder of record on such date. The Rights have certain anti-takeover effects. The Rights will cause substantial dilution to a person or group that attempts to acquire the Company on terms not approved by the Company's Board of Directors. The Rights should not interfere with any merger or other business combination approved by the Board of Directors since the Rights may be redeemed by the Company for \$.01 per Right prior to the time that a person or group has acquired beneficial ownership of 15% or more of the Common Stock.

### **Registrar and Transfer Agent**

The Registrar and Transfer Agent for the Common Stock and all shares of Preferred Stock is First Union National Bank, Charlotte, North Carolina.

## **FEDERAL INCOME TAX CONSIDERATIONS**

The following summary of certain Federal income tax considerations to the Company is based on current law, is for general purposes only, and is not tax advice. The summary addresses the material Federal income tax considerations relating to the Company's REIT status, as well as material Federal income tax considerations relating to the Operating Partnership and the Company's stockholders. The federal income tax treatment of any investor in the Securities will vary depending upon such investor's particular situations.

EACH INVESTOR IS ADVISED TO CONSULT HIS OR HER OWN TAX ADVISOR REGARDING THE TAX CONSEQUENCES TO HIM OR HER OF THE PURCHASE, OWNERSHIP AND SALE OF THE SECURITIES, INCLUDING THE FEDERAL, STATE, LOCAL, FOREIGN AND OTHER TAX CONSEQUENCES OF SUCH PURCHASE, OWNERSHIP AND SALE AND OF POTENTIAL CHANGES IN APPLICABLE TAX LAWS.

### **Taxation of the Company as a REIT**

General. Commencing with its taxable year ended December 31, 1994, the Company has elected to be taxed as a real estate investment trust under Sections 856 through 860 of the Code. The Company believes that, commencing with its taxable year ended December 31, 1994, it has been organized and has operated in such a manner as to qualify for taxation as a REIT under the Code, and the Company intends to continue to operate in such a manner, but no assurance can be given that it has operated or will operate in a manner so as to qualify or remain qualified.



These sections of the Code are highly technical and complex. The following sets forth the material aspects of the sections that govern the Federal income tax treatment of a REIT and its stockholders. This summary is qualified in its entirety by the applicable Code provisions, rules and regulations promulgated thereunder, and administrative and judicial interpretation thereof.

Alston & Bird LLP has acted as tax counsel to the Company in connection with the offering of the Securities and the Company's election to be taxed as a REIT. Alston & Bird LLP is of the opinion that the Company has been organized and has operated in conformity with the requirements for qualification and taxation as a REIT under the Code for its taxable years ended December 31, 1994 through 1996, and that the Company is in a position to continue its qualification and taxation as a REIT within the definition of Section 856(a) of the Code for the taxable year ended December 31, 1997, and the taxable year that will end December 31, 1998. This opinion is based on factual representations of the Company concerning its business operations and its properties and Alston & Bird LLP has not independently verified these facts. In addition, the Company's qualification and taxation as a REIT at any time during the 1997 and 1998 years is dependent, among other things, upon its meeting the requirements of Section 856(a) of the Code throughout each of such years and for each year as a whole. Accordingly, because the Company's satisfaction of the REIT requirements for such years will depend upon future events, including precise terms and facts of proposed transactions, and the final determination of operational results, no assurance can be given that the actual results of the Company's operations for the taxable year ended December 31, 1997, or the taxable year that will end December 31, 1998, will satisfy the REIT requirements.

### **Federal Income Taxation of the Company**

If the Company qualifies for taxation as a REIT, it generally will not be subject to Federal corporate income tax on that portion of its ordinary income or capital gain that is currently distributed to stockholders. The REIT provisions of the Code generally allow a REIT to deduct distributions paid to its stockholders, substantially eliminating the Federal "double taxation" on earnings (once at the corporate level when earned and once again at the stockholder level when distributed) that usually results from investments in a corporation. Nevertheless, the Company will be subject to Federal income tax as follows. First, the Company will be taxed at regular corporate rates on its undistributed REIT taxable income, including undistributed net capital gains. Second, under certain circumstances, the Company may be subject to the "alternative minimum tax" as a consequence of its items of tax preference. Third, if the Company has net income from the sale or other disposition of "foreclosure property" that is held primarily for sale to customers in the ordinary course of business or other non-qualifying income from foreclosure property, it will be subject to tax at the highest corporate rate on such income. Fourth, if the Company has net income from prohibited transactions (which are, in general, certain sales or other dispositions of property other than foreclosure property held primarily for sale to customers in the ordinary course of business), such income will be subject to a 100% tax. Fifth, if the Company should fail to satisfy either of the 75% or 95% gross income tests (discussed below) but has nonetheless maintained its qualification as a REIT because certain other requirements have been met, it will be subject to a 100% tax on the net income attributable to the greater of the amount by which the Company fails either the 75% or 95% test, multiplied by a fraction intended to reflect the Company's profitability. Sixth, if the Company fails to distribute during each year at least the sum of (i) 85% of its ordinary income for such year, (ii) 95% of its capital gain net income for such year, and (iii) any undistributed taxable income from prior periods, the Company will be subject to a 4% excise tax on the excess of such required distribution over the amounts actually distributed. Seventh, if the Company should acquire any asset from a C corporation (i.e., a corporation generally subject to full corporate-level tax) in a carryover-basis transaction and the Company subsequently recognizes gain on the disposition of such asset during the 10-year period (the "Recognition Period") beginning on the date on which the asset was acquired by the Company, then, to the extent of the excess of (a) the fair market value of the asset as of the beginning of the applicable Recognition Period over (b) the Company's adjusted basis in such asset as of the beginning of such Recognition Period (the "Built-In Gain"), such gain will be subject to tax at the highest regular corporate rate, pursuant to guidelines issued by the Internal Revenue Service ("IRS") (the "Built-In Gain Rules").

## Requirements for Qualification

To qualify as a REIT, the Company must elect to be so treated and must meet the requirements, discussed below, relating to the Company's organization, sources of income, and nature of assets.

**Organizational Requirements.** The Code defines a REIT as a corporation, trust or association: (i) that is managed by one or more trustees or directors, (ii) the beneficial ownership of which is evidenced by transferable shares or by transferable certificates of beneficial interest, (iii) that would be taxable as a domestic corporation but for the REIT requirements, (iv) that is neither a financial institution nor an insurance company subject to certain provisions of the Code, (v) the beneficial ownership of which is held by 100 or more persons, (vi) during the last half of each taxable year, not more than 50% in value of the outstanding stock of which is owned, directly or indirectly, through the application of certain attribution rules, by five or fewer individuals (as defined in the Code to include certain entities), (vii) files an election to be taxed as a REIT on its return for each taxable year, and (viii) satisfies the 95% and 75% income tests and the 75%, 25%, 10%, and 5% asset tests, as described below. The Code provides that conditions (i) through (iv), inclusive, must be met during the entire taxable year and that condition (v) must be met during at least 335 days of a taxable year of 12 months or during a proportionate part of a taxable year of less than 12 months. For purposes of condition (v), certain pension funds and other tax-exempt entities are treated as persons. For purposes of condition (vi), the beneficiaries of a pension or profit-sharing trust under section 401(a) of the Code are treated as REIT stockholders. In addition, the Company's Articles of Incorporation currently include certain restrictions regarding transfer of its Common Stock, which restrictions are intended (among other things) to assist the Company in continuing to satisfy conditions (v) and (vi) above.

In the case of a REIT that is a partner in a partnership, Treasury Regulations provide that the REIT will be deemed to own its proportionate share of the assets of the partnership and will be deemed to be entitled to the income of the partnership attributable to such share. In addition, the character of the assets and gross income of the partnership retain the same character in the hands of the REIT for purposes of Section 856 of the Code, including satisfying the gross income tests and asset tests. Thus, the Company's proportionate share of the assets, liabilities, and items of income of the Operating Partnership (including the Operating Partnership's share of the assets, liabilities, and items of income with respect to any partnership in which it holds an interest) will be treated as assets, liabilities, and items of income of the Company for purposes of applying the requirements described herein.

**Income Tests.** In order to maintain qualification as a REIT, the Company annually must satisfy two gross income requirements. First, at least 75% of the Company's gross income (excluding gross income from prohibited transactions) for each taxable year must be derived directly or indirectly from investments relating to real property, including investments in other REITs or mortgages on real property (including "rents from real property" and, in certain circumstances, interest). Second, at least 95% of the Company's gross income (excluding gross income from prohibited transactions) for each taxable year must be derived from such real property investments, dividends, interest, and gain from the sale or disposition of stock or securities (or from any combination of the foregoing). In addition, for taxable years ended on or before December 31, 1997, short-term gain from the sale or other disposition of stock or securities, gain from prohibited transactions and gain on the sale or other disposition of real property held for less than four years (apart from involuntary conversions and sales of foreclosure property) must represent less than 30% of the Company's gross income (including gross income from prohibited transactions). The Taxpayer Relief Act of 1997, enacted August 5, 1997 ("Taxpayer Relief Act"), repeals the 30% gross income test for taxable years beginning after August 5, 1997. Accordingly, the 30% gross income test will not apply to the Company beginning with its taxable year that will end December 31, 1998.

Rents received by the Company will qualify as "rents from real property" in satisfying the gross income requirements for a REIT described above only if several conditions are met. First, the amount of rent must not be based in whole or in part on the income or profits of any person but can be based on a fixed percentage of gross receipts or gross sales. Second, "rents from real property" excludes any amount received directly or indirectly from any tenant if the Company, or an owner of 10% or more of the Company, directly or constructively, owns 10% or more of such tenant taking into consideration the applicable attribution rules (a "Related Party Tenant"). Third, rent attributable to personal

property is excluded from "rents from real property" except where such personal property is leased in connection with a lease of real property and the rent attributable to such personal property is less than or equal to 15% of the total rent received under the lease. Finally, amounts that are attributable to services furnished or rendered in connection with the rental of real property, whether or not separately stated, will not constitute "rents from real property" unless such services are customarily provided in the geographic area. Customary services that are not provided to a particular tenant (e.g., furnishing heat and light, the cleaning of public entrances, and the collection of trash) can be provided directly by the Company. Where, on the other hand, such services are provided primarily for the convenience of the tenants and are provided to such tenants, such services must be provided by an independent contractor. In the event that an independent contractor provides such services, the Company must adequately compensate the independent contractor, the Company must not derive any income from the independent contractor, and neither the independent contractor nor certain of its shareholders may, directly or indirectly, own more than 35% of the Company, taking into consideration the applicable ownership rules. Pursuant to the Taxpayer Relief Act and beginning with the Company's taxable year that will end December 31, 1998, the Company's rental income will not cease to qualify as "rents from real property" merely because the Company performs a de minimis amount of impermissible services to the tenants. For purposes of the preceding sentence, (i) the amount of income received from such impermissible services cannot exceed one percent of all amounts received or accrued during such taxable year, directly or indirectly, by the Company with respect to such property and (ii) the amount treated as received by the Company for such impermissible services cannot be less than 150 percent of the direct cost of the Company in furnishing or rendering such services.

The Company does not currently charge and does not anticipate charging rent that is based in whole or in part on the income or profits of any person. The Company also does not anticipate either deriving rent attributable to personal property leased in connection with real property that exceeds 15% of the total rents or receiving rent from Related Party Tenants.

The Operating Partnership does provide certain services with respect to the Properties. The Company believes that the services with respect to the Properties that are and will be provided directly are usually or customarily rendered in connection with the rental of space for occupancy only and are not otherwise rendered to particular tenants and, therefore, that the provision of such services will not cause rents received with respect to the Properties to fail to qualify as rents from real property. Services with respect to the Properties that the Company believes may not be provided by the Company or the Operating Partnership directly without jeopardizing the qualification of rent as "rents from real property" are and will be performed by independent contractors.

The Operating Partnership and the Company receive fees in consideration of the performance of property management and brokerage and leasing services with respect to certain Properties not owned entirely by the Operating Partnership. Such fees will not qualify under the 75% or the 95% gross income test. The Operating Partnership also may receive certain other types of income with respect to the properties it owns that will not qualify for either of these tests. In addition, dividends on the Operating Partnership's stock in Highwoods Services will not qualify under the 75% gross income test. The Company believes, however, that the aggregate amount of such fees and other non-qualifying income in any taxable year will not cause the Company to exceed the limits on non-qualifying income under either the 75% or the 95% gross income test.

If the Company fails to satisfy one or both of the 75% or 95% gross income tests for any taxable year, it may nevertheless qualify as a REIT for that year if it is eligible for relief under a certain provision of the Code. This relief provision generally will be available if (i) the Company's failure to meet these tests was due to reasonable cause and not due to willful neglect, (ii) the Company attaches a schedule of the nature and amount of each item of income to its Federal income tax return and (iii) the inclusion of any incorrect information on such schedule is not due to fraud with intent to evade tax. It is not possible, however, to state whether in all circumstances the Company would be entitled to the benefit of this relief provision. For example, if the Company fails to satisfy the gross income tests because non-qualifying income that the Company intentionally incurs exceeds the limits on such income, the IRS could conclude that the Company's failure to satisfy the tests was not due to reasonable cause. As discussed above in " - Federal Income Taxation of the Company," even if this relief provision applies, a 100% tax would be imposed with respect to the portion of the Company's taxable income that fails the 75% or 95% gross income test.

**Asset Tests.** At the close of each quarter of its taxable year, the Company also must satisfy four tests relating to the nature and diversification of its assets. First, at least 75% of the value of the Company's total assets must be represented by real estate assets, cash and cash items (including receivables), and government securities. Second, no more than 25% of the value of the Company's total assets may be represented by securities other than those in the 75% asset class. Third, not more than 5% of the value of the Company's assets may consist of securities of any one issuer (other than those securities includible in the 75% asset test). Fourth, not more than 10% of the outstanding voting securities of any one issuer may be held by the Company (other than those securities includible in the 75% asset test).

The 5% test generally must be met for any quarter in which the Company acquires securities of an issuer. Thus, this requirement must be satisfied not only on the date on which the Company through the Operating Partnership acquired the securities of Highwoods Services, but also each time the Company increases its ownership of its respective securities (including as a result of increasing its interest in the Operating Partnership as limited partners exercise their redemption rights). Although the Company plans to take steps to ensure that it satisfies the 5% value test for any quarter with respect to which retesting is to occur, there can be no assurance that such steps will always be successful or will not require a reduction in the Company's overall interest in Highwoods Services.

The Operating Partnership owns 100% of the nonvoting stock and 1% of the voting stock of Highwoods Services, and by virtue of its ownership of Common Units, the Company will be considered to own its pro rata share of such stock. See "The Company and the Operating Partnership." Neither the Company nor the Operating Partnership, however, will own more than 1% of the voting securities of Highwoods Services. In addition, the Company and its senior management do not believe that the Company's pro rata share of the value of the securities of Highwoods Services exceeds 5% of the total value of the Company's assets. The Company's belief is based in part upon its analysis of the estimated value of the securities of Highwoods Services owned by the Operating Partnership relative to the estimated value of the other assets owned by the Operating Partnership. No independent appraisals will be obtained to support this conclusion, and Alston & Bird LLP, in rendering its opinion as to the qualification and taxation of the Company as a REIT, is relying on the conclusions of the Company and its senior management as to the value of the securities of Highwoods Services. There can be no assurance, however, that the IRS might not contend that the value of such securities held by the Company (through the Operating Partnership) exceeds the 5% value limitation.

After initially meeting the asset tests at the close of any quarter, the Company will not lose its status as a REIT for failure to satisfy the asset tests at the end of a later quarter solely by reason of changes in asset values. If the failure to satisfy the asset tests results from an acquisition of securities or other property during a quarter, the failure can be cured by disposition of sufficient non-qualifying assets within 30 days after the close of that quarter. The Company intends to maintain adequate records of the value of its assets to ensure compliance with the asset tests and to take such other actions within 30 days after the close of any quarter as may be required to cure any noncompliance.

### **Annual Distribution Requirements**

In order to be taxed as a REIT, the Company is required to make distributions (other than capital gain distributions) to its stockholders in an amount at least equal to (a) the sum of (i) 95% of the Company's "REIT taxable income" (computed without regard to the dividends-paid deduction and the Company's capital gain) and (ii) 95% of the net income, if any, from foreclosure property in excess of the special tax on income from foreclosure property, minus (b) the sum of certain items of non-cash income. Such distributions must be paid in the taxable year to which they relate. Dividends paid in the subsequent year, however, will be treated as if paid in the prior year for purposes of such prior year's 95% distribution requirement if one of the following two sets of criteria are satisfied: (i) the dividends were declared in October, November, or December, the dividends were payable to stockholders of record on a specified date in such a month, and the dividends were actually paid during January of the subsequent year; or (ii) the dividends were declared before the Company timely files its Federal income tax return for such year, the dividends were distributed in the twelve month period following the close of the prior year and not later than the first regular dividend payment after such declaration, and the Company elected on its Federal income tax return for the prior year to have a specified amount of the subsequent dividend treated as if paid in the prior year. Even if the Company satisfies the foregoing distribution requirements, the Company will be subject to tax thereon at regular capital gains or ordinary corporate tax rates to the

extent that it does not distribute all of its net capital gain or "REIT taxable income" as adjusted. Furthermore, if the Company should fail to distribute during each calendar year at least the sum of (a) 85% of its ordinary income for that year, (b) 95% of its capital gain net income for that year, and (c) any undistributed taxable income from prior periods, the Company would be subject to a 4% excise tax on the excess of such required distribution over the amounts actually distributed. In addition, during its Recognition Period, if the Company disposes of any asset subject to the Built-In Gain Rules, the Company will be required, pursuant to guidance issued by the IRS, to distribute at least 95% of the Built-In Gain (after tax), if any, recognized on the disposition of the asset.

The Company intends to make timely distributions sufficient to satisfy the annual distribution requirements. In this regard, the Operating Partnership Agreement authorizes the Company, as general partner, to take such steps as may be necessary to cause the Operating Partnership to distribute to its partners an amount sufficient to permit the Company to meet these distribution requirements.

It is expected that the Company's REIT taxable income will be less than its cash flow due to the allowance of depreciation and other non-cash charges in computing REIT taxable income. Accordingly, the Company anticipates that it generally will have sufficient cash or liquid assets to enable it to satisfy the 95% distribution requirement. It is possible, however, that the Company, from time to time, may not have sufficient cash or other liquid assets to meet the 95% distribution requirement or to distribute such greater amount as may be necessary to avoid income and excise taxation. In such event, the Company may find it necessary to arrange for borrowings or, if possible, pay taxable stock dividends in order to meet the distribution requirement.

In the event that the Company is subject to an adjustment to its REIT taxable income (as defined in Section 860(d)(2) of the Code) resulting from an adverse determination by either a final court decision, a closing agreement between the Company and the IRS under Section 7121 of the Code, or an agreement as to tax liability between the Company and an IRS district director, the Company may be able to rectify any resulting failure to meet the 95% annual distribution requirement by paying "deficiency dividends" to stockholders that relate to the adjusted year but that are paid in a subsequent year. To qualify as a deficiency dividend, the distribution must be made within 90 days of the adverse determination and the Company also must satisfy certain other procedural requirements. If the statutory requirements of Section 860 of the Code are satisfied, a deduction is allowed for any deficiency dividend subsequently paid by the Company to offset an increase in the Company's REIT taxable income resulting from the adverse determination. The Company, however, will be required to pay statutory interest on the amount of any deduction taken for deficiency dividends to compensate for the deferral of the tax liability.

### **Failure to Qualify**

If the Company fails to qualify for taxation as a REIT in any taxable year and the relief provisions do not apply, the Company will be subject to tax (including any applicable alternative minimum tax) on its taxable income at regular corporate rates. Distributions to stockholders in any year in which the Company fails to qualify will not be deductible by the Company nor will they be required to be made. In such event, to the extent of positive current and accumulated earnings and profits, all distributions to stockholders will be dividends, taxable as ordinary income, except that, subject to certain limitations of the Code, corporate distributees may be eligible for the dividends-received deduction. Unless the Company is entitled to relief under specific statutory provisions, the Company also will be disqualified from taxation as a REIT for the four taxable years following the year during which qualification was lost. It is not possible to state whether in all circumstances the Company would be entitled to such statutory relief. For example, if the Company fails to satisfy the gross income tests because non-qualifying income that the Company intentionally incurs exceeds the limit on such income, the IRS could conclude that the Company's failure to satisfy the tests was not due to reasonable cause.

### **Taxation of U.S. Stockholders**

As used herein, the term "U.S. Stockholder" means a holder of Common Stock that (for Federal income tax purposes) (a) is a citizen or resident of the United States, (b) is a corporation or partnership (including an entity treated as a corporation or partnership for United States Federal income tax purposes) created or organized in or under the laws

of the United States or of any political subdivision thereof, (c) is an estate, the income of which is subject to Federal income taxation regardless of its source, or (d) any trust if a court within the United States is able to exercise primary supervision over the administration of the trust, and one or more United States persons have the authority to control all substantial decisions of the trust. For any taxable year for which the Company qualifies for taxation as a REIT, amounts distributed to taxable U.S. Stockholders will be taxed as discussed below.

**Distributions Generally.** Distributions to U.S. Stockholders, other than capital gain dividends discussed below, will constitute dividends up to the amount of the Company's positive current and accumulated earnings and profits and, to that extent, will be taxable to the U.S. Stockholders as ordinary income. These distributions are not eligible for the dividends-received deduction for corporations. To the extent that the Company makes a distribution in excess of its positive current and accumulated earnings and profits, the distribution will be treated first as a tax-free return of capital, reducing the tax basis in the U.S. Stockholder's Common Stock, and then the distribution in excess of such basis will be taxable as gain realized from the sale of its Common Stock. Dividends declared by the Company in October, November, or December of any year payable to a U.S. Stockholder of record on a specified date in any such month shall be treated as both paid by the Company and received by the stockholders on December 31 of the year, provided that the dividends are actually paid by the Company during January of the following calendar year. U.S. Stockholders are not allowed to include on their own Federal income tax returns any tax losses of the Company.

The Company will be treated as having sufficient earnings and profits to treat as a dividend any distribution by the Company up to the amount required to be distributed in order to avoid imposition of the 4% excise tax discussed in "  
- Federal Income Taxation of the Company" above.

**Capital Gain Distributions.** Distributions to U.S. Stockholders that are properly designated by the Company as capital gain distributions will be treated as long-term capital gains (to the extent they do not exceed the Company's actual net capital gain) for the taxable year without regard to the period for which the U.S. Stockholder has held his or her stock. However, corporate stockholders may be required to treat up to 20% of certain capital gain dividends as ordinary income. Capital gain dividends are not eligible for the dividends-received deduction for corporations.

Pursuant to the Taxpayer Relief Act and beginning with the Company's taxable year that will end December 31, 1998, the Company may elect to retain and pay income tax on net long-term capital gain that it received during the tax year. If such election is made, (i) the U.S. Stockholders will include in their income their proportionate share of the undistributed long-term capital gains as designated by the Company; (ii) the U.S. Stockholders will be deemed to have paid their proportionate share of the tax, which would be credited or refunded to such stockholders, and (iii) the basis of the U.S. Stockholders' shares will be increased by the amount of the undistributed long-term capital gains (less the amount of capital gains tax paid by the Company) included in such stockholders' long-term capital gains.

As a result of the changes made to the capital gain rates by the Taxpayer Relief Act (See "-Certain Disposition of Shares"), the IRS recently issued Notice 97-64 outlining (i) when a REIT may designate its dividends as either a 20% rate gain distribution, an unrecaptured section 1250 gain distribution (taxed at 25% as noted below in "- Certain Disposition of Shares"), or a 28% rate gain distribution and (ii) how to calculate the amount of such distributions, which may be subject to certain deferral or bifurcation adjustments. When a REIT designates a distribution as a capital gain dividend, which is attributable to a taxable year ending after May 7, 1997, for purposes of the annual distribution requirement, the REIT also may designate such dividend as a 20% rate gain distribution, as unrecaptured section 1250 gain distribution, or a 28% rate gain distribution. Where no such designation is provided, the dividend will be treated as a 28% rate gain distribution. These additional designations by the REIT are effective only to the extent that they do not exceed certain limitations. For example, the maximum amount of each distribution that can be classified as either a 20% rate gain distribution, an unrecaptured section 1250 gain distribution, or a 28% rate gain distribution must be calculated in accordance with the Code and the IRS Notice.

**Passive Activity Loss and Investment Interest Limitations.** Distributions from the Company and gain from the disposition of Common Stock will not be treated as passive activity income and, therefore, U.S. Stockholders will not be able to apply any "passive losses" against such income. Dividends from the Company (to the extent they do not constitute a return of capital) generally will be treated as investment income for purposes of the investment interest

limitation. Net capital gain from the disposition of Common Stock or capital gain dividends generally will be excluded from investment income unless the U.S. Stockholder elects to have such gain taxed at ordinary income rates.

**Certain Dispositions of Shares.** In general, U.S. Stockholders will realize capital gain or loss on the disposition of Common Stock equal to the difference between (i) the amount of cash and the fair market value of any property received on such disposition, and (ii) such stockholders' adjusted basis in such Common Stock. Losses incurred on the sale or exchange of Common Stock held for less than six months (after applying certain holding period rules) will be deemed long-term capital loss to the extent of any capital gain dividends received by the selling U.S. Stockholder from those shares. As a result of the Taxpayer Relief Act, the maximum rate of tax on net capital gains on individuals, trusts, and estates from the sale or exchange of assets held for more than 18 months has been reduced to 20%, and such maximum rate is further reduced to 18% for assets acquired after December 31, 2000, and held for more than five years. For 15% percent bracket taxpayers, the maximum rate on net capital gains is reduced to 10%, and such maximum rate is further reduced to 8% for assets sold after December 31, 2000, and held for more than five years. The maximum rate for net capital gains attributable to the sale of depreciable real property held for more than 18 months is 25% to the extent of the deductions for depreciation with respect to such property. Long-term capital gain allocated to U.S. Stockholders by the Company will be subject to the 25% rate to the extent that the gain does not exceed depreciation on real property sold by the Company. The maximum rate of capital gains tax for capital assets held more than one year but not more than 18 months remains at 28%. The taxation of capital gains of corporations was not changed by the Taxpayer Relief Act.

**Treatment of Tax-Exempt Stockholders.** Distributions from the Company to a tax-exempt employee pension trust or other domestic tax-exempt stockholder generally will not constitute "unrelated business taxable income" ("UBTI") unless the stockholder has borrowed to acquire or carry its Common Stock. Qualified trusts that hold more than 10% (by value) of the shares of pension-held REITs may be required to treat a certain percentage of such a REIT's distributions as UBTI. This requirement will apply only if (i) the REIT would not qualify as such for Federal income tax purposes but for the application of a "look-through" exception to the five or fewer requirement applicable to shares held by qualified trusts and (ii) the REIT is "predominantly held" by qualified trusts. A REIT is predominantly held if either (i) at least one qualified trust holds more than 25% by value of the REIT interests or (ii) one or more qualified trusts, each owning more than 10% by value of the REIT interests, hold in the aggregate more than 50% of the REIT interests. The percentage of any REIT dividend treated as UBTI is equal to the ratio of (a) the UBTI earned by the REIT (treating the REIT as if it were a qualified trust and therefore subject to tax on UBTI) to (b) the total gross income (less certain associated expenses) of the REIT. In the event that this ratio is less than 5% for any year, then the qualified trust will not be treated as having received UBTI as a result of the REIT dividend. For these purposes, a qualified trust is any trust described in Section 401(a) of the Code and exempt from tax under Section 501(a) of the Code. The restrictions on ownership of Common Stock in the Articles of Incorporation generally will prevent application of the provisions treating a portion of REIT distributions as UBTI to tax-exempt entities purchasing Common Stock, absent a waiver of the restrictions by the board of directors.

### **Special Tax Considerations for Non-U.S. Stockholders**

The rules governing United States income taxation of non-resident alien individuals, foreign corporations, foreign partnerships, and foreign trusts and estates (collectively, "Non-U.S. Stockholders") are complex, and the following discussion is intended only as a summary of these rules. This discussion is based on current law, which is subject to change, and assumes that the Company qualifies for taxation as a REIT. Prospective Non-U.S. Stockholders should consult with their own tax advisors to determine the impact of Federal, state, local, and foreign income tax laws on an investment in the Company, including any reporting requirements.

A distribution by the Company that is not attributable to gain from the sale or exchange by the Company of a United States real property interest and that is not designated by the Company as a capital gain distribution will be treated as an ordinary income dividend to the extent that it is made out of current or accumulated earnings and profits of the Company. Generally, any ordinary income dividend will be subject to a Federal income tax equal to 30% of the gross amount of the dividend unless this tax is reduced by an applicable tax treaty. Such a distribution in excess of the Company's earnings and profits will be treated first as a return of capital that will reduce a Non-U.S. Stockholder's basis

in its Common Stock (but not below zero) and then as gain from the disposition of such shares, the tax treatment of which is described under the rules discussed below with respect to dispositions of Common Stock.

Distributions by the Company that are attributable to gain from the sale or exchange of a United States real property interest will be taxed to a Non-U.S. Stockholder under the Foreign Investment in Real Property Tax Act of 1980 ("FIRPTA"). Under FIRPTA, such distributions are taxed to a Non-U.S. Stockholder as if the distributions were gains "effectively connected" with a United States trade or business. Accordingly, a Non-U.S. Stockholder will be taxed at the normal capital gain rates applicable to a U.S. Stockholder (subject to any applicable alternative minimum tax and a special alternative minimum tax in the case of non-resident alien individuals). Distributions that are taxable under FIRPTA also may be subject to a 30% branch profits tax when made to a foreign corporation that is not entitled to an exemption or reduced branch profits tax rate under an income tax treaty.

Although tax treaties may reduce the Company's withholding obligations, the Company generally will be required to withhold from distributions to Non-U.S. Stockholders, and remit to the IRS, (i) 35% of designated capital gain dividends (or, if greater, 35% of the amount of any distributions that could be designated as capital gain dividends) and (ii) 30% of ordinary dividends paid out of earnings and profits. In addition, if the Company designates prior distributions as capital gain dividends, subsequent distributions, up to the amount of such prior distributions that were designated as capital gains dividends, will be treated as capital gain dividends for purposes of withholding. A distribution in excess of the Company's earnings and profits may be subject to 30% dividend withholding (unless such Non-U.S. Stockholder is entitled to a lower rate under an income tax treaty) or 10% FIRPTA withholding. If the amount of tax withheld by the Company with respect to a distribution to a Non-U.S. Stockholder exceeds the stockholder's United States tax liability with respect to such distribution, the Non-U.S. Stockholder may file for a refund of such excess from the IRS.

Unless the Common Stock constitutes a "United States real property interest" within the meaning of FIRPTA, a sale of Common Stock by a Non-U.S. Stockholder generally will not be subject to Federal income taxation. The Common Stock will not constitute a United States real property interest if the Company is a "domestically controlled REIT." A domestically controlled REIT is a REIT in which at all times during a specified testing period less than 50% in value of its shares is held directly or indirectly by Non-U.S. Stockholders. It currently is anticipated that the Company will be a domestically controlled REIT and, therefore, that the sale of Common Stock will not be subject to taxation under FIRPTA. However, because the Common Stock will be publicly traded, no assurance can be given that the Company will be a domestically controlled REIT. If the Company were not a domestically controlled REIT, a Non-U.S. Stockholder's sale of Common Stock would be subject to tax under FIRPTA as a sale of a United States real property interest unless the Common Stock were "regularly traded" on an established securities market (such as the New York Stock Exchange) on which the Common Stock will be listed and the selling stockholder owned no more than 5% of the Common Stock throughout the testing period. If the gain on the sale of Common Stock were subject to taxation under FIRPTA, the Non-U.S. Stockholder would be subject to the same treatment as a U.S. Stockholder with respect to the gain (subject to applicable alternative minimum tax and a special alternative minimum tax in the case of non-resident alien individuals). Notwithstanding the foregoing, capital gains not subject to FIRPTA will be taxable to a Non-U.S. Stockholder if the Non-U.S. Stockholder is a non-resident alien individual who is present in the United States for 183 days or more during the taxable year and certain other conditions apply, in which case the non-resident alien individual will be subject to a 30% tax on his or her U.S. source capital gains.

A purchaser of Common Stock from a Non-U.S. Stockholder will not be required to withhold under FIRPTA on the purchase price if the purchased Common Stock is "regularly traded" on an established securities market or if the Company is a domestically controlled REIT. Otherwise, the purchaser of Common Stock from a Non-U.S. Stockholder may be required to withhold 10% of the purchase price and remit this amount to the IRS. The Company's Common Stock currently is a regularly traded security on the New York Stock Exchange. The Company believes that it qualifies under both the regularly traded and the domestically controlled REIT exceptions to withholding but cannot provide any assurance to that effect.



## **Information Reporting Requirements and Backup Withholding Tax**

Under certain circumstances, U.S. Stockholders may be subject to backup withholding at a rate of 31% on payments made with respect to, or cash proceeds of a sale or exchange of, Common Stock. Backup withholding will apply only if (i) the payee fails to furnish his or her taxpayer identification number ("TIN") (which, for an individual, would be his or her Social Security Number) to the payor as required, (ii) the IRS notifies the payor that the taxpayer identification number furnished by the payee is incorrect, (iii) the IRS has notified the payee that such payee has failed to properly include reportable interest and dividends in the payee's return or has failed to file the appropriate return and the IRS has assessed a deficiency with respect to such underreporting, or (iv) the payee has failed to certify to the payor, under penalties of perjury, that the payee is not subject to withholding. In addition, backup withholding will not apply with respect to payments made to certain exempt recipients, such as corporations and tax-exempt organizations.

U.S. Stockholders should consult their own tax advisors regarding their qualifications for exemption from backup withholding and the procedure for obtaining such an exemption. Backup withholding is not an additional tax. Rather, the amount of any backup withholding with respect to a payment to a U.S. Stockholder will be allowed as a credit against the U.S. Stockholder's United States Federal income tax liability and may entitle the U.S. Stockholder to a refund, provided that the required information is furnished to the IRS.

Additional issues may arise pertaining to information reporting and backup withholding for Non-U.S. Stockholders. Non-U.S. Stockholders should consult their tax advisors with regard to U.S. information reporting and backup withholding.

## **Warrants**

Upon a holder's exercise of a Warrant, the holder will, in general, (i) not recognize any income, gain, or loss for federal income tax purposes, (ii) receive an initial tax basis in the Common Stock received equal to the sum of the holder's tax basis in the exercised Warrant and the exercise price paid for such Common Stock, and (iii) have a holding period for the Common Stock received beginning on the date of exercise. If a holder of a Warrant sells or otherwise disposes of such Warrant (other than by its exercise), the holder generally will recognize capital gain or loss equal to the difference between (i) the cash and fair market value of other property received and (ii) the holder's tax basis (on the date of disposition) in the Warrant sold. Such a holder generally will recognize a capital loss upon the expiration of an unexercised Warrant equal to the holder's tax basis in the Warrant on the expiration date. **HOLDERS OF WARRANTS PARTICIPATING IN STRADDLE TRANSACTIONS SHOULD CONSULT THEIR OWN TAX ADVISORS WITH RESPECT TO THE ADDITIONAL RULES THAT APPLY TO STRADDLE TRANSACTIONS.**

## **Tax Aspects of the Operating Partnership**

**General.** Substantially all of the Company's investments are held through the Operating Partnership. In general, partnerships are "pass-through" entities which are not subject to Federal income tax. Rather, partners are allocated their proportionate shares of the items of income, gain, loss, deduction, and credit of a partnership, and are potentially subject to tax thereon, without regard to whether the partners receive a distribution from the partnership. The Company includes in its income its proportionate share of the foregoing Operating Partnership items for purposes of the various REIT income tests and in the computation of its REIT taxable income. Moreover, for purposes of the REIT asset tests, the Company includes its proportionate share of assets held by the Operating Partnership.

**Tax Allocations with Respect to the Properties.** Pursuant to Section 704(c) of the Code, income, gain, loss, and deduction attributable to appreciated or depreciated property (such as the Properties) that is contributed to a partnership in exchange for an interest in the partnership, must be allocated in a manner such that the contributing partner is charged with, or benefits from the unrealized gain or unrealized loss, respectively, associated with the property at the time of the contribution. The amount of such unrealized gain or unrealized loss generally is equal to the difference between the fair market value of contributed property at the time of contribution and the adjusted tax basis of such property at the time of contribution (a "Book-Tax Difference"). Such allocations are solely for Federal income tax purposes and do not affect the book capital accounts or other economic or legal arrangements among the partners. The

Operating Partnership was formed by way of contributions of appreciated property (including the Properties). Consequently, the Operating Partnership Agreement requires such allocations to be made in a manner consistent with Section 704(c) of the Code.

In general, the partners who have contributed partnership interests in the Properties to the Operating Partnership (the "Contributing Partners") will be allocated lower amounts of depreciation deductions for tax purposes than such deductions would be if determined on a pro rata basis. In addition, in the event of the disposition of any of the contributed assets (including the Properties) that have a Book-Tax Difference, all taxable income attributable to such Book-Tax Difference generally will be allocated to the Contributing Partners, and the Company generally will be allocated only its share of capital gains attributable to appreciation, if any, occurring after the closing of the acquisition of such properties. This will tend to eliminate the Book-Tax Difference over the life of the Operating Partnership. However, the special allocation rules of Section 704 (c) of the Code do not always entirely eliminate the Book-Tax Difference on an annual basis or with respect to a specific taxable transaction such as a sale. Thus, the carryover basis of the contributed assets in the hands of the Operating Partnership will cause the Company to be allocated lower depreciation and other deductions and possibly amounts of taxable income in the event of a sale of such contributed assets in excess of the economic or book income allocated to it as a result of such sale. This may cause the Company to recognize taxable income in excess of cash proceeds, which might adversely affect the Company's ability to comply with the REIT distribution requirements. See " - Annual Distribution Requirements."

Treasury Regulations under Section 704(c) of the Code provide partnerships with a choice of several methods of accounting for Book-Tax Differences, including the "traditional method" that may leave some of the Book-Tax Differences unaccounted for, or the election of certain methods which would permit any distortions caused by a Book- Tax Difference at this time to be entirely rectified on an annual basis or with respect to a specific taxable transaction such as a sale. The Operating Partnership and the Company have determined to use the "traditional method" for accounting for Book-Tax Differences with respect to the Properties contributed to the Partnership. As a result of such determination, distributions to stockholders will be comprised of a greater portion of taxable income rather than a return of capital. The Operating Partnership and the Company have not determined which of the alternative methods of accounting for Book-Tax Differences will be elected with respect to Properties contributed to the Partnership in the future.

With respect to any property purchased by the Operating Partnership, such property initially will have a tax basis equal to its fair market value and Section 704(c) of the Code will not apply.

**Basis in Operating Partnership Interest.** The Company's adjusted tax basis in its interest in the Operating Partnership generally (i) will be equal to the amount of cash and the basis of any other property contributed to the Operating Partnership by the Company, (ii) will be increased by (a) its allocable share of the Operating Partnership's income and (b) its allocable share of indebtedness of the Operating Partnership and (iii) will be reduced, but not below zero, by the Company's allocable share of (a) losses suffered by the Operating Partnership, (b) the amount of cash distributed to the Company, and (c) constructive distributions resulting from a reduction in the Company's share of indebtedness of the Operating Partnership.

If the allocation of the Company's distributive share of the Operating Partnership's loss exceeds the adjusted tax basis of the Company's partnership interest in the Operating Partnership, the recognition of such excess loss will be deferred until such time and to the extent that the Company has an adjusted tax basis in its partnership interest. To the extent that the Operating Partnership's distributions, or any decrease in the Company's share of the indebtedness of the Operating Partnership (such decreases being considered a cash distribution to the partners) exceed the Company's adjusted tax basis, such excess distributions (including such constructive distributions) constitute taxable income to the Company. Such taxable income normally will be characterized as a capital gain if the Company's interest in the Operating Partnership has been held for longer than one year, subject to reduced tax rates described above (See " Taxation of U.S. Stockholders - Capital Gain Distributions"). Under current law, capital gains and ordinary income of corporations generally are taxed at the same marginal rates.

Sale of the Properties. The Company's share of gain realized by the Operating Partnership on the sale of any property held by the Operating Partnership as inventory or other property held primarily for sale to customers in the ordinary course of the Operating Partnership's trade or business will be treated as income from a prohibited transaction that is subject to a 100% penalty tax. See " - Requirements for Qualification - Income Tests." Such prohibited transaction income also may have an adverse effect upon the Company's ability to satisfy the income tests for qualification as a REIT. Under existing law, whether property is held as inventory or primarily for sale to customers in the ordinary course of the Operating Partnership's trade or business is a question of fact that depends on all the facts and circumstances with respect to the particular transaction. The Operating Partnership intends to hold the Properties for investment with a view to long-term appreciation, to engage in the business of acquiring, developing, owning, and operating the Properties (and other properties) and to make such occasional sales of the Properties, including peripheral land, as are consistent with the Operating Partnership's investment objectives.

### **Other Tax Considerations**

A portion of the amounts to be used to fund distributions to stockholders is expected to come from the Operating Partnership through distributions on stock of Highwoods Services held by the Operating Partnership. Highwoods Services will not qualify as a REIT and will pay Federal, state, and local income taxes on its taxable income at normal corporate rates. Any Federal, state, or local income taxes that Highwoods Services is required to pay will reduce the cash available for distribution by the Company to its stockholders.

As described above, the value of the securities of Highwoods Services held by the Company cannot exceed 5% of the value of the Company's assets at a time when a Common Unit holder in the Operating Partnership exercises his or her redemption right (or the Company otherwise is considered to acquire additional securities of Highwoods Services). See " - Federal Income Taxation of the Company." This limitation may restrict the ability of Highwoods Services to increase the size of its business unless the value of the assets of the Company is increasing at a commensurate rate.

### **State and Local Tax**

The Company and its stockholders may be subject to state and local tax in various states and localities, including those in which it or they transact business, own property, or reside. The tax treatment of the Company and the stockholders in such jurisdictions may differ from the Federal income tax treatment described above. Consequently, prospective stockholders should consult their own tax advisors regarding the effect of state and local tax laws on an investment in the Common Stock of the Company.

## **SELLING SECURITYHOLDERS**

This Prospectus relates to the offer and sale by the holders thereof from time to time of up to (i) 117,617 shares (the "Original Shares") of the Company's Common Stock; (ii) 2,972,524 shares (the "Redemption Shares") of Common Stock by which shares may be issued by the Company to the extent that holders of up to 2,972,524 Common Units exercise their right to redeem such Units and the Company elects to satisfy such redemption right through the issuance of Common Stock; (iii) 1,444,290 shares (the "Warrants Shares") of Common Stock issuable upon the exercise of up to 1,444,290 Warrants, which Warrants may be deemed to be held by affiliates of the Company; and (iv) 1,479,290 Warrants.

The Company has agreed to indemnify the Selling Securityholders against certain civil liabilities, including liabilities under the Securities Act of 1933, as amended (the "Securities Act"), or to contribute to payments the Selling Securityholders may be required to make in respect thereof. Insofar as indemnification of the Selling Securityholders for liabilities arising under the Securities Act may be permitted pursuant to such agreements, the Company has been informed that, in the opinion of the Commission, such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable.

Because the Selling Securityholders may offer all or some of the Securities, and because there are currently no agreements, arrangements or understandings with respect to the sale of any of the Securities that will be held by the Selling Securityholders after completion of the offering, no estimate can be given as to the principal amount of the Securities that will be held by the Selling Securityholders after completion of the offering.

The Selling Securityholders and any broker or dealer to or through whom any of the Securities are sold may be deemed to be underwriters within the meaning of the Securities Act with respect to the Securities offered hereby, and any profits realized by the Selling Securityholders or such brokers or dealers may be deemed to be underwriting commissions. Brokers' commissions and dealers' discounts, taxes and other selling expenses to be borne by the Selling Securityholders are not expected to exceed normal selling expenses for sales. The registration of the offering of the Securities by the selling Securityholders under the Securities Act shall not be deemed an admission by the Selling Securityholders or the Company that the Selling Securityholders are underwriters for purposes of the Securities Act of any Securities offered under this Prospectus.

The Securities offered by this Prospectus may be offered from time to time by the Selling Securityholders named below. The following table provides the name of each Selling Securityholder and the number of shares of Common Stock or Warrants beneficially owned and offered hereby by each Selling Securityholder. The number of shares of Common Stock provided in the following table includes the number of shares that may be acquired by each Selling Securityholder upon redemption of Units or upon exercise of Warrants.

The Securities offered by this Prospectus may be offered from time to time by the Selling Securityholders named below:

Name of Selling Securityholder -----	Number of Shares of Common Stock Owned Prior to Offering -----	Number of Shares of Common Stock offered hereby -----	Number of Warrants Owned prior to Offering -----	Number of Warrants offered hereby -----
James R. Heistand(1)	1,491,660(2)	1,491,660(2)	852,575	852,575
Allen C. de Olazarra(3)	835,350(2)	835,350(2)	488,165	488,165
Dale Johannes(3)	203,171(2)	203,171(2)	103,550	103,550
Karen Blakely	NA	NA	10,000	10,000
Mary L. Demetree	25,309	25,309	NA	NA
William G. Evans	1,539	1,539	NA	NA
Robert Turner	NA	NA	10,000	10,000
Mark Walsh	NA	NA	15,000	15,000
Starwood Capital Group	1,761,539(2)	1,761,539(2)	NA	NA
Starwood Exchange Partners, L.P.	215,863(2)	215,863(2)	NA	NA

(1) Executive officer. Company has agreed to name Mr. Heistand a director prior to October 7, 1998.

(2) Number of shares shown includes Redemption Shares that may be issued upon redemption of outstanding Units even if not currently redeemable and Warrant Shares issuable upon exercise of outstanding Warrants even if not currently exercisable.

(3) The Selling Securityholder's Redemption Shares and Warrant Shares are being registered hereby should such stockholder be deemed to be an underwriter under Rule 145 of the Securities Act or an affiliate. The Company disclaims that the Selling Securityholder is an underwriter or an affiliate of the Company.

## **PLAN OF DISTRIBUTION**

The sale or distribution of all or any portion of the Securities may be effected from time to time by the Selling Securityholders directly, indirectly through brokers or dealers or in a distribution by one or more underwriters on a firm commitment or best efforts basis, in the over-the-counter market, on any national securities exchange on which such Securities are listed or traded, in privately negotiated transactions or otherwise, at market prices prevailing at the time of sale, at prices related to such prevailing market prices or at negotiated prices. The Company will not receive any of the proceeds from the sale of the Securities.

The methods by which the Securities may be sold or distributed include, without limitation, (i) a block trade (which may involve crosses) in which the broker or dealer so engaged will attempt to sell the Shares as agent but may position and resell a portion of the block as principal to facilitate the transaction, (ii) purchases by a broker or dealer as principal and resale by such broker or dealer for its account pursuant to this Prospectus, (iii) exchange distributions and/or secondary distributions in accordance with the rules of the national securities exchange on which such Securities are listed, if any, (iv) ordinary brokerage transactions and transactions in which the broker solicits purchasers, (v) pro rata distributions as part of the liquidation and winding up of the affairs of the Selling Securityholders, and (vi) privately negotiated transactions.

The Company will pay all expenses in connection with the registration of the offering of the Securities by the Selling Securityholders. The Selling Securityholders will pay for any brokerage or underwriting commissions and taxes of any kind (including, without limitation, transfer taxes) with respect to any disposition, sale or transfer of the Securities.

Securities not sold pursuant to the registration statement on Form S-3 of which this Prospectus is a part (the "Registration Statement") may be subject to certain restrictions under the Securities Act and could be sold, if at all, only pursuant to Rule 144 or another exemption from the registration requirements of the Securities Act. In general, under Rule 144, a person (or persons whose Securities are aggregated) who has satisfied a one-year holding period may, under certain circumstances, sell within any three-month period a number of Securities which does not exceed the greater of one percent of the Company's outstanding Common Stock or the average weekly reported trading volume of the Company's Common Stock during the four calendar weeks prior to such sale. Rule 144 also permits, under certain circumstances, the sale of Securities by a person who is not an affiliate of the Company and who has satisfied a two-year holding period without any volume limitation.

Therefore, both during and after the effectiveness of the Registration Statement, sales of the Securities may be made by the Selling Securityholders pursuant to Rule 144.

## **EXPERTS**

The consolidated financial statements and schedule of Highwoods Properties, Inc., incorporated herein by reference from the Company's annual report (Form 10-K) for the year ended December 31, 1996, and of Highwoods/Forsyth Limited Partnership, incorporated herein by reference from the Operating Partnership's annual report (Form 10-K) for the year ended December 31, 1996, the statements of revenue and certain expenses of Shelton Properties, Riparius Properties, and Winners Circle for the year ended December 31, 1996 incorporated herein by reference from the Company's current report in Form 8-K dated November 17, 1997, the statements of revenue and certain expenses of Anderson Properties, Inc. and Century Center Group for the year ended December 31, 1996 incorporated herein by reference from the Company's current report on Form 8-K dated January 9, 1997 (as amended on Forms 8-K/A dated February 7, 1997 and March 10, 1997), the combined financial statements and schedule of Eakin & Smith as of and for the year ended December 31, 1995, incorporated by reference from the Company's current report on Form 8-K dated April 1, 1996 (as amended on Forms 8-K/A filed June 3, 1996 and June 18, 1996), and the Historical Summary of Gross Income and Direct Operating Expenses for certain properties owned by Towermarc Corporation for

the year ended December 31, 1995, incorporated herein by reference from the Company's Current Report on Form 8-K dated April 29, 1996 (as amended on Forms 8-K/A filed June 3, 1996 and June 18, 1996), have been audited by Ernst & Young LLP, independent auditors, as set forth in their reports thereon included therein and incorporated herein by reference. Such financial statements are incorporated herein by reference in reliance upon such reports given upon the authority of such firm as experts in accounting and auditing.

The combined statement of revenue and certain operating expenses of the Associated Capital Properties Portfolio for the year ended December 31, 1996, and the combined statement of revenue and certain operating expenses of the 1997 Pending Acquisitions for the year ended December 31, 1996, incorporated by reference herein from the Company's current reports on Form 8-K dated August 27, 1997 (as amended on September 23, 1997), and October 1, 1997, have been so incorporated in reliance upon the reports of Coopers & Lybrand L.L.P., independent accountants, given on the authority of said firm as experts in accounting and auditing.

The consolidated financial statements of Crocker Realty Trust, Inc. as of December 31, 1995 and for the year then ended, the financial statements of Crocker & Sons, Inc. as of December 31, 1994 and for the year then ended, and the financial statements of Crocker Realty Investors, Inc. as of December 31, 1994 and 1993, and for each of the years in the two year period ended December 31, 1994, have been incorporated by reference herein from the Company's current report on Form 8-K dated April 29, 1996 (as amended on Forms 8-K/A filed June 3, 1996 and June 18, 1996), in reliance upon the reports of KPMG Peat Marwick LLP, independent certified public accountants, incorporated by reference herein, and upon the authority of said firm as experts in accounting and auditing.

The combined financial statements of Southeast Realty Corp., AP Southeast Portfolio Partners, L.P. and AP Fontaine III Partners, L.P. for the year ended December 31, 1994 incorporated herein by reference from the Company's current report on Form 8-K dated April 29, 1996 (as amended on Forms 8-K/A filed June 3, 1996 and June 18, 1996), have been audited by Deloitte & Touche LLP, independent auditors, as set forth in their reports thereon included therein and incorporated herein by reference and are included in reliance upon the reports of such firm given upon their authority as experts in accounting and auditing.

The financial statements of AP Southeast Portfolio Partners, L.P. for the period from its date of inception (November 17, 1993) through December 31, 1993 incorporated herein by reference from the Company's current report on Form 8-K dated April 29, 1996 (as amended on Forms 8-K/A filed June 3, 1996 and June 18, 1996), have been so included in reliance on the reports of Price Waterhouse LLP, independent accountants, given on the authority of said firm as experts in auditing and accounting.

## **LEGAL MATTERS**

Certain legal matters have been passed upon for the Company by Alston & Bird LLP, Raleigh, North Carolina. In addition, Alston & Bird LLP has rendered its opinion with respect to certain Federal income tax matters relating to the Company.

## PART II

### SUPPLEMENTAL INFORMATION

#### ITEM 14. OTHER EXPENSES OF ISSUANCE AND DISTRIBUTION

The following table sets forth estimates of the various expenses to be paid by Highwoods Properties, Inc. (the "Company") in connection with the registration of the offering of the Securities by the selling Securityholders.

Securities and Exchange Commission Registration Fee.....	\$49,070
Fees and Expenses of Counsel.....	12,500
Miscellaneous .....	8,430
TOTAL.....	\$70,000

#### ITEM 15. INDEMNIFICATION OF DIRECTORS AND OFFICERS

The Company's officers and directors are and will be indemnified against certain liabilities in accordance with the MGCL, the Articles of Incorporation and bylaws of the Company and the Operating Partnership Agreement. The Articles of Incorporation require the Company to indemnify its directors and officers to the fullest extent permitted from time to time by the MGCL. The MGCL permits a corporation to indemnify its directors and officers, among others, against judgments, penalties, fines, settlements and reasonable expenses actually incurred by them in connection with any proceeding to which they may be made a party by reason of their service in those or other capacities unless it is established that the act or omission of the director or officer was material to the matter giving rise to the proceeding and was committed in bad faith or was the result of active and deliberate dishonesty, or the director or officer actually received an improper personal benefit in money, property or services, or in the case of any criminal proceeding, the director or officer had reasonable cause to believe that the act or omission was unlawful.

The Operating Partnership Agreement also provides for indemnification of the Company and its officers and directors to the same extent indemnification is provided to officers and directors of the Company in its Articles of Incorporation and limits the liability of the Company and its officers and directors to the Operating Partnership and its partners to the same extent liability of officers and directors of the Company to the Company and its stockholders is limited under the Company's Articles of Incorporation.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers or persons controlling the Company pursuant to the foregoing provisions, the Company has been informed that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

#### ITEM 16. EXHIBITS

##### EXHIBIT NO. DESCRIPTION

2.1 Master Agreement of Merger and Acquisition by and among the Company, the Operating Partnership, Associated Capital Properties, Inc. and its shareholders dated August 27, 1997 (incorporated by reference to the Company's Current Report on Form 8-K dated August 27, 1997)

2.2 Master Agreement of Merger and Acquisition by and among the Company, the Operating Partnership, Anderson Properties, Inc., Gene Anderson, and the partnerships and limited liability companies listed therein, dated January 31, 1997 (incorporated by reference to the Company's Current Report on Form 8-K dated January 9, 1997)

- 2.3 Agreement and Plan of Merger by and among the Company, Crocker Realty Trust, Inc. and Cedar Acquisition Corporation dated as of April 29, 1996 (incorporated by reference to the Company's Current Report on Form 8-K dated April 29, 1996)
- 2.4 Master Agreement of Merger and Acquisition by and among the Company, the Operating Partnership, Eakin & Smith, Inc. and the partnerships and limited liability companies listed therein, dated April 1, 1996 (incorporated by reference to the Company's Current Report on Form 8-K dated April 1, 1996)
- 3.1 Amended and Restated Articles of Incorporation (incorporated by reference to the Company's Current Report on Form 8-K dated September 25, 1997)
- 3.2 Bylaws (incorporated by reference to the Company's Registration Statement on Form S-11(File No. 33- 76952))
- 4.1 Rights Agreement, dated as of October 6, 1997, between Highwoods Properties, Inc. and First Union National Bank, including the form of Right Certificate as Exhibit A and the Summary of Rights to Purchase Preferred Shares as Exhibit C (incorporated by reference to the Company's Current Report on Form 8-K dated October 4, 1997)
- 4.2 Indenture dated as of December 1, 1996, between the Operating Partnership, the Company and First Union National Bank (incorporated by reference to the Operating Partnership's Current Report on Form 8-K dated December 2, 1996)
- 4.3 Articles Supplementary of the Company dated October 10, 1997 designating the terms of the Series C Preferred Shares (incorporated by reference to Exhibit 4.1 of the Company's Current Report on Form 8-K dated October 4, 1997)
- 5.1 Opinion of Alston & Bird LLP regarding the legality of the shares of Common Stock being registered
- 8.1 Opinion of Alston & Bird LLP regarding certain federal tax matters
- 23.1 Consent of Alston & Bird LLP (included as part of Exhibits 5.1 and 8.1)
- 23.2 Consent of Ernst & Young LLP
- 23.3 Consent of KPMG Peat Marwick LLP
- 23.4 Consent of Deloitte & Touche LLP
- 23.5 Consent of Price Waterhouse LLP
- 23.6 Consent of Coopers & Lybrand LLP
- 24.1\*\* Power of Attorney of O. Temple Sloan, Jr.
- 24.2\*\* Power of Attorney of Ronald P. Gibson
- 24.3\*\* Power of Attorney of John L. Turner
- 24.4\*\* Power of Attorney of Gene H. Anderson
- 24.5\*\* Power of Attorney of John W. Eakin
- 24.6\*\* Power of Attorney of William T. Wilson, III



24.7**	Power of Attorney of William E. Graham, Jr.
24.8**	Power of Attorney of Stephen Timko
24.9	Power of Attorney of L. Glenn Orr
24.10	Power of Attorney of Thomas W. Adler

\*\* Previously filed

## ITEM 17. UNDERTAKINGS

(a) The undersigned registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement; provided, however, that any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement; and

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement; provided, however, that the undertakings set forth in paragraphs (i) and (ii) also shall not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed by the registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in this registration statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial BONA FIDE offering thereof.

(c) Insofar as indemnification for liability arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions described under Item 15 of this Registration Statement, or otherwise, the Registrant has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event

that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

## SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Raleigh, State of North Carolina, on February 6, 1998

### HIGHWOODS PROPERTIES, INC.

By: /s/ Carman J. Liuzzo

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Carman J. Liuzzo

Vice President and Chief Financial Officer

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated:

Name	Title	Date
/s/ O. Temple Sloan, Jr.* ----- O. Temple Sloan, Jr.	Chairman of the Board of Directors	February 6, 1998
/s/ Ronald P. Gibson* ----- Ronald P. Gibson	President, Chief Executive Officer and Director	February 6, 1998
/s/ John L. Turner* ----- John L. Turner	Chief Investment Officer and Vice Chairman of the Board of Directors	February 6, 1998
/s/ Gene H. Anderson* ----- Gene H. Anderson	Senior Vice President and Director	February 6, 1998
/s/ John W. Eakin* ----- John W. Eakin	Senior Vice President and Director	February 6, 1998
/s/ William T. Wilson, III* ----- William T. Wilson, III	Director	February 6, 1998

/s/ Thomas W. Adler*	Director	February 6, 1998
-----		
Thomas W. Adler		
/s/ William E. Graham, Jr.*	Director	February 6, 1998
-----		
William E. Graham, Jr.		
/s/ L. Glenn Orr, Jr.*	Director	February 6, 1998
-----		
L. Glenn Orr, Jr.		
-----		
	Director	February 6, 1998
-----		
Willard H. Smith, Jr.		
/s/ Stephen Timko*	Director	February 6, 1998
-----		
Stephen Timko		
/s/ Carman J. Liuzzo	Vice President, Chief Financial Officer and	February 6, 1998
-----	Treasurer (Principal Accounting Officer)	
Carman J. Liuzzo		

\* By /s/ Carman J. Liuzzo  
-----  
Carman J. Liuzzo (Attorney-in-Fact)

## Exhibit 5.1

February 6, 1998

Highwoods Properties, Inc.  
3100 Smoketree Court, Suite 600  
Raleigh, North Carolina 27604

Re: Resale Prospectus of up to 3,090,141 Shares of Common Stock of Highwoods Properties, Inc. and 1,479,290 Warrants to Purchase Shares of Common Stock of Highwoods Properties, Inc.

Ladies & Gentlemen:

We are acting as counsel for Highwoods Properties, Inc., a Maryland corporation (the "Company"), in connection with the registration of the offering on Form S-3, File No. 333-43745 (the "Registration Statement") by the holders thereof (the "Selling Securityholders") of up to (i) 117,617 shares (the "Original Shares") of the Company's common stock, par value \$0.01 per share (the "Common Stock"); (ii) 2,972,524 shares (the "Redemption Shares") of Common Stock which shares may be issued by the Company to the extent that holders of up to 2,972,524 limited partnership interests ("Units") in Highwoods/Forsyth Limited Partnership, a North Carolina limited partnership, exercise their right to redeem such Units and the Company elects to satisfy such redemption right through the issuance of Common Stock; (iii) 1,479,290 warrants to purchase shares of Common Stock (the "Warrants"); and (iv) 1,444,290 shares (the "Warrants Shares," and together with the Original Shares, the Redemption Shares, and the Warrants, the "Securities") of Common Stock issuable upon the exercise of up to 1,444,290 Warrants, which Warrants may be deemed to be held by affiliates of the Company.

In our capacity as your counsel in connection with such registration, we are familiar with the proceedings (the "Resolutions") taken by the Company in connection with the authorization and issuance of the Securities. In addition, we have made such legal and factual examinations and inquiries, including an examination of originals and copies, certified or otherwise identified to our satisfaction of such documents, corporate records and instruments, as we have deemed necessary or appropriate for purposes of this opinion.

Based upon and subject to the foregoing, it is our opinion that:

The Company has authority pursuant to its Articles of Incorporation to issue the Securities, the offering by the Selling Securityholders of which is to be registered under the Registration Statement and (a) the Original Shares and the Warrants have been duly authorized and validly issued and are fully paid and non-assessable and (b) the Redemption Shares and the Warrant Shares, upon issuance and delivery of and payment for such Redemption Shares and Warrant Shares in the manner contemplated by the Resolutions and the Registration Statement, will be duly authorized and validly issued and are fully paid and non-assessable.

We consent to your filing this opinion as an exhibit to the Registration Statement and to the reference to our firm under the caption "Legal Matters" in the prospectus provided therein.

Very truly yours,

**ALSTON & BIRD LLP**

*/s/ Robert H. Bergdolt*

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*Robert H. Bergdolt, Partner*

## EXHIBIT 8.1

Pinney L. Allen Direct Dial: 404-881-7485

February 6, 1998

Highwoods Properties, Inc.  
3100 Smoketree Court, Suite 600  
Raleigh, North Carolina 27604

Re: Registration Statement on Form S-3 Relating to 3,090,141 Shares of Common Stock and 1,479,290 Warrants of Highwoods Properties, Inc.

Ladies and Gentlemen:

In connection with the registration statement on Form S-3 being filed by you on February 6, 1998, with the Securities and Exchange Commission regarding the registration of 3,090,141 shares of common stock and 1,479,290 warrants of Highwoods Properties, Inc. (the "Company") (the "Registration Statement") under the Securities Act of 1933, as amended, you have requested our opinion concerning certain of the federal income tax consequences to the Company of its election to be taxed as a real estate investment trust ("REIT") under Sections 856 through 860 of the Internal Revenue Code of 1986, as amended (the "Code").

This opinion is based solely on various assumptions and facts as set forth in the Registration Statement and is conditioned upon certain representations made by the Company as factual matters through a certificate of an officer of the Company (the "Officer's Certificate") attached hereto and made a part hereof. We have made no independent inquiry as to the factual matters set forth herein. In addition, we have examined no documents other than the Registration Statement for purposes of this opinion and, therefore, our opinion is limited to matters determined through an examination of such document and the factual matters set forth in the Officer's Certificate.

In rendering the opinions set forth herein, we have assumed the authenticity of all documents submitted to us as originals, the genuineness of all signatures thereon, the legal capacity of natural persons executing such documents and the conformity to authentic original documents of all documents submitted to us as copies.

We are opining herein as to the effect on the subject transaction only of the federal income tax laws of the United States and we express no opinion with respect to the applicability thereto, or the effect thereon, of other federal laws, the laws of any other jurisdiction, the laws of any state or as to any matters of municipal law or the laws of any other local agencies within any state.

Based solely on the facts in the Registration Statement and the Officer's Certificate, we are of the opinion that the Company has been organized and has operated in conformity with the requirements for qualification and taxation as a REIT under the Code for its taxable years ended December 31, 1994 through 1996, and that the Company is in a position to continue its qualification and taxation as a REIT within the definition of Section 856(a) of the Code for the taxable year that ended December 31, 1997, and the taxable year that will end December 31, 1998. With respect to 1997 and 1998, we note that the Company's status as a REIT at any time during such years is

dependent, among other things, upon the Company meeting the requirements of Sections 856 through 860 of the Code throughout each of such years and for each year as a whole. Accordingly, because the Company's satisfaction of such requirements will depend upon future events, including the precise terms and conditions of proposed transactions, and the final determination of operational results, it is not possible to assure that the Company will satisfy the requirements to be a REIT during the taxable year that ended December 31, 1997, or the taxable year that will end December 31, 1998.

In addition, we have participated in the preparation of the material under the heading "Federal Income Tax Considerations" of the Registration Statement and we are of the opinion that the federal income tax treatment described therein is accurate in all material respects.

This opinion is based on various statutory provisions, regulations promulgated thereunder and interpretations thereof by the Internal Revenue Service and the courts having jurisdiction over such matters, all of which are subject to change either prospectively or retroactively. Also, any variation or difference in the facts from those set forth in the Registration Statement or the Officer's Certificate may affect the opinions stated herein.

This opinion is furnished only to you, is solely for your use in connection with the Registration Statement, and is limited to the specific matters covered hereby and should not be interpreted to imply that the undersigned has offered its opinion on any other matter. This opinion may be relied upon only by the party to whom it is addressed and may not be quoted, circulated, or used for any other purpose without our prior written



consent. We, however, hereby consent to the filing of this opinion as an exhibit to the Registration Statement and to the use of our name under the caption "Legal Matters" in the Registration Statement.

Very truly yours,

**ALSTON & BIRD LLP**

*By: /s/ PINNEY L. ALLEN*  
-----  
*Pinney L. Allen*

**PLA:MMH**  
**AD980350.176**

## CERTIFICATE

I, MACK D. PRIDGEN, III, in my capacity as Vice-President and General Counsel of Highwoods Properties, Inc. (the "Company"), do hereby certify, to the best of my knowledge and belief after making appropriate inquiries with respect to all matters set forth below, as follows:

1. That I am a Vice-President and the General Counsel of the Company in the state of North Carolina;
2. That in such capacity, I have access to relevant information regarding each of the factual matters set forth below;
3. That for purposes of this Certificate,

(a) "Affiliated Partnerships" means AP-GP Southeast Portfolio Partners, L.P., Highwoods/Tennessee Holdings, L.P., AP Southeast Portfolio Partners, L.P., and Highwoods/Florida Holdings, L.P., collectively;

(b) "Code" means the Internal Revenue Code of 1986, as amended;

(c) "Foreclosure Property" means real property (including interests in real property), and any personal property incident to such real property, acquired by the real estate investment trust as a result of such trust having bid in such property at foreclosure, or having otherwise reduced such property to ownership or possession by agreement or process of law, after there was default (or default was imminent) on a lease of such property or on an indebtedness that such property secured;

(d) "Garcia Transaction" means the transaction that will close in 1998 pursuant to the terms and conditions set forth in the Master Acquisition Agreement, dated December 21, 1997, by and among Highwoods Properties, Inc., Highwoods/Forsyth Limited Partnership, Martin L. Garcia, the Garcia Partnerships (i.e., Pinellas Bay Vista Partners, Ltd., BDBP, Ltd., Downtown Clearwater Tower, Ltd., Cross Bayou, Ltd., Interstate Business Park, Ltd., Pinellas Northside Partners, Ltd., Pinellas Pinebrook Partners, Ltd., and Sisbros, Ltd.), and the Garcia Corporations (i.e., Westshore Square, Inc., Garcia Property Management, Inc., Garcia, Meyers Co., and Garcia Enterprises of Tampa, Inc.), which provides that (1) the Garcia Partners (as defined in the Master Acquisition Agreement) will sell their interests in the Garcia Partnerships to Highwoods/Forsyth Limited Partnership; (2) Garcia Enterprises of Tampa, Inc. will sell its ownership interest in the Properties (as defined in the Master Acquisition Agreement) to Highwoods/Forsyth Limited Partnership; and (3) Highwoods/Forsyth Limited Partnership, Martin L. Garcia, the Garcia Partnerships, and the Garcia Corporations will combine business operations;

(e) "Highwoods Services" means Highwoods Services, Inc., a North Carolina corporation, the equity ownership of which is owned 99% by Highwoods/Forsyth Limited Partnership and .5% each by Ronald P. Gibson and Edward J. Fritsch;

(f) "Independent Contractor" means any person who does not own, directly or indirectly, more than 35% of the shares in the REIT, and, if such person is a corporation, not more

than 35% of the total combined voting power of whose stock (or 35% of the total shares of all classes of whose stock), or, if such person is not a corporation, not more than 35% of the interest in whose assets or net profits is owned, directly or indirectly, by one or more persons owning 35% or more of the shares in the REIT;

(g) "Operating Partnership" means Highwoods/Forsyth Limited Partnership, a North Carolina partnership of which the Company is the sole general partner with an approximate 82% ownership interest, including a 1% general partnership interest and an 81% limited partnership interest, and various others (including officers and directors of the Company) are the remaining limited partners with an approximate 18% aggregate interest;

(h) "Operating Partnership Agreement" means the First Amended and Restated Agreement of Limited Partnership of Highwoods/Forsyth Limited Partnership, dated June 14, 1994, as amended;

(i) "Prohibited Transaction" means a sale or other disposition of property, other than foreclosure property, that is stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of trade or business;

(j) "Qualified REIT Subsidiary" means (1) any corporation in which a real estate investment trust owned stock during any taxable year ended on or before December 31, 1997, if 100% of the stock of such corporation was held by the real estate investment trust at all times during the period such corporation was in existence and (2) any corporation in which a real estate investment trust may own stock after the taxable year ended December 31, 1997, if 100% of the stock of such corporation is held by the real estate investment trust;

(k) "Real Estate Assets" means real property (including interests in real property and interests in mortgages on real property) and shares (or transferable certificates of beneficial interest) in other real estate investment trusts that meet the requirements of Code Sections 856 through 860;

(l) "Registration Statement" means the Form S-3 being filed by the Company on February 6, 1998, with the Securities and Exchange Commission regarding the registration of 3,090,141 shares of common stock and 1,479,290 warrants of the Company under the Securities Act of 1933, as amended;

(m) "REIT" means a real estate investment trust;

(n) "REIT Election" means an election to be taxed as a REIT under Code Section 856(c)(1);

(o) "Service" means the Internal Revenue Service; and

(p) "Subsequent ACP Mergers" means (1) the merger of Associated Capital Equities Corp. II with and into Highwoods Properties, Inc. pursuant to Articles of Merger, dated

October 7, 1997; (2) the merger of Euro II, Inc., with and into Highwoods/Florida GP Corp. pursuant to Articles of Merger, dated November 20, 1997; (3) the merger of Comeau Building, Inc., ACP-Atrium CG, Inc., ACP-Dadeland, Inc., ACP-F, Inc., ACP-Lakeview, Inc., ACP-Lee Road, Inc., ACP-L, Inc., ACP Pine Street GP, Inc., ACP-Tampa Bay, Inc., ACP-W, Inc., ACP-Eastpointe, Inc., JH Property Investments, Inc., ACP-5400, Inc., ACP-C, Inc., ACP-Grand, Inc., ACP-I, Inc., ACP- Southpoint, Inc., ACP Florida Office Properties, Inc., ACP-Fireman, Inc., and ACP Venture Corp. with and into Highwoods Properties, Inc. pursuant to Articles of Merger, dated November 20, 1997; (4) the merger of 319 Clematis Associates, Ltd., ACP-Atrium CG, Limited Partnership, ACP- Dadeland, Limited Partnership, ACP-F, Limited Partnership, ACP-Lakeview, Limited Partnership, ACP-Lee Road, Limited Partnership, ACP-L, Limited Partnership, ACP Pine Street, Limited Partnership, ACP-Tampa Bay, Limited Partnership, ACP-W, Limited Partnership, Eastpointe Towers Associates, Ltd., Eller Drive Limited Partnership, ACP Venture I Limited Partnership, SCGACP Master Limited Partnership, SCG-ACP I Limited Partnership, SOFI-IV Tampa Office Limited Partnership, ACP-5400, Limited Partnership, ACP-C, Limited Partnership, ACP-Grand, Limited Partnership, ACP-I, Limited Partnership, SOFI-IV Tallahassee Office Limited Partnership, ACP- Southpoint Limited Partnership, ACP-Reflections, Limited Partnership, and One Winter Park Associates with and into Highwoods/Florida Holdings, LP, pursuant to Articles of Merger, dated December 5, 1997; and (5) the merger of The Shoppes of Interlachen, Inc. with and into Florida Transition Co. II;

4. That I have consulted with other employees and officers of the Company regarding the matters set forth below and such persons have agreed in all respects with the representations made below;

5. That, except as otherwise noted, all representations made below are true and complete for each of the taxable years ended December 31, 1994 through December 31, 1997, and through the date hereof; and that I have no reason to believe that such representations will not continue to be true for the taxable year that will end December 31, 1998;

6. That the Company has operated and will continue to operate in accordance with Maryland law, its articles of incorporation, and its bylaws and in accordance with the statements and representations made in the Registration Statement;

7. That the Operating Partnership has operated and will continue to operate in accordance with North Carolina law, the Operating Partnership Agreement, and the statements and representations made in the Registration Statement;

8. That I am a licensed attorney familiar with the requirements for qualification as a REIT under applicable provisions of the Code, that all such requirements have been satisfied for the Company's taxable years ended December 31, 1994 through December 31, 1997 (except for the election to be taxed as a REIT for the taxable year ended December 31, 1997, which will be made on the federal income tax return for such taxable year as noted in Item 9 below); that I have no reason to believe that such requirements will not continue to be satisfied in the taxable year that will end December 31, 1998; and that I have exercised ordinary business care and prudence to attempt to satisfy such requirements and I have advised Alston & Bird LLP of any matter of which I am aware that could cause reason for concern as to whether those requirements have been or will be satisfied;

9. That the Company has filed an election, in accordance with applicable Code requirements, to be taxed as a REIT with each of its tax returns for the periods ended December 31, 1994 through December 31, 1996, and has not taken any action to terminate such election; that the Company will file an election, in accordance with applicable Code requirements, to be taxed as a REIT with its tax return for the period ended December 31, 1997, and has not taken any action to prevent such election; that I have no reason to believe that the Company will not continue to file such election or that it will take any action to terminate such election for the period that will end December 31, 1998; and that the Company has received no notification formally or informally from the Service or any other person that such election may not be valid or has been revoked or withdrawn in any respect;
10. That the Company is and will continue to be managed by one or more of its directors who have exclusive authority over the management of the Company, the management of its officers, and the management and disposition of the Company's property;
11. That the beneficial ownership of the Company is and will continue to be evidenced by transferable shares; and that there are no restrictions on the transferability of such shares either in the Articles of Incorporation or in any agreement to which the Company is a party, other than the restrictions set forth in the Articles of Incorporation that permit the directors to redeem shares or refuse to transfer shares in any case where such directors, in good faith, believe that a failure to redeem or that a transfer of shares would result in the loss of the Company's REIT status;
12. That the Company has been a domestic corporation during its entire existence;
13. That the Company has not been, is not, and will not be (i) a bank, a mutual savings bank, a cooperative bank, a domestic building and loan association or other savings institution, a small business investment company operating under the Small Business Investment Act of 1958, or a corporation created under state law for the purpose of promoting, maintaining, and assisting the economy within a state by making loans, or (ii) an insurance company;
14. That at no time during the last half of any taxable year for which a REIT election has been made or during the taxable year ended December 31, 1997, for which a REIT election will be made has more than 50% of the value of the Company's outstanding stock been beneficially owned by five or fewer individuals; and that the Company will take all measures within its control to ensure that, at no time during the last half of any taxable year for which a REIT election will be made will more than 50% of the value of the Company's outstanding stock be beneficially owned by or for five or fewer individuals;
15. That the record and beneficial ownership of the Company has been and will held by 100 or more persons;
16. That at least 95% of the gross income derived by the Company (including the income derived through its ownership of the Operating Partnership and the Affiliated Partnerships) in all taxable years consisted of: (i) amounts derived from rental of real property, including rents attributable to personal property as described in representation (20) below and including charges for services customarily furnished or rendered in connection with the rental of such real property, whether or not such charges are separately stated, but excluding rents received from parties in which

the Company owns 10% or more of the vote or value of equity ownership of such party and excluding amounts received or accrued with respect to any real or personal property if the Company furnishes noncustomary services to the tenants or manages or operates such property other than through an independent contractor from which neither the Company nor the Partnership derives any form of income; (ii) interest; (iii) gain realized upon the sale of all or a portion of a Real Estate Asset that is not a Prohibited Transaction; (iv) dividends; (v) abatements and refunds of tax; (vi) income and gain from Foreclosure Property; and (vii) amounts for making loans by secured properties or to purchase or lease real property; and that I have no reason to believe that such 95% gross income test will not continue to be met for the taxable year that will end December 31, 1998;

17. That at least 75% of the gross income derived by the Company (including the income derived through its ownership of the Operating Partnership and the Affiliated Partnerships) in all taxable years consisted of: (i) amounts derived from rental of real property, including rents attributable to personal property as described in representation (20) below and including charges for services customarily furnished or rendered in connection with the rental of such real property, whether or not such charges are separately stated, but excluding rents received from parties in which the Company owns 10% or more of the vote or value of equity ownership of such party and excluding amounts received or accrued with respect to any real or personal property if the Company furnishes noncustomary services to the tenants or manages or operates such property other than through an independent contractor from which neither the Company nor the Partnership derives any form of income; (ii) interest on obligations secured by mortgages on real property or on interests in real property; (iii) gain realized upon the sale of all or a portion of the real property; (iv) abatements and refunds of property tax; (v) income and gain derived from Foreclosure Property; (vi) amounts for agreeing to make loans secured by real property or to purchase or lease real property; and (vii) gain from the sale or disposition of a Real Estate Asset that is not a Prohibited Transaction; and that I have no reason to believe that such 75% gross income test will not continue to be met for the taxable year that will end December 31, 1998;

18. That less than 30% of the gross income of the Company (including the income derived through its ownership of the Operating Partnership and the Affiliated Partnerships) in all taxable years was derived from (i) the sale or other disposition of stock or securities held for less than one year; (ii) property in a transaction that is a Prohibited Transaction; and (iii) real property (including interests in real property and interests in mortgages on real property) held for less than four years other than property compulsorily or involuntarily converted and property that is Foreclosure Property;

19. That the Company, the Operating Partnership and the Affiliated Partnerships, have not entered into and will not enter into any lease, agreement, or other arrangement in connection with the rental of real property under which any amount payable to the Company, the Operating Partnership, or the Affiliated Partnerships depends or will depend in whole or in part on the income or profits derived from any tenant (or sub-tenant) of such real property (except that such an amount may be based on a fixed percentage or percentages of gross receipts or sales);

20. That (i) less than 15% of the rent received or accrued from any lease of real property has been and will be attributable to personal property; (ii) any such personal property has been and will be leased under or in connection with a lease of the real property; and (iii) no personal property

owned by the Company or the Operating Partnership at any time has had or will have significant value in excess of its adjusted basis for federal income tax purposes;

21. That for purposes of Items 16 and 17 above, "rent" does not include rent received for any real property directly or indirectly from any person in which the Company owns (i) in the case of a corporation, 10% or more of the total combined voting power of all classes of stock entitled to vote, or 10% or more of the total combined voting power of all classes of stock entitled to vote, or 10% or more of the total number of shares of all classes of stock; or

(ii) in the case of an entity other than a corporation, an interest of 10% or more in the assets or net profits of such entity; (for purposes of this representation, ownership is determined by taking into account the attribution rules, which generally apply a look-through provision to determine constructive stock ownership);

22. That the fair market value of any real property (or, with respect to any construction loan, the fair market value of the land plus the reasonably estimated cost of the improvements other than personal property) securing a note, determined at the time the Company became bound to make the loan, is equal to or exceeds the amount of the loan;

23. That the Company has reviewed and will continue to review all leases for each property to ensure that such leases conform with all REIT requirements;

24. That neither the Company, the Operating Partnership, nor the Affiliated Partnerships, have provided or will provide any services to any tenant other than services that would be considered customarily furnished or rendered in connection with the rental of real property, such as the furnishing of water, heat, lights, trash collection, and maintenance of common areas;

25. That no Independent Contractor providing management and operating functions for either the Company, the Operating Partnership, or the Affiliated Partnerships, or any of their properties has any ownership interest in the Company in excess of 35%;

26. That at the close of each quarter of any taxable year that the Company has made or will make a REIT election, at least 75% of the total combined value of its assets, including its proportionate share of the assets of the Operating Partnership and the Affiliated Partnerships, has or will consist of Real Estate Assets, cash and cash items (including receivables), and government securities;

27. That at the close of each quarter of any taxable year that the Company has made or will make a REIT election not more than 25% of the value of the Company's total assets (including those assets owned indirectly through the Operating Partnership or the Affiliated Partnerships) has been or will be represented by securities (other than government securities) for purposes of this calculation limited in respect of any one issuer to an amount not greater in value than 5% of the value of the total assets of the Company and to not more than 10% of the outstanding voting securities of such issuer;

28. That the Company's pro rata share of the value of the securities of Highwoods Services has not exceeded 5% of the total value of the Company's assets at the end of any calendar quarter; that 1% of the voting stock of Highwoods Services is owned by Ronald P. Gibson and Edward J. Fritsch; that the Company has no informal or formal agreement with Highwoods Services

or the other shareholders of Highwoods Services regarding the voting of the Highwoods Services stock; and that the stock owned by Ronald P. Gibson and Edward J. Fritsch is not subject to any voting or purchase agreement that effectively would deny such individuals of the economic rights of such stock;

29. That at the close of each quarter of any taxable year that the Company has made or will make a REIT election the Company has not owned and will not own directly or indirectly securities in any one issuer, including mutual funds, having an aggregated value in excess of 5% of the value of the total assets of the Company;

30. That the Company, the Operating Partnership, and the Affiliated Partnerships have held and hold all real property and all other assets for investment purposes and not as (i) stock in trade or other property of a kind which would properly be includible in inventory if on hand at the close of the taxable year, or (ii) property held primarily for sale to customers in the ordinary course of the trade or business of the Operating Partnership or the Company;

31. That for each taxable year for which a REIT election has been or will be made the Company has distributed or will distribute an amount equal to or exceeding the sum of 95% of the Company's real estate investment trust taxable income for such taxable year, determined without regard for the deduction for dividends paid and by excluding any net capital gain, and 95% of the excess of the net income from Foreclosure Property over the tax imposed on such income, reduced by, any excess noncash income;

32. That for each taxable year for which a REIT election has been or will be made the Company has and will (i) maintain stock records that disclose actual ownership of the Company's outstanding stock, and (ii) within 30 days of each taxable year end, demand a written statement from shareholders of record, including holders of the Company's stock warrants, for the purpose of disclosing actual ownership as required by Treas. Reg. Section 1.857-8;

33. That the Company has at all times adopted and will continue to use a calendar year accounting period;

34. That other than the direct ownership of the stock in Highwoods/Florida GP Corp., Highwoods Realty GP Corp., Highwoods/Tennessee Properties, Inc., Jackson Acquisition Corporation, and Florida Transition Co. II, each of which is a Qualified REIT Subsidiary, and the indirect ownership of stock in Highwoods Services and its subsidiaries, Southeast Realty Options Corp. and PSC Acquisition Corporation (which is owned through RC One LLC), the Company has owned no stock or other voting securities in any corporation at the close of any quarter of any taxable year ended on or before December 31, 1997, or as of the date hereof;

35. That Highwoods Properties Company was merged with and into the Company; that such merger was intended to qualify as a tax-free reorganization within the meaning of Section 368 of the Code; that I have no reason to believe such merger did not so qualify and, for purposes hereof, you may assume that it did so qualify; and that, at the time of such merger, neither Highwoods Properties Company nor any corporation that it directly or indirectly owned had any earnings and profits accumulated from a year when it was taxable as a "C" corporation;



36. That Eakin & Smith, Inc. was merged with and into the Company; and that, at the time of such merger, neither Eakin & Smith, Inc. nor any corporation that it directly or indirectly owned had any earnings and profits accumulated from a year when it was taxable as a "C" corporation;
37. That Crocker Realty Trust, Inc. was merged with and into the Company; that, at the time of such merger, Crocker Realty Trust, Inc. qualified as a REIT; that during the course of the due diligence conducted in connection with such merger, I had no reason to believe that Crocker Realty Trust, Inc. did not so qualify; and that neither Crocker Realty Trust, Inc., nor any corporation that it directly or indirectly owned had any Subchapter C earnings and profits;
38. That Associated Capital Properties, Inc. was merged with and into the Company; that such merger was intended to qualify as a tax-free reorganization within the meaning of Section 368 of the Code; that I have no reason to believe such merger did not so qualify and, for purposes hereof, you may assume that it did so qualify; and that, at the time of such merger, neither Associated Capital Properties, Inc., nor any corporation that it directly or indirectly owned had any earnings and profits accumulated from a year when it was taxable as a "C" corporation;
39. That the Operating Partnership, AP-GP Southeast Portfolio Partners, L.P., Highwoods/Tennessee Holdings, L.P., AP Southeast Portfolio Partners, L.P., and Highwoods/Florida Holdings, L.P. were formed as partnerships under the laws of the applicable states; that Shockoe Plaza LLC, which is owned 99% by the Operating Partnership and 1% by Highwoods Services, was formed as a limited liability company under the laws of Virginia and elected to be treated as a partnership for federal income tax purposes; and that such partnerships (including Shockoe Plaza LLC) have made no election to be treated as a corporation or any other type of entity for federal income tax purposes;
40. That I have no reason to believe that the Garcia Transaction will cause the Company to fail to satisfy any of the matters set forth in this certificate or to fail to qualify as a REIT in the taxable year that will end December 31, 1998;
41. That the acquisition by the Company of the membership interest in RC One LLC, which owns 100% of the stock of PSC Acquisition Corporation, from Riparius Development Corporation ("Riparius") was consummated pursuant to the terms and conditions of the Master Agreement of Merger and Acquisition by and among the Company, the Operating Partnership, Highwoods Services, Riparius, Michael J. McCarthy, and James K. Flannery, Jr., and the Purchase Agreement by and among the Company and Riparius occurred on January 8, 1998; and that the membership interest in RC One LLC was transferred to Highwoods Services on January 22, 1998;
42. That the Company has filed timely tax returns in each year of its existence and has not included any information in such returns due to fraud with an intent to evade taxes;
43. That no proceedings are pending or, to the knowledge of the undersigned, threatened against the Operating Partnership, the Company, any of their subsidiaries (including corporations, limited and general partnerships, joint ventures and other entities, whether directly or indirectly controlled) or any of their properties, before or by any Federal state or other commission, board, court, or administrative agency wherein an unfavorable decision, ruling, or finding would materially

and adversely affect the business, property, financial condition, or income of the Company, the Operating Partnership, and their subsidiaries considered as one enterprise or any of their properties.

44. That the Company's ownership interests in the Operating Partnership and its other directly or indirectly held subsidiaries (the "Subsidiaries") are held free and clear of any security interest, mortgage, pledge, lien, encumbrance, claim or equity, except for security interests granted in respect to indebtedness of the Company or the Subsidiaries as described in the Registration Statement.

45. That the description of the Company, its properties, and its method of operation contained in the Registration Statement is accurate and complete in all material aspects with respect to this opinion; and

46. That the Company will undertake to advise you of any change in the representations made herein for so long as the Registration Statement referred to above remains in effect.

The foregoing Certification is provided to Alston & Bird LLP in connection with rendering an opinion regarding the qualification of the Company as a REIT and may not be relied upon for any other purpose or by any other party. It is understood that such opinion is limited to the factual matters revealed pursuant hereto and other materials provided to them and that to the extent required, I have asked questions of the appropriate individuals to confirm the foregoing answers, and to the best of my knowledge and belief such answers are true, correct, and complete and in no way are misleading.

*February 6, 1998*

*/s/ MACK D. PRIDGEN, III*

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*MACK D. PRIDGEN, III  
Vice-President and General Counsel  
Highwoods Properties, Inc.*

## EXHIBIT 23.2

### CONSENT OF INDEPENDENT AUDITORS

We consent to the reference to our firm under the caption "Experts" in the Registration Statement (Form S-3 No. 333-43745) for the registration of 3,090,141 shares of common stock and 1,479,290 warrants to purchase common stock of Highwoods Properties, Inc. We also consent to the incorporation by reference therein of our reports (a) dated February 14, 1997, with respect to the consolidated financial statements and schedule of Highwoods Properties, Inc. included in its Annual Report (Form 10-K) for the year ended December 31, 1996; (b) dated February 14, 1997, with respect to the financial statements and schedule of Highwoods/Forsyth Limited Partnership included in its Annual Report (Form 10-K) for the year ended December 31, 1996; (c) dated April 17, 1996 with respect to the combined audited financial statements and schedule of Eakin & Smith for the year ended December 31, 1995 included in Highwoods Properties, Inc.'s Current Report on Form 8-K dated April 1, 1996 as amended on June 3, 1996 and June 18, 1996; (d) dated February 26, 1996 with respect to the audited Historical Summary of Gross Income and Direct Operating Expenses for certain properties owned by Towermarc Corporation for the year ended December 31, 1995 included in Highwoods Properties, Inc.'s Current Report on Form 8-K dated April 29, 1996 as amended on June 3, 1996 and June 18, 1996; (e) dated January 24, 1997 and January 25, 1997 with respect to the Combined Statements of Revenues and Certain Expenses of Century Center and Anderson Properties, respectively, included in Highwoods Properties, Inc.'s and Highwoods/Forsyth Limited Partnership's Current Reports on Forms 8-K dated January 9, 1997 (as amended on February 7, 1997 and March 10, 1997) and February 12, 1997 respectively, and (f) dated January 16, 1998 with respect to the Statements of Revenues and Certain Expenses of Riparius Properties, Shelton Properties, and Winners Circle included in Highwoods Properties, Inc.'s and Highwoods/Forsyth Limited Partnership's Current Reports on Form 8-K dated November 17, 1997, all filed with the Securities and Exchange Commission.

### ERNST & YOUNG LLP

*/s/ Ernst & Young LLP*

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*Raleigh, North Carolina  
February 5, 1998*

## EXHIBIT 23.3

### Accountants' Consent

The Board of Directors  
Highwoods Properties, Inc.:

We consent to the incorporation by reference in the Form S-3 of Highwoods Properties, Inc. of our report dated March 4, 1996, with respect to the consolidated balance sheet of Crocker Realty Trust, Inc. as of December 31, 1995 and the related consolidated statements of operations, stockholders' equity and cash flows for the year ended December 31, 1995, and our report dated February 3, 1995 with respect to the balance sheets of Crocker Realty Investors, Inc. as of December 31, 1994 and 1993, and the related statements of operations, stockholders' equity and cash flows for each of the years in the two-year period ended December 31, 1994, and our report dated February 23, 1995 with respect to the balance sheet of Crocker & Sons, Inc. as of December 31, 1994, and the related statements of operations, stockholders' equity and cash flows for the year then ended, which reports appear in Forms 8-K/A of Highwoods Properties, Inc. dated April 29, 1996, as amended June 3, 1996 and June 18, 1996. We also consent to the reference to our firm under the heading "Experts" in the registration statement.

#### Signature:

*/s/ KPMG Peat Marwick LLP*  
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*Fort Lauderdale, Florida*  
*Date: February 4, 1998*

## EXHIBIT 23.4

### INDEPENDENT AUDITOR'S CONSENT

We consent to the incorporation by reference in this Registration Statement on Form S-3 of Highwoods Properties, Inc. of our report dated February 21, 1995, with respect to the combined financial statements of Southeast Realty Corp., AP Southeast Portfolio Partners, L.P. and AP Fontaine III Partners, L.P. for the year ended December 31, 1994, which report appears in the Form 8-K/A of Highwoods Properties, Inc. dated April 29, 1996, as amended on June 3, 1996 and June 18, 1996. We also consent to the reference to our firm under the heading "Experts" in the prospectus that is part of the Registration Statement.

#### Signature:

*/s/ Deloitte & Touche LLP*  
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*Dallas, Texas*

*Date: February 3, 1998*

## EXHIBIT 23.5

### CONSENT OF INDEPENDENT ACCOUNTANTS

We hereby consent to the incorporation by reference in the Registration Statement (No. 333-43745) on Form S-3 of Highwoods Properties, Inc. of our report dated March 7, 1994 relating to the financial statements of AP Southeast Portfolio Partners, L.P. which appears on Page F-13 in the Form 8-K/A of Highwoods Properties, Inc. dated April 29, 1996, as amended June 3, 1996 and June 18, 1996. We also consent to the references under the heading "Experts" in the prospectus that is part of such Registration Statement.

**Signature:**

*/s/ PRICE WATERHOUSE LLP*

*-----  
Dallas, Texas*

*Date: February 5, 1998*

## Exhibit 23.6

### CONSENT OF INDEPENDENT ACCOUNTANTS

We consent to the incorporation by reference in this Registration Statement on Form S-3 (File No. 333-43745) of our reports dated September 12, 1997, on our audits of the combined statement of revenues and certain operating expenses of the Associated Capital Properties Portfolio for the year ended December 31, 1996, and the combined statement of revenues and certain operating expense of the 1997 Pending Acquisitions for the year ended December 31, 1996, which reports are included in the Forms 8-K of Highwoods Properties, Inc. dated August 27, 1997 (as amended on September 23, 1997) and October 1, 1997. We also consent to the reference to our firm under the caption "Experts".

#### Signature:

*/s/ Coopers & Lybrand L.L.P.*

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*Memphis, Tennessee*

*February 5, 1998*

**EXHIBIT 24.9**

**POWER OF ATTORNEY  
OF  
L. GLENN ORR**

KNOW ALL MEN BY THESE PRESENTS, that the undersigned director of Highwoods Properties, Inc. (the "Company"), hereby constitutes and appoints Ronald P. Gibson, Carman J. Liuzzo, Edward J. Fritsch and/or Mack D. Pridgen his true and lawful attorneys-in-fact and agents, each acting alone, with full powers to sign for me and in my name the Registration Statement on Form S-3 to register the shares and warrants of the Company, as contemplated by the Registration Rights and Lockup Agreements between the Company and the holders listed therein, dated as of October 7, 1997, and as of October 1, 1997, and generally to do all such things in my name and in my capacity as a director to enable the Company to comply with the provisions of the Securities Act of 1933, as amended, hereby ratifying and confirming my signature as it may be signed by my said attorneys-in-fact, or any of them, to said Registration Statement and any amendments thereto.

**Signature:**

*Date: January 5, 1998*

*/s/ L. Glenn Orr*

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*L. Glenn Orr*



**EXHIBIT 24.10**

**POWER OF ATTORNEY  
OF  
THOMAS W. ADLER**

KNOW ALL MEN BY THESE PRESENTS, that the undersigned director of Highwoods Properties, Inc. (the "Company"), hereby constitutes and appoints Ronald P. Gibson, Carman J. Liuzzo, Edward J. Fritsch and/or Mack D. Pridgen his true and lawful attorneys-in-fact and agents, each acting alone, with full powers to sign for me and in my name the Registration Statement on Form S-3 to register the shares and warrants of the Company, as contemplated by the Registration Rights and Lockup Agreements between the Company and the holders listed therein, dated as of October 7, 1997, and as of October 1, 1997, and generally to do all such things in my name and in my capacity as a director to enable the Company to comply with the provisions of the Securities Act of 1933, as amended, hereby ratifying and confirming my signature as it may be signed by my said attorneys-in-fact, or any of them, to said Registration Statement and any amendments thereto.

**Signature:**

*Date: January 5, 1998*

*/s/ Thomas W. Adler*

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*Thomas W. Adler*

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