

HOST MARRIOTT CORP/  
Form S-4/A  
February 07, 2006  
Table of Contents

As filed with the Securities and Exchange Commission on February 7, 2006

Registration No. 333-130249

---

# UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

**Amendment No. 2**

to

**FORM S-4**

**REGISTRATION STATEMENT**

*UNDER THE SECURITIES ACT OF 1933*

**HOST MARRIOTT CORPORATION**

(Exact name of registrant as specified in its charter)

<b>Maryland</b> (State or other jurisdiction of incorporation or organization)	<b>7011</b> (Primary Standard Industrial Classification Code Number) Elizabeth A. Abdo	<b>53-0085950</b> (IRS Employer Identification Number)
--	---	--

Executive Vice President and General Counsel

6903 Rockledge Drive, Suite 1500

Bethesda, Maryland 20817

(240) 744-1000

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

Copies to:

Scott C. Herlihy

Latham & Watkins LLP

Edgar Filing: HOST MARRIOTT CORP/ - Form S-4/A

555 11<sup>th</sup> Street, N.W., Suite 1000

Washington, D.C. 20004

(202) 637-2200

**Approximate date of commencement of proposed sale to the public:** As soon as practicable after this registration statement becomes effective.

If the securities being registered on this form are being offered in connection with the formation of a holding company and there is compliance with General Instruction G, 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, 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(d) 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. "

**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, as amended, or until the registration statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.**

---

**Table of Contents**

**The information in this proxy statement/prospectus is not complete and may be changed. These securities may not be sold until the registration statement filed with the Securities and Exchange Commission is effective. This preliminary proxy statement/prospectus is not an offer to sell and it is not soliciting an offer to buy these securities in any jurisdiction where the offer or sale is not permitted.**

**Proxy Statement/Prospectus**

**Subject to Completion, Dated February 7, 2006**

Host Marriott Corporation, or Host, Host Marriott, L.P., or Host LP, Starwood Hotels & Resorts Worldwide, Inc., or Starwood, and Starwood's majority-owned subsidiary, Starwood Hotels & Resorts, or Starwood Trust, have entered into a master agreement and plan of merger, pursuant to which Host will acquire 38 hotels from Starwood and certain Starwood subsidiaries in a series of transactions, including the merger of a direct, wholly owned subsidiary of Host LP with and into Starwood Trust.

If the transactions are completed in their entirety, Host will pay total consideration of approximately \$4.037 billion to Starwood, holders of Starwood Trust's Class B shares and Class A Exchangeable Preferred Shares and holders of SLT Realty Limited Partnership's RP units and Class A RP units (which classes of units represent 100% of the outstanding limited partnership interests in SLT Realty Limited Partnership), consisting in the aggregate of approximately \$2.27 billion of Host common stock (representing approximately 133.5 million shares of Host common stock at the exchange price of \$17.00 per share), \$1.063 billion in cash and the assumption by Host of approximately \$704 million in indebtedness, subject to adjustments described in this proxy statement/prospectus. The portion of the consideration to be received from Host by holders of Class B shares or Class A Exchangeable Preferred Shares generally will consist of 0.6122 shares of Host common stock and \$0.503 in cash for each share held immediately prior to the completion of the transactions. Holders of Class A Exchangeable Preferred Shares will separately receive from Starwood a cash amount representing the value of the shares of Starwood common stock into which their Class A Exchangeable Preferred Shares are exchangeable immediately prior to the completion of the transactions. Currently, each Class B share trades as a unit with a share of Starwood common stock. Holders of these paired shares will retain their shares of Starwood common stock, which will not be affected by the transactions, except that the shares of Starwood common stock and Class B shares will be de-paired and the shares of Starwood common stock will trade independently of the Class B shares.

Host's management estimates that immediately after the transactions, Starwood Trust shareholders will hold approximately 26% of the then-outstanding shares of Host common stock, based on the number of shares of Host common stock outstanding on February 6, 2006. Host stockholders will continue to own their existing shares, which will not be affected by the transactions.

Host common stock is currently traded on the New York Stock Exchange under the trading symbol HMT. On February 6, 2006, Host common stock closed at \$20.15 per share as reported on the New York Stock Exchange Composite Transaction Tape. However, the value of the consideration to be received by Starwood Trust shareholders will depend upon the market price per share of Host common stock and, with respect to the cash consideration payable by Starwood, Starwood common stock, which prior to the de-pairing is derived from the market price of the paired shares of Starwood and Starwood Trust, at the time of the completion of the transactions. There can be no assurance as to the market price of those securities at any time prior to, at or after the completion of the transactions.

The transactions cannot be completed unless the holders of a majority of shares of Host common stock voting in person or by proxy at the meeting approve the issuance of shares of Host common stock in the transactions, provided that the total votes cast represent over 50% of the

Edgar Filing: HOST MARRIOTT CORP/ - Form S-4/A

outstanding shares of Host common stock entitled to vote. More information about Host, Starwood, Starwood Trust and the transactions is contained in this proxy statement/prospectus. **We encourage you to read carefully this proxy statement/prospectus, including the section entitled Risk Factors beginning on page 18.**

Based on its review, the board of directors of Host has determined that the master agreement and the transactions contemplated by the master agreement are advisable and in the best interests of Host and its stockholders and has unanimously approved the master agreement and the issuance of shares of Host common stock in the transactions. **Host's board of directors unanimously recommends that Host common stockholders vote FOR the proposal to approve the issuance of shares of Host common stock in the transactions.**

**The vote of Host common stockholders is very important.** Whether or not you plan to attend the Host special meeting, please take the time to vote by completing and mailing to us the enclosed proxy card or, by granting your proxy electronically over the Internet or by telephone. If your shares are held in street name, you must instruct your broker in order to vote.

**The sole holder of Starwood Trust's Class A shares, a Starwood subsidiary, has already adopted the master agreement and approved the transactions and no other approval of Starwood Trust shareholders or Starwood stockholders is required. Accordingly, no vote of Starwood Trust shareholders or Starwood stockholders is being sought, and therefore no proxy is being requested, with respect to the transactions.**

Sincerely,

Richard E. Marriott

Chairman of the Board

Host Marriott Corporation

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

This proxy statement/prospectus is dated \_\_\_\_\_, 2006, and is being mailed to stockholders of Host and shareholders of Starwood Trust on or about \_\_\_\_\_, 2006.

Table of Contents

**ADDITIONAL INFORMATION**

This proxy statement/prospectus incorporates by reference important business and financial information about Host and Starwood Trust from documents that are not included in or delivered with this proxy statement/prospectus. For a more detailed description of the information incorporated by reference into this proxy statement/prospectus and how you may obtain it, see **Additional Information Where You Can Find More Information** beginning on page 188.

You can obtain any of the documents incorporated by reference into this proxy statement/prospectus from Host or Starwood Trust, as applicable, or from the Securities and Exchange Commission, which is referred to as the SEC, through the SEC's website at [www.sec.gov](http://www.sec.gov). Documents incorporated by reference are available from Host and Starwood Trust, as applicable, without charge, excluding any exhibits to those documents, unless the exhibit is specifically incorporated by reference as an exhibit in this proxy statement/prospectus. Host stockholders and Starwood Trust shareholders may request a copy of such documents in writing or by telephone by contacting the applicable department at:

Host Marriott Corporation	Starwood Hotels & Resorts
6903 Rockledge Drive, Suite 1500	1111 Westchester Avenue
Bethesda, Maryland 20817-1109	White Plains, New York 10604
Attn: Investor Relations	Attn: General Counsel
Telephone: (240) 744-1000	Telephone: (914) 640-8100

In addition, you may obtain copies of the information relating to Host, without charge, by sending an e-mail to [iiinfo@hostmarriott.com](mailto:iiinfo@hostmarriott.com).

We are not incorporating the contents of the websites of the SEC, Host, Starwood Trust, Starwood or any other person into this document. We are only providing the information about how you can obtain certain documents that are incorporated by reference into this proxy statement/prospectus at these websites for your convenience.

**In order for Host stockholders to receive timely delivery of the documents in advance of the Host special meeting, Host or Starwood Trust, as applicable, should receive your request no later than \_\_\_\_\_, 2006. While Starwood Trust shareholders are not entitled to vote at the Host special meeting, the transactions may be completed soon after that meeting, subject to the other conditions described in this proxy statement/prospectus. Accordingly, in order for Starwood Trust shareholders to receive timely delivery of the documents, Host or Starwood Trust, as applicable, should receive your request no later than \_\_\_\_\_, 2006.**

For information about where to obtain copies of documents, see **Additional Information Where You Can Find More Information** beginning on page 188.

**ABOUT THIS DOCUMENT**

## Edgar Filing: HOST MARRIOTT CORP/ - Form S-4/A

This document, which forms part of a registration statement on Form S-4 filed with the SEC by Host, constitutes a prospectus of Host under the Securities Act of 1933, as amended, which is referred to in this document as the Securities Act, with respect to the shares of Host common stock to be issued to the holders of Starwood Trust shares in connection with the transactions. This document also constitutes a proxy statement of Host under Section 14(a) of the Securities Exchange Act of 1934, as amended, which is referred to in this document as the Exchange Act, and the rules thereunder, and a notice of meeting with respect to the Host special meeting of stockholders, at which, among other things, the holders of Host common stock will consider and vote upon a proposal to approve the issuance of shares of Host common stock in the transactions.

Table of Contents

**HOST MARRIOTT CORPORATION**

**6903 Rockledge Drive, Suite 1500**

**Bethesda, Maryland 20817-1109**

**NOTICE OF SPECIAL MEETING OF STOCKHOLDERS**

**To Be Held On \_\_\_\_\_, 2006**

---

To the Stockholders of Host Marriott Corporation:

We will hold a special meeting of stockholders of Host at \_\_\_\_\_, on \_\_\_\_\_, 2006, at 10:00 a.m., local time, for the following purposes:

1. To consider and vote upon a proposal to approve the issuance of shares of Host common stock pursuant to the Master Agreement and Plan of Merger, dated as of November 14, 2005, among Host Marriott Corporation, Host Marriott, L.P., Horizon Supernova Merger Sub, L.L.C., Horizon SLT Merger Sub, L.P., Starwood Hotels & Resorts Worldwide, Inc., Starwood Hotels & Resorts, Sheraton Holding Corporation and SLT Realty Limited Partnership.
2. To transact any other business as may properly come before the special meeting or any adjournments or postponements of the special meeting.

These items of business are described in the attached proxy statement/prospectus. Only Host common stockholders of record at the close of business on \_\_\_\_\_, 2006, the record date for the special meeting, are entitled to notice of and to vote at the special meeting and any adjournments or postponements of the special meeting.

**The board of directors of Host unanimously recommends that you vote FOR the proposal to approve the issuance of shares of Host common stock in the transactions.**

**Your vote is very important.** It is important that your shares be represented and voted whether or not you plan to attend the special meeting in person. You may vote by completing and mailing the enclosed proxy card, or you may grant your proxy electronically via the Internet or by telephone. If your shares are held in street name, which means shares held of record by a broker, bank or other nominee, you should check the voting form used by that firm to determine whether you will be able to submit your proxy by telephone or on the Internet. Submitting a proxy over the Internet, by telephone or by mailing the enclosed proxy card will ensure your shares are represented at the special meeting. Please review the instructions in this proxy statement/prospectus and the enclosed proxy card or the information forwarded by your bank, broker or other holder of record regarding each of these options.

By Order of the Board of Directors,

ELIZABETH A. ABDOO

*Corporate Secretary*

Host Marriott Corporation

, 2006



**Table of Contents**

**TABLE OF CONTENTS**

	<b>Page</b>
<u>QUESTIONS AND ANSWERS ABOUT VOTING PROCEDURES FOR THE HOST SPECIAL MEETING</u>	iv
<u>SUMMARY</u>	1
<u>The Companies</u>	1
<u>The Transactions</u>	2
<u>Recommendation of Host's Board of Directors</u>	3
<u>Opinion of Host Financial Advisor</u>	3
<u>Opinion of Starwood and Starwood Trust's Financial Advisor</u>	4
<u>Stockholders Entitled to Vote at the Host Special Meeting</u>	4
<u>Vote Required</u>	4
<u>Share Ownership of Directors and Executive Officers of Host</u>	5
<u>Conditions to Completion of the Transactions</u>	5
<u>No Solicitation by Starwood</u>	6
<u>Break-up Fee</u>	6
<u>Deferral of Hotels</u>	6
<u>Termination of the Master Agreement</u>	8
<u>Listing of Host Common Stock</u>	8
<u>Dissenters' Rights of Appraisal</u>	8
<u>Regulatory Matters</u>	9
<u>Material Federal Income Tax Consequences</u>	9
<u>Accounting Treatment</u>	9
<u>Risks</u>	9
<u>Financing for the Transactions</u>	10
<u>Material Differences in Rights of Host Stockholders and Starwood Trust Shareholders</u>	10
<u>Summary Selected Historical Financial Data</u>	11
<u>Host Marriott Corporation</u>	11
<u>Starwood Hotels &amp; Resorts</u>	13
<u>Selected Unaudited Pro Forma Financial Data</u>	14
<u>Comparative Per Share Information</u>	16
<u>Comparative Per Share Market Price Data</u>	17
<u>RISK FACTORS</u>	18
<u>CAUTIONARY STATEMENT CONCERNING FORWARD-LOOKING STATEMENTS</u>	40
<u>THE HOST SPECIAL MEETING</u>	42
<u>General</u>	42
<u>Date, Time, Place and Purpose of the Host Special Meeting</u>	42
<u>Recommendation of Host's Board of Directors</u>	42
<u>Record Date; Outstanding Shares; Shares Entitled to Vote</u>	42
<u>Quorum and Vote Required; Abstentions and Broker Non-Votes</u>	42
<u>Voting by Host Directors and Executive Officers</u>	43
<u>Voting; Proxies; Revocation</u>	43
<u>Proxy Solicitation</u>	44
<u>Other Business; Adjournments</u>	45
<u>Assistance</u>	45
<u>THE TRANSACTIONS</u>	46
<u>Summary of the Transactions</u>	46
<u>Background of the Transactions</u>	51
<u>Recommendation of Host's Board of Directors and Its Reasons for the Transactions</u>	57
<u>Starwood's Reasons for the Transactions</u>	60
<u>Opinion of Host Financial Advisor</u>	63

**Table of Contents**

	<u>Page</u>
<u>Opinion of Starwood and Starwood Trust's Financial Advisor</u>	68
<u>Accounting Treatment</u>	73
<u>Financing for the Transactions</u>	74
<u>No Dissenters' Rights of Appraisal</u>	77
<u>Regulatory Matters</u>	77
<u>Stock Exchange Listing and Related Matters</u>	77
<u>Restrictions on Sales of Shares of Host Common Stock Received in the Transactions</u>	77
<u>MATERIAL TERMS OF THE PRINCIPAL TRANSACTION AGREEMENTS</u>	79
<u>General</u>	79
<u>Structure of the Closing Transactions</u>	79
<u>Completion of the Closing Transactions</u>	79
<u>Consideration</u>	80
<u>Conditions to Completion of the Closing Transactions</u>	85
<u>Representations and Warranties</u>	90
<u>Covenants Regarding the Conduct of Business Prior to the Closing</u>	92
<u>No Solicitation</u>	95
<u>Other Agreements Relating to the Period Prior to Closing</u>	96
<u>Termination of the Master Agreement</u>	100
<u>Public Announcements</u>	103
<u>Transfer Taxes and Transaction Costs</u>	103
<u>Tax Treatment</u>	103
<u>Amendments, Extensions and Waivers</u>	103
<u>Indemnification Agreement</u>	104
<u>Tax Sharing and Indemnification Agreement</u>	106
<u>STRUCTURE OF HOST FOLLOWING THE TRANSACTIONS</u>	108
<u>STRUCTURE OF STARWOOD PRIOR TO AND FOLLOWING THE TRANSACTIONS</u>	111
<u>RELATIONSHIP OF HOST AND STARWOOD FOLLOWING THE TRANSACTIONS</u>	113
<u>MATERIAL FEDERAL INCOME TAX CONSEQUENCES OF THE REIT MERGER TO HOLDERS OF PAIRED SHARES OF STARWOOD AND STARWOOD TRUST AND HOLDERS OF STARWOOD TRUST CLASS A EXCHANGEABLE PREFERRED SHARES</u>	116
<u>Consequences of the De-Pairing of Shares of Starwood and Starwood Trust</u>	117
<u>Consequences to U.S. Shareholders of the REIT Merger</u>	117
<u>Consequences to Non-U.S. Shareholders of the REIT Merger</u>	118
<u>Information Reporting and Backup Withholding</u>	118
<u>Disclosure of Reportable Transactions</u>	119
<u>MATERIAL FEDERAL INCOME TAX CONSIDERATIONS TO HOLDERS OF SHARES OF HOST COMMON STOCK</u>	120
<u>Introduction</u>	120
<u>Federal Income Taxation of Host</u>	121
<u>Tax Aspects of Host's Ownership of Interest of Host LP</u>	137
<u>Other Tax Consequences for Host and Its Stockholders</u>	139
<u>Taxation of Taxable U.S. Stockholders</u>	140
<u>Taxation of Tax-Exempt Stockholders</u>	143
<u>Taxation of Non-U.S. Stockholders</u>	143
<u>Information Reporting and Backup Withholding Tax Applicable to Stockholders</u>	146
<u>Sunset of Reduced Tax Rate Provisions</u>	147
<u>Tax Shelter Reporting</u>	147
<u>HOST MARRIOTT CORPORATION UNAUDITED PRO FORMA FINANCIAL STATEMENTS</u>	149
<u>DESCRIPTION OF HOST CAPITAL STOCK</u>	159
<u>General</u>	159
<u>Common Stock</u>	159
<u>Preferred Stock</u>	161
<u>Restrictions on Ownership and Transfer</u>	162

**Table of Contents**

	<b>Page</b>
<u>Certain Provisions of Maryland Law and of Host's Charter and Bylaws</u>	164
<u>COMPARISON OF THE RIGHTS OF HOST STOCKHOLDERS AND STARWOOD TRUST SHAREHOLDERS</u>	168
<u>ADDITIONAL INFORMATION</u>	187
<u>Stockholder Proposals</u>	187
<u>Legal Matters</u>	187
<u>Experts</u>	187
<u>Where You Can Find More Information</u>	188

**Annexes**

<u>Annex A Master Agreement and Plan of Merger</u>
<u>Annex B Indemnification Agreement</u>
<u>Annex C Tax Sharing and Indemnification Agreement</u>
<u>Annex D Opinion of Goldman, Sachs &amp; Co.</u>
<u>Annex E Opinion of Bear, Stearns &amp; Co. Inc.</u>

**Table of Contents**

**QUESTIONS AND ANSWERS ABOUT VOTING PROCEDURES FOR THE HOST SPECIAL MEETING**

**The sole holder of Starwood Trust's Class A shares, a Starwood subsidiary, has already adopted the master agreement and approved the transactions and no other approval of Starwood Trust shareholders or Starwood stockholders is required. Accordingly, no vote of Starwood Trust shareholders or Starwood stockholders is being sought with respect to the transactions. Accordingly, Starwood Trust shareholders may skip this section and proceed to the Summary section beginning on page 1.**

*If you are a Host stockholder, the following questions and answers highlight only selected procedural information from this proxy statement/prospectus. They do not contain all of the information that may be important to you. You should read carefully this entire proxy statement/prospectus and the additional documents incorporated by reference into this proxy statement/prospectus to fully understand the voting procedures for the Host special meeting.*

**Q: Why are Host stockholders receiving this proxy statement/prospectus?**

A: Host and Starwood have agreed to the transactions contemplated by the master agreement that is described in this proxy statement/prospectus.

Under the rules of the New York Stock Exchange, which is referred to throughout this proxy statement/prospectus as the NYSE, on which Host common stock is traded, in order to complete the transactions, holders of shares of Host common stock must vote to approve the issuance of shares of Host common stock in the transactions. Host will hold a special meeting of its stockholders to obtain this approval.

This proxy statement/prospectus contains important information about the transactions, the transaction agreements and the special meeting of the stockholders of Host, which you should read carefully. The enclosed voting materials allow you to vote your shares without attending the Host special meeting.

Your vote is very important. We encourage you to vote as soon as possible.

**Q: When and where will the special meeting of Host stockholders be held?**

A: The Host special meeting will take place at \_\_\_\_\_ on \_\_\_\_\_, 2006 at 10:00 a.m., local time.

**Q: Who can attend and vote at the Host special meeting?**

A: All Host common stockholders of record as of the close of business on \_\_\_\_\_, 2006, the record date for the Host special meeting, are entitled to receive notice of and to vote at the Host special meeting.

**Q: What should holders of Host common stock do now?**

## Edgar Filing: HOST MARRIOTT CORP/ - Form S-4/A

A: After carefully reading and considering this proxy statement/prospectus, Host common stockholders of record as of the record date for the Host special meeting may now vote by proxy by completing, signing, dating and returning the enclosed proxy card in the accompanying pre-addressed postage paid envelope or by submitting a proxy over the Internet or by telephone by following the instructions on the enclosed proxy card. If you hold shares of Host common stock in street name, which means your shares are held of record by a broker, bank or nominee, you must provide the record holder of your shares with instructions on how to vote your shares. Please refer to the voting instruction card used by your broker, bank or nominee to see if you may submit voting instructions using the Internet or telephone.

**Q: May holders of Host common stock vote at the Host special meeting?**

A: Yes. You may also vote in person by attending the special meeting of Host stockholders. If you plan to attend the Host special meeting and wish to vote in person, you will be given a ballot at the special meeting.

**Table of Contents**

Please note, however, that if your shares are held in street name, and you wish to vote at the Host special meeting, you must bring a proxy from the record holder of the shares authorizing you to vote at the special meeting. Whether or not you plan to attend the Host special meeting, you should grant your proxy as described in this proxy statement/prospectus.

**Q: What will happen if I abstain from voting or fail to vote?**

A: An abstention by a Host stockholder, which occurs when a stockholder attends a meeting, either in person or by proxy, but abstains from voting, will have the same effect as voting against the issuance of shares of Host common stock in the transactions. Your failure to vote or to instruct your broker to vote if your shares are held in street name may have a negative effect on Host's ability to obtain the number of votes cast necessary for approval of the issuance of shares of Host common stock in the transactions in accordance with the listing requirements of the NYSE.

**Q: May I change my vote after I have delivered my proxy?**

A: Yes. If you are a holder of record, you can change your vote at any time before your proxy is voted at the Host special meeting by:

delivering a signed written notice of revocation to Host's transfer agent at:

Computershare Trust Company, N.A.

P.O. Box 8611

Edison, New Jersey 08818

signing and delivering a new, valid proxy bearing a later date; and if it is a written proxy, it must be signed and delivered to Host's transfer agent at the address listed above;

submitting another proxy by telephone or on the Internet (your latest telephone or Internet voting instructions are followed); or

attending the Host special meeting and voting in person, although your attendance alone will not revoke your proxy.

If your shares are held in a street name account, you must contact your broker, bank or other nominee to change your vote.

**Q: What should holders of Host common stock do if they receive more than one set of voting materials for the Host special meeting?**

A: You may receive more than one set of voting materials for the Host special meeting, including multiple copies of this proxy statement/prospectus and multiple proxy cards or voting instruction cards. For example, if you hold your shares in more than one brokerage account, you will receive a separate voting instruction card for each brokerage account in which you hold shares. If you are a holder of record and your shares are registered in more than one name, you will receive more than one proxy card. Please complete, sign, date and return each proxy card and voting instruction card that you receive.

**Q: Who can help answer my questions?**

A: If you have any questions about the transactions or how to submit your proxy, or if you need additional copies of this proxy statement/prospectus, the enclosed proxy card, voting instructions or the election form, you should contact:

MacKenzie Partners, Inc.

105 Madison Avenue, 14<sup>th</sup> Floor

New York, New York 10016

Call toll-free: (800) 322-2885

v

**Table of Contents**

**SUMMARY**

*The following is a summary that highlights information contained in this proxy statement/prospectus. This summary may not contain all of the information that may be important to you. For a more complete description of the master agreement and other transaction agreements and the transactions contemplated thereby, we encourage you to read carefully this entire proxy statement/prospectus, including the attached annexes. In addition, we encourage you to read the information incorporated by reference into this proxy statement/prospectus, which includes important business and financial information about Host and Starwood Trust that has been filed with the SEC. You may obtain the information incorporated by reference into this proxy statement/prospectus without charge by following the instructions in the section entitled "Additional Information Where You Can Find More Information" beginning on page 188.*

**The Companies**

Host Marriott Corporation

6903 Rockledge Drive, Suite 1500

Bethesda, Maryland 20817-1109

(240)744-1000

Host Marriott Corporation, or Host, is a Maryland corporation and operates as a self-managed and self-administered real estate investment trust, or REIT. Host owns properties and conducts operations through Host Marriott, L.P., which is referred to throughout this proxy statement/prospectus as Host LP, a Delaware limited partnership of which Host is the sole general partner, and of which Host currently holds approximately 95% of the partnership interests. References throughout this proxy statement/prospectus to Host will include a reference to Host LP to the extent applicable. As of February 6, 2006, Host's lodging portfolio consisted of 105 upper-upscale and luxury full-service hotels containing approximately 54,287 rooms. Host's portfolio is geographically diverse with hotels in most of the major metropolitan areas in 26 states, Washington, D.C., Toronto and Calgary, Canada and Mexico City, Mexico. Host's locations include central business districts of major cities, near airports and resort/conference locations. Upon the completion of the transactions, Host intends to change its name to Host Hotels & Resorts, Inc.

Host was formed in 1998 as a Maryland corporation in connection with its reorganization to qualify as a REIT. Host common stock is currently traded on the NYSE under the symbol HMT. Upon the completion of the transactions, Host common stock will trade on the NYSE under the symbol HST.

Starwood Hotels & Resorts Worldwide, Inc.

Starwood Hotels & Resorts

1111 Westchester Avenue

White Plains, New York 10604

(914) 640-8100



Starwood Hotels & Resorts Worldwide, Inc., or Starwood, is one of the world's largest hotel and leisure companies. Starwood conducts its hotel and leisure business both directly and through its subsidiaries, including Starwood Hotels & Resorts, a Maryland real estate investment trust, which is referred to in this proxy statement/prospectus as Starwood Trust. At December 31, 2005, Starwood's hotel portfolio included owned, leased, managed and franchised hotels totaling approximately 850 hotels with approximately 260,000 rooms in more than 99 countries and territories, and is comprised of approximately 130 hotels that Starwood owns or leases or in which Starwood has a majority equity interest, approximately 375 hotels managed by Starwood on behalf of third-party owners (including entities in which Starwood has a minority equity interest) and approximately 340 hotels for which Starwood receives franchise fees. Starwood's brand names include St. Regis®, The

## **Table of Contents**

Luxury Collection<sup>®</sup>, Sheraton<sup>®</sup>, Westin<sup>®</sup>, Four Points<sup>®</sup> by Sheraton<sup>®</sup>, W<sup>®</sup>, Le Meridien<sup>®</sup> and aloft<sup>(SM)</sup>. Starwood also owns Starwood Vacation Ownership, Inc., a developer and operator of high quality vacation interval ownership resorts.

Starwood Trust was organized in 1969, and Starwood was incorporated in 1980, both under the laws of Maryland. The shares of Starwood common stock and the Class B shares of Starwood Trust are paired and trade together as a unit on the NYSE under the symbol HOT.

## **The Transactions (see page 45)**

Host and Starwood have agreed to engage in a series of transactions pursuant to which Host will acquire 38 hotels from Starwood and certain Starwood subsidiaries for total consideration of approximately \$4.037 billion. The transactions include:

the merger of a direct, wholly owned subsidiary of Host LP with and into Starwood Trust, resulting in Starwood Trust becoming a direct, wholly owned subsidiary of Host LP and SLT Realty Limited Partnership becoming an indirect, majority-owned subsidiary of Host LP;

the acquisition by Host LP of the equity interests in Sheraton Holding Corporation, or SHC;

the merger of an indirect, wholly owned subsidiary of Host LP with and into SLT Realty Limited Partnership, resulting in the exchange of all outstanding RP units in SLT Realty Limited Partnership and, if the requisite consent of the holders of Class A RP units in SLT Realty Limited Partnership is obtained by Starwood, all outstanding Class A RP units in SLT Realty Limited Partnership into the right to receive cash, and, if such consent is obtained, resulting in SLT Realty Limited Partnership becoming an indirect wholly owned subsidiary of Host LP;

the acquisition by Host LP of certain domestic hotels in a separate purchase structured to allow Host LP to complete like-kind exchange transactions for federal income tax purposes;

the acquisition by Host LP (through certain subsidiary REITs and foreign subsidiaries formed for this transaction) of certain foreign hotels not owned by Starwood Trust, SHC or SLT Realty Limited Partnership through the acquisition of the equity interests in various Starwood subsidiaries; and

the acquisition by Host LP (or a designated taxable REIT subsidiary or other subsidiary of Host LP) of certain domestic improvements and working capital, as well as other ancillary assets from Starwood and SLC Operating Limited Partnership, a Starwood subsidiary.

We have attached the master agreement, indemnification agreement and tax sharing and indemnification agreement as *Annex A*, *Annex B* and *Annex C*, respectively, to this proxy statement/prospectus. We encourage you to carefully read the annexed transaction agreements as they are the principal legal documents that govern the transactions.

## ***Consideration for the Transactions***

## Edgar Filing: HOST MARRIOTT CORP/ - Form S-4/A

The total consideration payable by Host in the transactions, if completed in their entirety, will be approximately \$4.037 billion, consisting of approximately \$1.063 billion in cash, the assumption by Host of approximately \$704 million in indebtedness and approximately \$2.27 billion of Host common stock (representing 133,529,412 shares of Host common stock at the exchange price of \$17.00 per share), in each case subject to adjustments described herein. Because the total consideration includes shares of Host common stock, the value of such consideration to Starwood Trust shareholders depends on the market price of Host common stock at the time of closing.

The portion of the consideration to be received from Host LP by holders of Class B shares or Class A Exchangeable Preferred Shares of Starwood Trust generally consists of 0.6122 shares of Host common stock and

## **Table of Contents**

\$0.503 in cash for each share held immediately prior to the completion of the transactions. Holders of Class A Exchangeable Preferred Shares of Starwood Trust will also separately receive from Starwood a cash amount representing the value of the shares of Starwood common stock into which their Class A Exchangeable Preferred Shares are exchangeable immediately prior to the completion of the transactions. Holders of these paired shares of Starwood and Starwood Trust will retain their shares of Starwood common stock, which will not be affected by the transactions, except that the shares of Starwood common stock and Class B shares of Starwood Trust will be de-paired prior to the date of the merger of the Host LP subsidiary with and into Starwood Trust, after which the shares of Starwood common stock will trade independently of the Class B shares of Starwood Trust.

Starwood and its subsidiaries will directly receive the consideration not payable in respect of Starwood Trust's Class B shares or Class A Exchangeable Preferred Shares or SLT Realty Limited Partnership's RP units or Class A RP units.

### ***Preferred Stock Purchase Rights (see page 165)***

Each person or entity receiving shares of Host common stock in the transactions will also receive the right to acquire an equal number of Host's Series A Junior Participating Preferred Stock associated with Host common stock. These preferred stock purchase rights are traded with Host common stock, are evidenced by certificates representing common stock and may be transferred only with the common stock. Prior to the public announcement that a person (or group of affiliated persons) has acquired, obtained the right to acquire, or commenced a tender offer or exchange offer that would result in its ownership of, 20% or more of Host's outstanding shares of common stock, none of which has occurred as of this date, the rights will not be exercisable or evidenced separately from Host common stock. If a triggering event not approved by the board of directors of Host were to occur, each purchase right entitles its holder, other than the third party or parties responsible for triggering the event, to purchase common stock of either Host or the acquiring entity having a value of twice the exercise price of the right. The preferred stock purchase rights have no rights or benefits unless and until one of the triggering events described above occurs.

### ***Ownership of Host After the Transactions***

In connection with the transactions contemplated by the master agreement, Host expects to issue approximately 133.5 million shares of Host common stock, which will result in former Starwood Trust shareholders receiving in the transactions approximately 26% of the then-outstanding shares of Host common stock, based on the number of shares of Host common stock outstanding on February 6, 2006.

### ***Recommendation of Host's Board of Directors (see page 57)***

Host's board of directors has determined that the master agreement and the transactions contemplated by the master agreement are advisable and in the best interests of Host and its stockholders and has unanimously approved the master agreement and the issuance of shares of Host common stock in the transactions. Host's board of directors unanimously recommends that Host common stockholders vote **FOR** the proposal to approve of the issuance of shares of Host common stock in the transactions.

### ***Host's Reasons for the Transactions (see page 57)***

## Edgar Filing: HOST MARRIOTT CORP/ - Form S-4/A

In determining whether to approve the master agreement and the proposed transactions, Host's board of directors considered a number of factors, including, among others, the strength of the portfolio, the enhanced growth potential and brand diversification (with the portfolio including 20 Sheratons, 13 Westins, two W hotels, one St. Regis hotel, one The Luxury Collection hotel and one additional unbranded hotel), the international platform represented by the portfolio (with 13 of the hotels to be acquired located outside the United States), and the attractive financial terms. As a result of the transactions, 9% of Host's entire portfolio (by revenue) will be located outside United States, up from 3% prior to the transactions. With the addition of the acquired hotels, only 53% of Host's portfolio (by revenue) will consist of Marriott-branded hotels, while Westin-branded hotels will

## **Table of Contents**

represent 9%, up from 1% prior to the transactions, and Sheraton and W-branded hotels will represent 14% and 2%, respectively. Currently, Host does not own Sheraton or W-branded hotels.

Host's board also considered potentially negative factors, including the risk that the transactions could not be completed or, if completed, could fail to produce the benefits anticipated by Host. Host's board of directors did not consider it practical and did not attempt to quantify, rank or otherwise assign relative weights to the specific factors it considered.

### **Opinion of Host Financial Advisor (see page 63)**

Goldman, Sachs & Co., or Goldman Sachs, delivered its opinion to Host's board of directors to the effect that, as of November 14, 2005 and based upon and subject to the factors and assumptions set forth therein, the Consideration (as defined in such opinion) in the aggregate to be paid by Host and certain of its subsidiaries for the Assets and Interests (each as defined in such opinion) pursuant to the master agreement was fair from a financial point of view to Host.

The full text of the written opinion of Goldman Sachs, dated November 14, 2005, which sets forth assumptions made, procedures followed, matters considered and limitations on the review undertaken in connection with the opinion, is attached as *Annex D* to this proxy statement/prospectus. Goldman Sachs provided its opinion for the information and assistance of Host's board of directors in connection with its consideration of the master agreement and the transactions. The Goldman Sachs opinion is not a recommendation as to how any holder of shares of Host common stock should vote with respect to the transactions. Pursuant to an engagement letter between Host and Goldman Sachs, if the aggregate consideration is greater than \$4 billion, but less than or equal to \$5 billion, Host has agreed to pay Goldman Sachs upon completion of the transactions a transaction fee equal to 0.33% of the aggregate consideration (as defined in such engagement letter) not to exceed \$15 million. In the event that the transaction is not consummated, Goldman Sachs would not receive a fee in connection with the transaction (other than as a result of a termination in connection with which a break-up fee is payable to Host).

### **Opinion of Starwood and Starwood Trust's Financial Advisor (see page 68)**

Bear, Stearns & Co. Inc., or Bear Stearns, at the November 13, 2005 meeting of Starwood's board of directors and Starwood Trust's board of trustees, delivered its oral opinion, which was subsequently confirmed in writing, that, as of November 13, 2005, and based upon and subject to the assumptions, qualifications and limitations set forth in the written opinion, the aggregate consideration to be received by Starwood, Starwood Trust and their shareholders for the Starwood Portfolio, as defined in Bear Stearns' written opinion, was fair, from a financial point of view, to Starwood and Starwood Trust.

The full text of Bear Stearns' written opinion is attached as *Annex E* to this proxy statement/prospectus. Bear Stearns provided its opinion solely for the benefit and use of Starwood's board of directors and Starwood Trust's board of trustees and the opinion did not constitute a recommendation to either of the boards in connection with the transactions. The Bear Stearns opinion is not a recommendation to Host's board of directors or any shareholders of Host as to how to vote in connection with the transactions. Pursuant to the terms of Bear Stearns' engagement letter, Starwood has agreed to pay Bear Stearns a transaction fee equal to \$17 million, which is payable upon consummation of the transactions contemplated by the master agreement. If the transactions are terminated, Starwood would not be required to pay Bear Stearns a fee in connection with the transactions.

**Stockholders Entitled to Vote at the Host Special Meeting (see page 42)**

You can vote at the Host special meeting if you owned Host common stock at the close of business on \_\_\_\_\_, 2006, which is referred to throughout this proxy statement/prospectus as the record date. On that date, there were \_\_\_\_\_ shares of Host common stock outstanding and entitled to vote at the Host special meeting. You can cast one vote for each share of Host common stock that you owned on the record date.

## **Table of Contents**

### **Vote Required (see page 42)**

**The sole holder of Starwood Trust's Class A shares, Starwood Hotels & Resorts Holdings, Inc., a subsidiary of Starwood, has already adopted the master agreement and approved the transactions and no other approval of Starwood Trust shareholders or Starwood stockholders is required. Accordingly, no vote of Starwood Trust shareholders or Starwood stockholders is being sought, and therefore no proxy is being requested from them, with respect to the transactions.**

In order to complete the transactions contemplated by the master agreement, holders of shares of Host common stock must approve the issuance of shares of Host common stock in the transactions. In accordance with the listing requirements of the NYSE, the issuance of shares of Host common stock in the transactions requires the affirmative vote of the holders of a majority of shares of Host common stock cast on the proposal, in person or by proxy, provided that the total votes cast on the proposal represent over 50% of the outstanding shares of Host common stock entitled to vote on the proposal.

Abstentions and broker non-votes, will be counted in determining whether a quorum is present at the Host special meeting for purposes of the vote of Host stockholders on the proposal to approve the issuance of shares of Host common stock in the transactions. An abstention, which occurs when a stockholder attends a meeting either in person or by proxy, but abstains from voting, will have the same effect as a vote against the proposal. A broker non-vote occurs when shares are held in street name by a broker or other nominee on behalf of a beneficial owner and the beneficial owner does not instruct the broker or nominee how to vote the shares for a proposal that is non-routine under the listing requirements of the NYSE. Broker non-votes could have a negative effect on Host's ability to obtain the necessary number of votes cast in accordance with the NYSE's listing requirements for the proposal to approve the issuance of shares of Host common stock in the transactions because it is a non-routine proposal.

### **Share Ownership of Directors and Executive Officers of Host**

At the close of business on the record date, directors and executive officers of Host and their affiliates beneficially owned and were entitled to vote approximately \_\_\_\_\_ shares of Host common stock, collectively representing approximately \_\_\_\_\_ % of the shares of Host common stock outstanding on that date.

### **Conditions to Completion of the Transactions (see page 85)**

A number of conditions must be satisfied before the transactions will be completed. These include, among others:

the receipt of the approval by Host common stockholders of the issuance of shares of Host common stock in the transactions;

the receipt of the approval for listing on the NYSE of shares of Host common stock to be issued in the transactions;

the satisfaction of all antitrust requirements in Canada and Italy;



the absence of any legal restraints or prohibitions preventing the completion of the transactions;

the representations and warranties of each party contained in the master agreement being true and correct, generally except to the extent that breaches of such representations and warranties would not reasonably be expected to result in a material adverse effect with respect to Host or the business of Starwood currently contemplated to be acquired by Host or result in a material default under certain operating agreements to be entered into between Host and Starwood at the closing;

## **Table of Contents**

the performance by Host and Starwood in all material respects of their respective obligations under the master agreement;

the absence of any events or developments since the date of the master agreement that would reasonably be expected to have a material adverse effect with respect to Host or the business of Starwood currently contemplated to be acquired by Host;

the absence of any actual or proposed change in tax law or regulation with respect to consolidated tax return rules that would reasonably be expected to result in a material risk of Starwood incurring an economic cost of more than \$200 million that Starwood did not expect to bear from the transactions; and

the 20-trading day average closing price of a share of Host common stock being no less than \$13.60 on the date on which the closing date is determined.

Each of Host and Starwood may, if legally permissible, waive the conditions to the performance of its obligations under the master agreement and complete the transactions even though one or more of these conditions has not been met. Neither Host nor Starwood can give any assurance that all of the conditions to the transactions will be either satisfied or waived or that the transactions will occur.

### **No Solicitation by Starwood (see page 95)**

The master agreement contains restrictions on the ability of Starwood to solicit or engage in discussions or negotiations with a third party with respect to a proposal to acquire a significant interest in the hotels currently contemplated to be acquired by Host in the transactions. Notwithstanding these restrictions, the master agreement provides that, under specified circumstances and prior to February 12, 2006, if Starwood receives an unsolicited bona fide proposal from a third party to acquire a significant interest in the hotels currently contemplated to be acquired by Host that Starwood's board of directors or Starwood Trust's board of trustees determines in good faith would reasonably be expected to lead to a proposal that is superior to the transactions, Starwood may furnish nonpublic information to that third party and engage in negotiations regarding a takeover proposal with that third party.

### **Break-up Fee (see page 102)**

If the master agreement is terminated, Starwood, in certain circumstances, will be required to pay a break-up fee of up to \$100 million to Host and reimburse Host for up to \$20 million of Host's transaction-related expenses, and Host, in the event the master agreement is terminated by either party due to the failure to obtain the requisite vote of Host stockholders, will be required to reimburse Starwood for up to \$20 million of Starwood's transaction-related expenses but will not be required to pay a break-up fee.

### **Deferral of Hotels (see page 97)**

Host and Starwood have agreed that, in the circumstances described below, one or both of them may elect to defer, or temporarily (or, ultimately, permanently) exclude from the transactions, one or more hotels or entities to be acquired by Host in the transactions. If a hotel or entity is deferred, the cash portion of the overall purchase price for the transactions will be reduced by the amount of the purchase price that was allocated to such hotel (or, in the case of a deferred entity, the hotels owned by such entity) in the master agreement.

Either Host or Starwood can defer any hotel or entity to be acquired by Host from the initial closing transactions without the other's consent upon the occurrence of any of the following deferral triggers related to such hotel or entity:

failure to obtain any consent identified prior to signing the master agreement;

required antitrust approvals are not obtained; or

**Table of Contents**

any temporary restraining order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction is issued or laws become effective that prevent the transactions or make them illegal.

In addition, Starwood can exclude any of the Canadian hotels to be acquired by Host from the initial closing transactions without Host's consent if Starwood does not succeed in obtaining the desired ruling from the Canadian tax authorities with respect to certain Canadian restructuring transactions related to the sale of the Canadian hotels to Host.

In addition, Host can defer any hotel or entity to be acquired by Host from the initial closing transactions without Starwood's consent upon the occurrence of any of the following deferral triggers related to such hotel or entity:

casualty at a hotel currently contemplated to be acquired by Host that results in cost of repair (without taking into account insurance) in excess of 25% of the value of such hotel;

condemnation of a hotel currently contemplated to be acquired by Host that results in an economic impact (without taking into account any condemnation award) in excess of 25% of the value of such hotel;

breach of specified Starwood representations or failure to obtain a required consent not previously identified that results in an economic impact (without taking into account any indemnification or insurance) in excess of 25% of the value of a hotel or entity currently contemplated to be acquired by Host;

failure of Starwood to complete its restructuring in a manner that satisfies Host's restructuring conditions;

specified structuring costs attendant to the ownership of certain foreign hotels to be acquired by Host would reasonably be expected to exceed 10% of the earnings before interest, taxes, depreciation and amortization, or EBITDA, that would (but for such costs) otherwise be received by Host with respect to such foreign hotels during the twelve months immediately following the closing; or

if Host's closing conditions are satisfied on the overall transactions, but a required consent has not been obtained (or there is another deferral trigger) with respect to one of three primary European hotels (i.e., Westin Palace Madrid, Westin Palace Milan and the Westin Europa & Regina), Host can elect to defer all acquired hotels located outside of the United States, Canada and Poland.

Host and Starwood are working with the intention that Host will acquire at closing all of the hotels in the transactions and no hotel has been deferred or excluded from the transactions as of the date of this proxy statement/prospectus. Furthermore, Host and Starwood have conditions to their respective obligations to complete the transactions, which limit the hotels that can be excluded by either party from the initial closing without the other party's consent. However, there is no guarantee that all of the deferral triggers will be satisfied or waived prior to closing. In particular, given the waiting period applicable to certain approvals that are required to be obtained from the municipality in which the Westin Europa & Regina (a hotel in Venice) is located, unless a waiver can be obtained, it is likely that the transfer of that hotel will not be capable of completion prior to the second quarter of 2006. As a result, if the requisite Host stockholder approval is obtained and all other conditions to the completion of the closing transactions have been satisfied prior to that time, it is likely that the acquisition of the Westin Europa & Regina (and, if Host so elects, all other hotels located outside of the United States, Canada and Poland) would be deferred. In such an event, if the applicable approvals are not obtained prior to 90 days after the initial closing of the transactions (or, if Host elects to defer all hotels located outside the United States, Canada and Poland, prior to October 17, 2006), the deferred hotels could ultimately be permanently excluded from the transactions and retained by Starwood.

## Edgar Filing: HOST MARRIOTT CORP/ - Form S-4/A

In the event that the requisite Host stockholder vote is obtained and, following such vote, the number or value of hotels in the transactions were to materially change due to the deferral triggers described above, then

## **Table of Contents**

Host would call another special meeting of its stockholders for the purpose of re-approving the issuance of shares of Host common stock in the transactions.

### **Indemnification (see page 104)**

Subject to certain limitations, Starwood has agreed to indemnify and hold Host harmless from liabilities being retained by Starwood and breaches of Starwood's covenants, agreements, representations and warranties contained in the master agreement. Similarly, subject to certain limitations, Host has agreed to indemnify and hold Starwood harmless from liabilities being assumed by Host and breaches of Host's covenants, agreements, representations and warranties contained in the master agreement.

Each of Host and Starwood will indemnify the other for every dollar there is no deductible, cap or survival limitation of assumed liabilities and retained liabilities, respectively. Subject to certain survival limitations, the parties will indemnify each other for every dollar of losses arising from a breach of a covenant there is no deductible or cap except that with respect to breaches of covenants relating to the parties' conduct of their respective businesses pre-closing, there is a \$500,000 threshold. A party's right to indemnification for a loss that results from a breach by the other party of its representations or warranties will be subject to a specified deductible, cap and survival limitation. Generally, neither Host nor Starwood will be liable for a claim by the other with respect to breaches of representations and warranties involving (i) individual losses of less than \$500,000, (ii) losses that, in the aggregate, are less than \$50 million or (iii) losses in excess of \$100 million.

### **Termination of the Master Agreement (see page 100)**

Host and Starwood may mutually agree in writing, at any time before the completion of the transactions, to terminate the master agreement. Also, either Host or Starwood may terminate the master agreement in a number of circumstances, including if:

the transactions are not completed by April 17, 2006;

any governmental entity prohibits the transactions;

Host common stockholders at the Host special meeting fail to approve the issuance of shares of Host common stock in the transactions;

the 20-trading day average closing price of a share of Host common stock is less than \$13.60 on the date on which the closing date is determined; or

the breach or failure to perform of the other party's covenants, agreements, representations or warranties contained in the master agreement would result in the failure to satisfy one or more of the closing conditions, and such breach is not cured within 20 business days following notice of such breach.

Host may terminate the master agreement if:

Starwood enters into a definitive agreement relating to, or consummates, a transaction resulting in a more than 50% change in the ownership of Starwood; or

Host delivers to Starwood notice of actual or alleged breaches by Starwood of its representations and warranties and Starwood declines to agree that the cap on Host's indemnification will not apply for such identified breaches of representations and warranties (for more information on Starwood's indemnification obligations, see Material Terms of the Principal Transaction Agreements - Indemnification Agreement beginning on page 104).

Starwood may terminate the master agreement if:

prior to February 12, 2006, Starwood accepts, in accordance with the terms of the master agreement, a superior proposal and pays Host the break-up fee described above under Break-up Fee ; or

Starwood delivers to Host notice of actual or alleged breaches by Starwood of its representations and warranties and Host declines to limit to \$50 million Starwood's total liability for Host's claims for such identified breaches or representations and warranties.

## **Table of Contents**

### **Listing of Host Common Stock (see page 77)**

Application will be made to have the shares of Host common stock issued in the transactions approved for listing on the NYSE, where Host common stock is currently traded under the symbol HMT and, after the completion of the transactions, will be traded under the symbol HST.

### **Dissenters' Rights of Appraisal (see page 77)**

Under Maryland law, holders of Host common stock are not entitled to dissenters' or appraisal rights in connection with the issuance of Host common stock in the transactions.

Except for the sole holder of the Class A shares of Starwood Trust, which waived its rights, no holder of shares of Starwood Trust, paired shares of Starwood and Starwood Trust or units of SLT Realty Limited Partnership is entitled to appraisal, dissenters' or similar rights as a result of the consummation of the transactions.

### **Regulatory Matters (see page 77)**

Neither Host nor Starwood is aware of any material federal or state regulatory requirements that must be complied with or approvals that must be obtained in connection with the transactions. However, there are certain antitrust requirements that must be satisfied in Canada and Italy in connection with Host's acquisition of hotels located in these countries. With respect to the Canadian antitrust approval, the Canadian Competition Bureau issued a no-action letter on January 24, 2006 indicating that it will not challenge the transactions at this time.

### **Transfer Taxes and Transaction Costs (see page 103)**

Host and Starwood will share equally all transfer taxes and specified transaction costs incurred in connection with the closing transactions. However, this sharing by Host and Starwood is subject, except in certain circumstances, to a \$50 million cap on Host's obligations, subject to reduction in certain circumstances.

In addition, each party will bear its own legal, investment banking and other fees and expenses incurred in connection with the closing transactions, including, in the case of Host, substantially all of the costs of obtaining title policies.

### **Relationship of Host and Starwood Following the Transactions (see page 113)**



## Edgar Filing: HOST MARRIOTT CORP/ - Form S-4/A

At the closing of the transactions, Host and Starwood will enter into certain agreements to govern their relationship going forward. In particular, Host and Starwood, through their respective subsidiaries, will enter into operating agreements (pursuant to which Starwood will provide management services for the hotels being acquired by Host) and license agreements (which will address rights to use service marks, logos, symbols and trademarks, such as Westin®, Sheraton® and W®). The combined terms of the operating and license agreements with Starwood would be structured to be generally comparable to Host's established management agreements with its other third-party managers (such as Marriott International, Hyatt and Hilton).

Under each operating agreement, Starwood would provide comprehensive management services for the hotels for an initial term of 20 years each, with two renewal terms of 10 years each. Starwood would receive compensation in the form of a base fee of 1% of annual gross revenues, and an incentive fee of 20% of annual gross operating profit, after Host has received a priority return of 10.75% on its purchase price and other investments in the hotels. In addition, the operating agreements would require Host to provide funding for any required capital expenditures (including replacements of furniture, fixtures and equipment) and building capital improvements. For the purpose of funding, an amount equal to 5% of the gross operating revenue of each hotel would be periodically deposited into a reserve fund account for such hotel.

In addition to rights relating to the subject brand, the license agreement would address matters relating to compliance with certain standards and policies and the provision of certain system program and centralized services. The license agreements would have an initial term of 20 years each, with two renewal terms of 10 years each. Starwood would receive compensation in the form of a license fee of 5% of gross operating revenue

## **Table of Contents**

attributable to room sales and 2% of gross operating revenue attributable to food and beverage sales. In addition, the license agreements would limit Host's ability to sell, lease or otherwise transfer any hotel by requiring that the transferee assume the related operating agreement and meet other specified conditions.

### **Material Federal Income Tax Consequences (see pages 116 and 120)**

The parties intend that the REIT merger will be treated as a taxable purchase by Host LP of all of the outstanding shares of Starwood Trust in exchange for the REIT merger consideration. In evaluating the tax consequences of the transactions, including the ownership and disposition of Host common stock after the transactions, you should consider the matters discussed in the section entitled "Material Federal Income Tax Consequences of the REIT Merger to Holders of Paired Shares of Starwood and Starwood Trust and Holders of Starwood Trust Class A Exchangeable Preferred Shares" beginning on page 116, and the section entitled "Material Federal Income Tax Consequences to Holders of Shares of Host Common Stock" on page 120.

### **Accounting Treatment (see page 73)**

In accordance with SFAS No. 141, "Business Combinations," Host will account for the transactions as a business combination. Upon the consummation of the transactions, Host will record the cash consideration, the market value of Host common stock issued, the fair value of the assets and liabilities assumed, as well as the amount of direct transaction costs.

### **Risks (see page 18)**

In evaluating the transactions, the transaction agreements or the issuance of shares of Host common stock in the transactions, you should carefully read this proxy statement/prospectus and especially consider the factors discussed in the section entitled "Risk Factors" beginning on page 18.

### **Financing for the Transactions (see page 74)**

Host has received commitments from Goldman Sachs Credit Partners, L.P., Deutsche Bank AG Cayman Islands Branch, Bank of America Bridge LLC and Merrill Lynch Capital Corporation in an aggregate amount of up to \$1.67 billion, which is sufficient to fund the cash portion of the purchase price for the transactions. This bridge loan amount would also allow Host to consummate the transactions even if the consents of the holders of certain indebtedness of SHC necessary in order to permit the \$600 million of SHC indebtedness to remain obligations of SHC (instead of being assumed by Starwood) at the time of the closing. If the SHC indebtedness is not assumed, the cash portion of the purchase price would increase by the corresponding amount. The bridge loan facility has a term, excluding extensions, of one year.

Host expects to permanently finance the \$1.063 billion cash portion of the purchase price for the transactions (assuming the SHC consents are obtained) through available cash proceeds from a combination of (i) asset sales of existing assets of approximately \$250 million to \$650 million (including the Ft. Lauderdale Marina Marriott, the Albany Marriott, the Chicago Marriott Deerfield Suites and the Marriott at Research Triangle

## Edgar Filing: HOST MARRIOTT CORP/ - Form S-4/A

Park), (ii) sales of joint venture interests related to the six European assets to be acquired in the transactions (approximately \$580 million, including new debt to be issued by the joint venture but excluding Host's portion of the capital contributions to the joint venture) and (iii) the issuance or other incurrence of indebtedness. Some of these sales and financings may occur prior to the closing of the transactions and depending on their timing, may be used to either reduce the amount initially drawn under the bridge loan facility or to repay amounts borrowed on the bridge loan facility. Host expects to assume approximately \$704 million of indebtedness of the entities acquired in the transactions (including \$600 million of SHC indebtedness if the above-referenced bondholder consents are obtained).

### **Comparison of the Rights of Host Stockholders and Starwood Trust Shareholders (see page 168)**

Holders of Starwood Trust shares who will be receiving consideration in the form of shares of Host common stock will have rights as Host stockholders, which are governed by Titles 1-3 of the Corporations and Associations Article of the Annotated Code of Maryland and Host's charter and bylaws, that are different than their rights as Starwood Trust shareholders, which are governed by Title 8 of the Corporations and Associations Article of the Annotated Code of Maryland and Starwood Trust's restated declaration of trust and bylaws.

**Table of Contents****Summary Selected Historical Financial Data**

Host is providing the following information to aid you in your analysis of the financial aspects of the transactions.

**Host Marriott Corporation**

The following table presents certain selected historical financial data which has been derived from Host's audited consolidated financial statements for the five years ended December 31, 2004. The data presented for the year-to-date periods ended September 9, 2005 and September 10, 2004 are derived from Host's unaudited condensed consolidated financial statements and include, in the opinion of management, all adjustments necessary to present fairly the data for such periods. The results for year-to-date 2005 are not necessarily indicative of the results to be expected for the full year because of the effect of seasonal and short-term variations. The information is only a summary and should be read in conjunction with (i) the unaudited pro forma financial statements and accompanying notes included in this proxy statement/prospectus as described under "Host Marriott Corporation Unaudited Pro Forma Financial Statements" beginning on page 149, and (ii) the consolidated financial statements, accompanying notes and management's discussion and analysis of results of operations and financial condition of Host as of and for the periods presented, all of which can be found in publicly available documents, including those incorporated by reference into this proxy statement/prospectus. See "Additional Information - Where You Can Find More Information" beginning on page 188.

	Year-to-date		Fiscal year				
	September 9, September 10,		2004	2003	2002	2001	2000
	2005	2004					
(in millions, except per share amounts)							
<b>Income Statement Data:</b>							
Revenues	\$ 2,647	\$ 2,452	\$ 3,629	\$ 3,278	\$ 3,333	\$ 3,362	\$ 1,305
Income (loss) from continuing operations	79	(89)	(65)	(238)	(71)	7	103
Income from discontinued operations (1)	13	28	65	252	55	44	53
Net income (loss)	92	(61)		14	(16)	51	156
Net income (loss) available to common stockholders	67	(93)	(41)	(21)	(51)	19	141
Basic earnings (loss) per common share:							
Income (loss) from continuing operations	.15	(.36)	(.31)	(.97)	(.40)	(.10)	.40
Income from discontinued operations	.04	.08	.19	.90	.21	.18	.24
Net income (loss)	.19	(.28)	(.12)	(.07)	(.19)	.08	.64
Diluted earnings (loss) per common share:							
Income (loss) from continuing operations	.15	(.36)	(.31)	(.97)	(.40)	(.10)	.39
Income from discontinued operations	.04	.08	.19	.90	.21	.18	.24
Net income (loss)	.19	(.28)	(.12)	(.07)	(.19)	.08	.63
Cash dividends declared per common share	.29		.05			.78	.91
<b>Balance Sheet Data:</b>							
Total assets	\$ 8,248	\$ 8,384	\$ 8,421	\$ 8,592	\$ 8,316	\$ 8,338	\$ 8,396
Debt (2)	5,501	5,564	5,523	5,486	5,638	5,602	5,322
Convertible Preferred Securities (2)				475	475	475	475
Preferred stock	241	337	337	339	339	339	196

**Table of Contents**

---

- (1) Discontinued operations reflects the operations of properties classified as held for sale, the results of operations of properties sold and the gain or loss on those dispositions. Results in 2003 include the gain on disposition and business interruption proceeds of the New York Marriott World Trade Center hotel of approximately \$212 million.
- (2) Host adopted Financial Interpretation No. 46 Consolidation of Variable Interest Entities (FIN 46) in 2003. Under FIN 46, Host's limited purpose trust subsidiary that was formed to issue trust-preferred securities (the Convertible Preferred Securities) was accounted for on a consolidated basis as of December 31, 2003 since Host was the primary beneficiary under FIN 46.

In December 2003, the FASB issued a revision to FIN 46, referred to as FIN 46R. Under FIN 46R, Host is not the primary beneficiary and Host is required to deconsolidate the accounts of the Convertible Preferred Securities Trust (the Trust). Host adopted the provisions of FIN 46R on January 1, 2004. As a result, Host recorded the \$492 million in debentures (the Convertible Subordinated Debentures) issued by the Trust and eliminated the \$475 million of Convertible Preferred Securities that were previously classified in the mezzanine section of Host's consolidated balance sheet prior to January 1, 2004. The difference of \$17 million is Host's investment in the Trust, which is included in Investments in affiliates on Host's consolidated balance sheet. The related dividend payment of approximately \$32 million for 2004 is required to be classified as interest expense effective January 1, 2004. Host adopted FIN 46R prospectively and, therefore, did not restate prior periods. The adoption of FIN 46R had no effect on Host's net loss, loss per diluted share or the financial covenants under Host's senior notes indentures.

On January 11, 2006, Host completed the redemption of \$86 million of the Convertible Preferred Securities (and the underlying Convertible Subordinated Debentures) and issued approximately 5.6 million shares of Host common stock. Also, on January 11, 2006, Host announced its intention to exercise its option to cause the conversion rights of the remaining Convertible Preferred Securities to expire effective February 10, 2006. Host is exercising this right because the market price of its common stock has exceeded 120% of the adjusted conversion price for 20 out of the last 30 trading days. Each of the Convertible Preferred Securities are currently convertible into 3.2357 shares of Host common stock per \$50 liquidation amount of the preferred security, which equates to a conversion price of \$15.367. The last reported sale price on February 6, 2006 of Host common stock was \$20.15 and, as a result, the company expects that all of the remaining security holders will elect to convert their interests to common stock.

**Table of Contents****Starwood Hotels & Resorts (Starwood Trust)**

The following table was prepared by Starwood and presents certain selected historical financial data which has been derived from Starwood Trust's audited consolidated financial statements for the five years ended December 31, 2004. The data presented for the year-to-date periods ended September 30, 2005 and September 30, 2004 are derived from Starwood Trust's unaudited condensed consolidated financial statements and include, in the opinion of Starwood's management, all adjustments necessary to present fairly the data for such periods. The results for the nine months ended September 30, 2005 are not necessarily indicative of the results to be expected for the full year because of the effect of seasonal and short-term variations. The information is only a summary and should be read in conjunction with (i) the unaudited pro forma financial statements and accompanying notes included in this proxy statement/prospectus as described under Host Marriott Corporation Unaudited Pro Forma Financial Statements beginning on page 149, and (ii) the consolidated financial statements, accompanying notes and management's discussion and analysis of results of operations and financial condition of Starwood Trust as of and for the periods presented, all of which can be found in publicly available documents, including those incorporated by reference into this proxy statement/prospectus. See Additional Information Where You Can Find More Information beginning on page 188.

	As of and for the						
	Nine Months Ended		Year Ended December 31,				
	September 30,		2004	2003	2002	2001	2000
2005	2004	2004	2003	2002	2001	2000	
(in millions, except per share data)							
<b>Income Statement Data</b>							
Revenues	\$ 423	\$ 398	\$ 536	\$ 526	\$ 587	\$ 633	\$ 692
Operating income	302	279	377	358	362	418	499
Income from continuing operations	265	256	322	133	315	376	460
<b>Operating Data</b>							
Cash from continuing operations	375	418	455	43	104	602	641
Cash from (used for) investing activities	1	(47)	(61)	336	(35)	(164)	(68)
Cash used for financing activities	(375)	(372)	(395)	(379)	(70)	(444)	(565)
Aggregate cash distributions paid	176	172	172	170	40 <sup>(1)</sup>	156	134
Cash distributions declared per share			0.84	0.84	0.84	0.80	0.69
<b>Balance Sheet Data</b>							
Total assets	\$ 6,807	\$ 6,861	\$ 6,925	\$ 6,978	\$ 7,230	\$ 6,984	\$ 7,048
Long-term debt, net of current maturities and including exchangeable units and Class B preferred shares	431	438	435	475	486	495	600

- (1) This balance reflects the payment made in January 2002 for the dividends declared for the fourth quarter of 2001. As Starwood Trust now declares dividends annually, the 2002 annual dividend payment, which was made in January 2003, is reflected in the 2003 column.

**Table of Contents**

**Selected Unaudited Pro Forma Financial Data**

The following selected unaudited pro forma financial data has been prepared based upon the audited consolidated financial statements of Host and the audited combined financial statements of the acquired business, which is referred to as the Starwood portfolio, for the year ended December 31, 2004, the unaudited financial statements of Host and the Starwood portfolio for the three quarters ended September 9, 2005 and for the eight months ended August 31, 2005, respectively, and based upon certain assumptions, as set forth in the notes to the unaudited pro forma financial statements that Host believes are reasonable under the circumstances.

The selected unaudited pro forma statements of operations information of Host reflects the acquisition of the Starwood portfolio and other matters described in the section entitled "Host Marriott Corporation Unaudited Pro Forma Financial Statements" beginning on page 149 for the three quarters ended September 9, 2005 and the year ended December 31, 2004 as if the transactions and other matters had been completed at the beginning of each period. The selected unaudited pro forma balance sheet information of Host as of September 9, 2005 reflects the acquisition of the Starwood portfolio and, to the extent not already reflected in the unaudited historical balance sheet, other matters as if these items had been completed on September 9, 2005.

In accordance with SFAS No. 141, "Business Combinations," Host will account for the acquisition of the Starwood portfolio as a business combination. Upon consummation of the acquisition, Host will record as the purchase price the cash consideration, the market value of the Host common stock issued, the fair value of the liabilities assumed, as well as any direct transaction costs. For the purpose of the preparation of the selected unaudited pro forma financial data, based on the guidance set forth in Emerging Issues Task Force Issue No. 99-12, the market value of the Host common stock issued in the transactions, or \$16.97, has been calculated based on the average of the closing prices of Host common stock during the range of trading days from two days before and after November 14, 2005, the announcement date.

For the purpose of the preparation of the selected unaudited pro forma financial data, Host has assumed that fair value is equivalent to historical cost except for the property and equipment which is recorded at the stepped-up basis and the debt assumed by Host which is recorded at fair value based on market rates as of September 9, 2005 for the senior notes and is based on expected future debt service payments discounted at risk adjusted rates for the mortgage debt. The pro forma adjustments as presented are based on estimates and certain information that is currently available and may change as additional information becomes available, as estimates are refined or as additional events occur. Specifically, while the purchase price has been allocated among individual hotels, we are in the beginning stages of evaluating the fair value of the allocation of the purchase price among each individual hotel's assets and liabilities including land, property and equipment items, other assets and liabilities, and assumed agreements, including ground and retail space leases and other intangible assets. Host management does not anticipate that there will be material changes in the total purchase price allocation as presented in these unaudited pro forma financial statements. To the extent there is any excess to the purchase price over the fair value of the net assets acquired, it will be recorded as goodwill for accounting purposes. Host believes that this presentation provides investors with the best estimate of the financial condition and results of operations because the determination of fair value will be affected by, among other things, the timing of the closing, changes in interest rates and the allocation of the final purchase price among the various hotels.

The selected unaudited pro forma financial information is for illustrative purposes only and does not purport to be indicative of the financial position or results of operations that would actually have been achieved had the transactions occurred on the dates indicated or which may be achieved in the future. In the opinion of Host management, all material adjustments necessary to reflect the effects of the transactions that can be factually supported within the SEC regulations covering the preparation of the selected unaudited pro forma financial information have been made.

The selected unaudited pro forma financial information should be read in conjunction with the separate historical consolidated financial statements and accompanying notes of Host which are incorporated by reference





**Table of Contents**

into this proxy statement/prospectus and the combined financial statements and accompanying notes of the Starwood portfolio to be acquired by Host in the transactions which are included elsewhere in this proxy statement/prospectus. The selected unaudited pro forma financial information also should be read in conjunction with the unaudited pro forma financial statements and accompanying notes included elsewhere in this proxy statement/prospectus. See Host Marriott Corporation Unaudited Pro Forma Financial Statements beginning on page 149.

	Year-to-date	
	Ended September 9, 2005 <sup>(1)</sup>	Year Ended December 31, 2004 <sup>(1)</sup>
(in millions, except per share amounts)		
<b>Income Statement Data:</b>		
Total revenues	\$ 3,451	\$ 4,875
Operating profit	422	534
Income from continuing operations	106	71
Basic and diluted earnings (loss) per share from continuing operations	.17	.09
		<b>At September 9, 2005<sup>(1)</sup></b>
		(in millions)
<b>Balance Sheet Data:</b>		
Total assets		\$ 12,221
Debt		6,592
Stockholders' equity		5,202

- (1) These amounts reflect the historical results of Host and the historical results of the Starwood portfolio to be acquired by Host in the transactions, which is referred to herein as the Acquired Businesses, which have been adjusted on a pro forma basis for the acquisition and other significant transactions. The results of operations and financial position of the Acquired Businesses have been derived from the accounting records of Starwood and Starwood Trust and their subsidiaries using the historical results of operations of 38 properties to be acquired by Host under the master agreement. Twenty-one of the properties, with a net book value of \$1.2 billion at December 31, 2004 and revenues of \$324 million and \$462 million for the periods ended September 9, 2005 and December 31, 2004, respectively, were owned by Starwood Trust or its subsidiaries, while 17 of the properties, with a net book value at December 31, 2004 of \$1.3 billion and revenues of \$487 million and \$736 million for the periods ended September 9, 2005 and December 31, 2004, respectively, were owned by Starwood or its subsidiaries (other than Starwood Trust and its subsidiaries). Host will assume approximately \$600 million of the debt related to SHC, a subsidiary of Starwood, which represents the balance outstanding after Starwood repaid \$450 million of this debt subsequent to September 9, 2005. In addition, Host will assume approximately \$104 million of mortgage debt. Accordingly, the acquisition of these 38 hotels results in an increase of \$811 million and \$1,198 million of revenues for the periods ended September 9, 2005 and December 31, 2004, respectively, for Host. For further information on the pro forma adjustments for Host related to the Starwood transactions, including the affect on Host's total assets and debt, as well as the affect of other pro forma adjustments, see Host Marriott Corporation Unaudited Pro Forma Financial Statements beginning on page 149.

Host does not intend to sell any of the assets acquired to finance the acquisition. However, Host does intend to form a joint venture with two third-party partners that will own the six European assets. The basic and diluted earnings per share amounts are based on the historical weighted average shares outstanding for Host as adjusted for the estimated shares to be issued for the acquisition of the Starwood portfolio and other significant transactions.

The summary unaudited pro forma financial data should be read in conjunction with the Host Marriott Corporation Unaudited Pro Forma Financial Statements and notes thereto included on page 149 and the audited Acquired Businesses Combined Financial Statements and notes thereto included on page F-1 and the historical financial statements of Host and Starwood incorporated by reference into this proxy statement/prospectus.



**Table of Contents****Comparative Per Share Information**

The following table presents, for the periods indicated, selected historical per share data for Host and Starwood Trust, as well as unaudited pro forma per share amounts, assuming the issuance of approximately \$2.27 billion of Host common stock (representing 133,529,412 shares of Host common stock at the exchange price of \$17.00 per share), the payment of approximately \$1.063 billion in cash and the assumption of approximately \$704 million in indebtedness in the transactions, as well as the effect of the conversion of the \$492 million of Convertible Subordinated Debentures into 30.9 million shares of Host common stock and other pro forma adjustments.

	<b>Host</b>	<b>Host</b>	<b>Starwood Trust</b>	<b>Starwood Trust</b>
	<b>Host (2)(3)</b>	<b>Pro Forma (1)(2)(3)(4)</b>	<b>Starwood Trust (5)</b>	<b>Pro Forma (6)</b>
	<b>Year-to-date ended</b>	<b>Year-to-date ended</b>	<b>Year-to-date ended</b>	<b>Year-to-date ended</b>
	<b>September 9, 2005</b>	<b>September 9, 2005</b>	<b>September 30, 2005</b>	<b>September 9, 2005</b>
<b>Per share data:</b>				
Income from continuing operations:				
Basic	\$ .15	\$ .17	N/A	\$ .07
Diluted	.15	.17	N/A	.07
Cash dividends declared	.29	N/A		N/A
Book value	6.57	10.06	N/A	6.16

	<b>Host</b>	<b>Host</b>	<b>Starwood Trust</b>	<b>Starwood Trust</b>
	<b>Host (2)(3)</b>	<b>Pro Forma (1)(2)(3)(4)</b>	<b>Starwood Trust (4)</b>	<b>Pro Forma (6)</b>
	<b>Year ended December 31, 2004</b>			
<b>Per share data:</b>				
Income (loss) from continuing operations:				
Basic	\$ (.31)	\$ .09	N/A	\$ .01
Diluted	(.31)	.09	N/A	.01
Cash dividend declared	.05	N/A	\$ .84	N/A
Book value	6.84	N/A	N/A	N/A

	<b>Host</b>	<b>Host</b>	<b>Starwood Trust</b>	<b>Starwood Trust</b>
	<b>Host (2)(3)</b>	<b>Pro Forma (1)(2)(3)(4)</b>	<b>Starwood Trust (4)</b>	<b>Pro Forma (6)</b>
	<b>Year ended December 31, 2004</b>			
<b>Per share data:</b>				
Income (loss) from continuing operations:				
Basic	\$ (.31)	\$ .09	N/A	\$ .01
Diluted	(.31)	.09	N/A	.01
Cash dividend declared	.05	N/A	\$ .84	N/A
Book value	6.84	N/A	N/A	N/A

- (1) Pro forma results reflect the effect on Host's financial statements of the transactions, along with several other transactions which occurred in 2004 and 2005, as if all transactions had occurred on the first day of the period presented.
- (2) The table above presents Host's income (loss) from continuing operations for the fiscal year ended December 31, 2004 and for the year-to-date period ended September 9, 2005 divided by their respective weighted average number of outstanding shares and share equivalents. The pro forma results reflect the effect of the acquisition of the Starwood portfolio along with several other transactions which occurred in 2004 and 2005, divided by Host's weighted average number of common shares and common share equivalents outstanding, plus the 164.4 million shares of Host common stock expected to be issued in conjunction with the transactions and the conversion of the Convertible Preferred Securities.
- (3) The historical book value per share was computed by dividing Host's total unaudited stockholders' equity as of September 9, 2005 and total audited stockholders' equity as of December 31, 2004, by the number of shares outstanding as of those dates. The historical book value per share for the pro forma results was computed by dividing the pro forma stockholders' equity as of September 9, 2005 by the pro forma shares outstanding. No pro forma book value per share is presented for the year ended December 31, 2004 as no pro forma balance sheet is prepared in accordance with Rule 210.11-01 of Regulation S-X.

## Edgar Filing: HOST MARRIOTT CORP/ - Form S-4/A

- (4) The pro forma financial statements have not been prepared on a tax basis which is required for Host as a REIT to determine the amount of dividends for the periods presented. Accordingly, no dividend amount is shown.
- (5) Because Starwood Trust has multiple classes of securities outstanding with significantly different rights, per share data for Starwood Trust is not meaningful and therefore is not presented.
- (6) The pro forma equivalents for Starwood Trust Class B per share amounts are calculated by multiplying the Host pro forma per share amounts by the exchange ratio of 0.6122.

**Table of Contents****Comparative Per Share Market Price Data**

Host common stock currently trades on the NYSE under the symbol HMT. There is no market for Starwood Trust shares trading independently from shares of Starwood common stock. Paired shares, consisting of one share of Starwood common stock and one Class B share of Starwood Trust, trade as a unit on the NYSE under the symbol HOT. Each Class A Exchangeable Preferred Share of Starwood Trust, which is not traded on any exchange, is exchangeable for one paired share. The table below sets forth, for the periods indicated, dividends and the range of high and low per share closing sales prices for Host common stock, and the high and low per share sales prices for paired shares of Starwood and Starwood Trust, in each case as reported on the NYSE. For current price information, you should consult publicly available sources.

	Host Common Stock			Paired Share of Starwood and Starwood Trust		
	High	Low	Dividends	High	Low	Dividends
			Declared			Declared
2004						
First quarter	\$ 13.00	\$ 11.95	\$	\$ 40.93	\$ 34.81	\$
Second quarter	12.91	11.37		45.04	38.15	
Third quarter	14.01	12.23		46.65	40.06	
Fourth quarter	17.30	13.50	0.05	59.90	46.20	0.84
2005						
First quarter	\$ 17.24	\$ 15.49	\$ 0.08	\$ 61.45	\$ 55.00	\$
Second quarter	17.57	16.22	0.10	61.04	51.50	
Third quarter	19.05	17.00	0.11	64.36	54.23	
Fourth quarter	18.95	16.19	0.12	65.22	55.09	0.84

The following table presents:

the last reported sale price of a share of Host common stock, as reported on the NYSE; and

the last reported sale price of a paired share of Starwood and Starwood Trust, as reported on the NYSE;

in each case, on November 11, 2005, the last full trading day prior to the public announcement of the transactions, and on February 6, 2006, the last practicable trading day prior to the date of this proxy statement/prospectus.

Date	Host	Paired Share of
	Common Stock	Starwood and Starwood Trust
November 11, 2005	\$ 17.44	\$ 59.26
February 6, 2006	20.15	58.99

## Edgar Filing: HOST MARRIOTT CORP/ - Form S-4/A

The market value of the shares of Host common stock to be issued in the transactions at the closing will not be known at the time Host common stockholders vote on the proposal to approve the issuance of shares of Host common stock in the transactions because the transactions will not be completed at the time of the Host special meeting.

The above tables show only historical comparisons. Because the market prices of Host common stock and paired shares of Starwood and Starwood Trust will likely fluctuate prior to the completion of the transactions, and because each paired share includes a share of Starwood common stock that holders of paired shares will retain, these comparisons may not provide meaningful information to Host stockholders in determining whether to approve the issuance of shares of Host common stock in the transactions. Host stockholders are encouraged to obtain current market quotations for Host common stock and for paired shares of Starwood and Starwood Trust, and to review carefully the other information contained in this proxy statement/prospectus or incorporated by reference into this proxy statement/prospectus in considering whether to approve the respective proposals before them. See [Additional Information](#) [Where You Can Find More Information](#) beginning on page 188.

**Table of Contents**

**RISK FACTORS**

*In addition to the other information included in this proxy statement/prospectus, including the matters addressed in Cautionary Statement Concerning Forward-Looking Statements, you should carefully consider the following risks, including, if you hold Host common stock, before deciding whether to vote for approval of the issuance of shares of Host common stock in the transactions. In addition, you should read and consider the risks associated with the business of Host because these risks will affect Host following consummation of the transactions. These risks can be found in Host's Annual Report on Form 10-K for the year ended December 31, 2004, which is filed with the SEC and incorporated by reference into this proxy statement/prospectus.*

***The market value of Host common stock that holders of Starwood Trust shares will receive depends on what the market price of Host common stock will be at the effective time of the transactions and will increase or decrease if the market value of Host common stock increases or decreases.***

The market value of the Host common stock that holders of Starwood Trust shares will receive in the transactions depends on what the trading price of Host common stock will be at the effective time of the transactions. The 0.6122 exchange ratio that determines the number of shares of Host common stock that holders of Starwood Trust shares are entitled to receive in the transactions is fixed. This means that there is no price protection mechanism in the master agreement that would adjust the number of shares of Host common stock that holders of Starwood Trust shares may receive in the transactions as a result of increases or decreases in the trading price of Host common stock. If the price of a share of Host common stock increases or decreases, then the market value of the consideration payable to holders of Starwood Trust shares will also increase or decrease, respectively. Similarly, the cash consideration payable for each RP Unit of SLT Realty Limited Partnership in the SLT merger may be increased or decreased based on the market price of Host common stock at the effective time of the SLT merger. The market value of the shares of Host common stock that will be received in the transactions will continue to fluctuate after the completion of the transactions.

During the twelve-month period ending on February 6, 2006, the most recent practicable date prior to the date of this proxy statement/prospectus, the closing price of Host common stock varied from a low of \$15.46 to a high of \$20.41, and ended that period at \$20.15.

***The occurrence of certain developments, including the failure to obtain required consents, could lead to Host's acquisition of the affected hotels being delayed past the initial closing and, ultimately, abandoned, which could cause Host or Starwood, or both, not to realize all of the intended benefits of the transactions.***

Host and Starwood have agreed that, in the circumstances described below, one or both of them may elect to defer or temporarily (or, ultimately, permanently) exclude from the transactions one or more hotels or entities to be acquired by Host in the transactions. While neither party will be required to close if the deferrals result in the failure of its applicable closing condition in the master agreement, each party may be forced to close despite significant changes to the portfolio, including the possibility that some, or all, of the foreign hotels to be acquired may be retained by Starwood.

The deferral or exclusion of hotels from the transactions could result in either Host or Starwood, or both, failing to realize all of the intended benefits of the transactions. While Host and Starwood have already agreed to specific amounts by which the cash portion of the purchase price would be reduced as a result of the deferral or exclusion of each hotel in the portfolio, this adjustment to the purchase price may not be adequate to offset the impact of such deferral or exclusion on either party's intended benefits.

For example, when considering whether or not to approve the master agreement and the transactions, Host's board of directors considered as positive factors both the expansion of Host's geographic distribution into new markets outside the United States and Host's enhanced profile that would result from completing the transactions as currently structured. Due to the ability of the parties to defer or exclude hotels, the transactions could be completed without Host acquiring the desired international presence or the full benefit that would arise from acquiring all of the hotels in the transactions.



**Table of Contents**

Even if a deferred hotel is ultimately acquired by Host after the closing, the delay in acquiring that hotel could result in Host not obtaining all of the intended benefits of that hotel contemplated by Host management and Host's board of directors when the master agreement was approved and signed.

Either Host or Starwood can defer any hotel or entity to be acquired by Host from the initial closing transactions without the other's consent upon the occurrence of any of the following deferral triggers related to such hotel or entity:

after the date of the Host special meeting, failure to obtain any consent identified prior to signing the master agreement; or

after the date of the Host special meeting, (1) required antitrust approvals are not obtained or (2) any temporary restraining order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction is issued or laws become effective that prevent the transactions or make them illegal.

In addition, Starwood can exclude any of the Canadian hotels to be acquired by Host from the initial closing transactions without Host's consent if Starwood does not succeed in obtaining the desired ruling from the Canadian tax authorities with respect to certain Canadian restructuring transactions related to the sale of the Canadian hotels to Host.

In addition, Host can defer any hotel or entity to be acquired by Host from the initial closing transactions without Starwood's consent upon the occurrence of any of the following deferral triggers related to such hotel or entity:

casualty at a hotel currently contemplated to be acquired by Host that results in cost of repair (without taking into account insurance) in excess of 25% of the value of such hotel;

condemnation of a hotel currently contemplated to be acquired by Host that results in an economic impact (without taking into account any condemnation award) in excess of 25% of the value of such hotel;

after the date of the Host special meeting, one or more of the following that results in an economic impact (without taking into account any indemnification or insurance) in excess of 25% of the value of a hotel or entity currently contemplated to be acquired by Host:

breach of any of the following Starwood representations if the economic effect of such breach exceeds \$500,000: absence of changes, litigation, real property (other than title), environmental matters, sufficiency of assets, title to personal property, compliance with laws and certain types of material contracts;

breach of any of the following Starwood representations: due organization, power, authorization, necessary governmental or third party consents, capitalization and title to real property; or

failure to obtain a required, but not previously identified, consent;

after the date of the Host special meeting, failure of Starwood to complete its restructuring in a manner that satisfies Host's restructuring conditions;

after the date of the Host special meeting, the portion of the costs of lease structures attendant to the ownership of certain foreign hotels to be acquired by Host, including costs associated with consents of works councils, and certain indemnification liabilities, in each case payable by Host, would reasonably be expected to exceed 10% of the EBITDA that would (but for such costs and liabilities) otherwise be received by Host with respect to such foreign hotels during the twelve months immediately following the closing; or

if Host's closing conditions are satisfied on the overall transactions, but a required consent has not been obtained (or there is another deferral trigger) with respect to one of three primary European hotels (i.e., Westin Palace Madrid, Westin Palace Milan and the Westin Europa & Regina), Host can elect to defer all acquired hotels located outside of the United States, Canada and Poland.

## **Table of Contents**

Host and Starwood are working with the intention that Host will acquire at closing all of the hotels in the transactions and no hotel has been deferred or excluded from the transactions as of the date of this proxy statement/prospectus. However, there is no guarantee that all of the deferral triggers will be satisfied or waived prior to closing. In particular, given the waiting period applicable to certain approvals that are required to be obtained from the municipality in which the Westin Europa & Regina (a hotel in Venice) is located, unless a waiver can be obtained, it is likely that the transfer of that hotel will not be capable of completion prior to the second quarter of 2006. As a result, if the required Host stockholder approval is obtained and all other conditions to the completion of the closing transactions have been satisfied prior to that time, it is likely that the acquisition of the Westin Europa & Regina (and, if Host so elects, all other hotels located outside of the United States, Canada and Poland) would be deferred. In such an event, if the applicable approvals are not obtained prior to 90 days after the initial closing of the transactions (or, if Host elects to defer all hotels located outside the United States, Canada and Poland, prior to October 17, 2006), the deferred hotels could ultimately be permanently excluded from the transactions and retained by Starwood.

***The transactions are subject to a number of conditions that could have an adverse effect on Host or Starwood or could cause abandonment of the transactions.***

The transactions are subject to a number of conditions beyond the control of Host or Starwood, or both, that may delay or otherwise materially adversely affect their completion. These conditions include antitrust requirements in Italy and other governmental and third party approvals. In addition, the obligations of Host and Starwood to consummate the transactions are subject to the conditions that there must not have occurred (1) a material adverse effect with respect to the business of Starwood currently contemplated to be acquired by Host in the case of Host's obligations or with respect to Host in the case of Starwood's obligations or (2) any actual or proposed change in tax law or regulation with respect to consolidated tax return rules that would reasonably be expected to result in a material risk of Starwood incurring an economic cost of more than \$200 million that Starwood did not expect to bear from the transactions. Further, the master agreement may be terminated for certain other reasons, including by either Host or Starwood in the event the initial closing of the transactions has not occurred by or on April 17, 2006 or, by Host, if Starwood consummates, or enters into any definitive agreement relating to, a transaction that has resulted or will result in a more than 50% change in the ownership of Starwood.

There can be no assurance that Host and Starwood will obtain the necessary consents, orders and approvals or satisfy the other conditions to closing prior to April 17, 2006, or at any time, which could result in the abandonment of the transactions or the modification of the transactions by Host and Starwood in a manner that is adverse to Host or Starwood. Finally, if the transactions are terminated, and Host or Starwood determines to seek other business combinations, there can be no assurance that either will be able to negotiate a transaction with another company on terms comparable to the terms of the transactions.

***Any delay in completing the transactions may reduce or eliminate the benefits expected.***

As described in the preceding risk factor, the transactions may not be completed until the conditions to closing are satisfied or waived. Host and Starwood cannot predict whether or when these other conditions will be satisfied.

Any delay in completing the transactions may increase the likelihood that certain of these conditions will not be able to be fulfilled, resulting in either party's ability to terminate the master agreement and abandon the transactions. Further, the requirements for obtaining the required consents and antitrust approvals and satisfying the other conditions to closing could delay not only the initial closing of the transactions for a significant period of time but also result in the removal of certain hotels from the transactions as described more fully herein.

Edgar Filing: HOST MARRIOTT CORP/ - Form S-4/A

Any delay in completing the transactions could cause Host following the consummation of the transactions not to realize some or all of the benefits that Host expects to achieve if it successfully completes the transactions

## **Table of Contents**

within its expected timeframe and integrates the business to be acquired from Starwood. See **Material Terms of the Principal Transaction Agreements – Conditions to Completion of the Closing Transactions** beginning on page 85 for additional information regarding the applicable provisions of the master agreement.

Finally, because the master agreement generally restricts Host from issuing shares of its common stock during the period from the signing of the master agreement until 60 days after the closing of the transactions, any delay in completing the transactions will lengthen the amount of time that Host is restricted from accessing the equity capital markets for fundraising purposes.

***The pendency of the transactions could materially adversely affect the future business and operations of Host and Starwood.***

The pending transactions could result in the delay or deferral by the respective managements of Host and Starwood of important strategic decisions, which could negatively impact revenues, earnings and cash flows of Host and Starwood, as well as the market prices of shares of Host common stock and paired shares of Starwood and Starwood Trust, regardless of whether the transactions are completed. This risk is exacerbated by provisions in the master agreement that restrict or prevent Host and Starwood from taking or agreeing to take certain actions, including acquisition or disposition transactions, during the period between the signing of the master agreement and the closing of the transactions. In addition, in the event that the ratings agencies that provide securities ratings on Host's and Starwood's debts downgrade their ratings on such debts of one company or both companies in light of the pending transactions, such a downgrade could materially adversely affect the ability of Host and Starwood to finance their operations, including increasing the cost of obtaining financing.

***Host and Starwood expect to incur significant costs and expenses in connection with the transactions, which could result in either or both not realizing some or all of the anticipated benefits of the transactions.***

Host and Starwood are expected to incur significant costs in connection with the transactions, including, for Host, the financing of the cash consideration and obtaining title policies. These costs and expenses include investment banking expenses, specified taxes, severance, legal and accounting fees, printing expenses, defeasance costs and other related charges. There can be no assurance that the costs incurred by Host and Starwood in connection with the transactions will not be higher than expected. The master agreement generally provides that certain transaction costs borne by Host will generally be capped at \$50 million. This cap does not apply to Host's investment banking, legal and accounting fees, printing expenses, financing and title costs or other similar costs and expenses directly incurred by Host.

Host also expects to incur costs related to the integration of the assets acquired from Starwood. While Host has assumed that a certain level of expenses would be incurred, there are a number of factors beyond its control that could affect the total amount or the timing of all of the expected integration expenses. There can be no assurance that Host will not incur additional unanticipated costs and expenses related to integration after the completion of the transactions, including in connection with the proposed structure pursuant to which Starwood will operate certain of the acquired European hotels for Host after the closing.

***The allocation of REIT merger consideration to the holders of Class B shares of Starwood Trust does not reflect historical standalone trading of the shares.***

The Class B shares of Starwood Trust have historically been paired with shares of Starwood common stock and have not traded on a standalone basis. The allocation of the REIT merger consideration between the Class A shares and the Class B shares of Starwood Trust was therefore made

## Edgar Filing: HOST MARRIOTT CORP/ - Form S-4/A

by Starwood based on certain assumptions, and certain analyses received, regarding the respective values of the two classes of shares. To the extent that the value of the Class B shares of Starwood Trust were to differ from the portion of the REIT merger consideration so allocated to such shares, the federal income tax consequences of the REIT merger to a holder of Class A Exchangeable Preferred Shares or Class B shares of Starwood Trust could differ (including potentially in an adverse matter and including with respect to the character and amount of gain, other income or loss recognized by such holder) from the consequences described in this proxy statement/prospectus.

**Table of Contents**

***If Host is unable to finance the transactions as contemplated, including through borrowings under its anticipated bridge loan facility, the completion of the transactions will be jeopardized.***

Host expects to fund the \$1.063 billion cash portion of the purchase price (which could increase by \$600 million if the required consents with respect to the SHC indebtedness are not obtained, see The Transactions Financing for the Transactions Summary of the Sheraton Holding Corporation Consent Solicitation beginning on page 75) for the transactions through proceeds from a combination of asset sales, sales of joint venture interests related to the European assets to be acquired and the issuance or other incurrence of additional indebtedness. There can be no assurance that Host will consummate one or more of these financing transactions prior to consummation of the transactions. To the extent that the contemplated financings are not completed prior to consummation of the transactions, Host has received financing commitments for a bridge loan facility in an aggregate principal amount of up to \$1.67 billion from certain lenders (which would allow Host to consummate the acquisition even if the required consents with respect to the SHC indebtedness are not obtained). Funding of amounts under the bridge loan facility will be subject to a number of customary conditions. There can be no assurance that all such conditions will be satisfied at or prior to consummation of the transactions.

If Host is unable to finance the transactions, and other financings are not available on acceptable terms, in a timely manner or at all, then the completion of the transactions will be jeopardized and Host could be in breach of the master agreement.

***Host will need to replace, at or before maturity, the bridge loan facility that will be used to finance a portion of the cash component of the transactions.***

Host has received financing commitments for a bridge loan facility in an aggregate amount of up to \$1.67 billion from Goldman Sachs Credit Partners, L.P., Deutsche Bank AG Cayman Islands Branch, Bank of America Bridge LLC and Merrill Lynch Capital Corporation. This facility will have an initial maturity date of twelve months, with two six-month extension options being available subject to the payment of extension fees and the satisfaction of certain other customary conditions. There can be no assurance that Host will be able to replace this facility with indebtedness on terms that are at least as beneficial to Host as the terms of this facility. For instance, Host may incur increased interest costs on indebtedness that replaces this facility due to higher interest costs of longer-term debt, which would adversely affect Host's operating results and financial condition. The interest rate on the replacement indebtedness will depend on prevailing conditions at the time.

***The master agreement does not require that the financial advisors' fairness opinions be updated as a condition to closing the transactions.***

The master agreement does not require that the financial advisors' fairness opinions be updated as a condition to closing the transactions and neither Host nor Starwood currently intends to request that those opinions be updated. As such, the fairness opinions do not reflect any changes in the relative values of Host, Starwood Trust or the hotels currently contemplated to be acquired by Host subsequent to November 14, 2005, the date of the master agreement. The market price of Host common stock and paired shares of Starwood and Starwood Trust at the closing of the transactions may vary significantly from the market prices as of the date of the master agreement, which is the same date as the fairness opinions of the financial advisors.

***The termination fee may discourage other companies from trying to acquire the assets to be acquired by Host.***

## Edgar Filing: HOST MARRIOTT CORP/ - Form S-4/A

In the master agreement, Starwood has agreed to pay Host a termination fee of \$100 million and to reimburse Host for up to \$20 million of its transaction-related expenses if Starwood terminates the master agreement in order to accept a superior proposal from a third party to acquire the assets that would otherwise be acquired by Host. These provisions could discourage third parties from trying to purchase the assets to be acquired by Host in the transactions, even if those companies might be willing to offer a greater amount of consideration than Host has offered in the master agreement. In addition, payment of the termination fee could have a material adverse effect on Starwood's financial condition.



## **Table of Contents**

***Host may fail to realize the revenue enhancements and other benefits expected from the transactions, which could affect the value of Host common stock following consummation of the transactions.***

The value of Host common stock following consummation of the transactions may be affected by the ability of Host to achieve the expected benefits. Achieving the benefits of the transactions will depend in part upon meeting the challenges inherent in successfully integrating the portfolio of hotels to be acquired and the possible diversion of management attention for an extended period of time. There can be no assurance that such challenges will be met and that such diversion will not negatively impact the operations of Host following the consummation of the transactions.

Delays encountered in this transition process could have a material adverse effect on the operating results and financial condition of Host following the transactions. Although Host expects significant benefits to result from the transactions, there can be no assurance that Host will realize any of these anticipated benefits.

***Host may be subject to unknown or contingent liabilities related to the business to be acquired from Starwood.***

Assets and entities that Host has agreed to acquire from Starwood in the transactions may be subject to unknown or contingent liabilities for which Host may have no recourse, or only limited recourse, against Starwood. In general, the representations and warranties provided by Starwood under the master agreement do not survive the closing of the transactions. While Starwood is required to indemnify Host with respect to breaches of certain representations and warranties that do survive the closing, such indemnification is limited and subject to various materiality thresholds, a significant deductible and an aggregate cap on losses. As a result, there is no guarantee that Host will recover any amounts with respect to losses due to breaches by Starwood of its representations and warranties. The total amount of costs and expenses that may be incurred with respect to liabilities associated with acquired hotels and entities may exceed Host's expectations, plus Host may experience other unanticipated adverse effects, all of which may adversely affect Host's revenues, expenses, operating results and financial condition.

Finally, the indemnification agreement provides that Starwood will retain certain specified liabilities relating to the assets and entities currently contemplated to be acquired by Host, including with respect to liabilities related to pre-closing taxes, six pending litigation matters involving various unrelated claims and contingent ownership interests in the Fiji hotels and liabilities associated with the SLT merger and certain post-closing consequences thereof. While Starwood is contractually obligated to pay all losses and other expenses relating to such retained liabilities without regard to survival limitations, materiality thresholds, the deductible or cap on losses, there can be no guarantee that this arrangement will not require Host to incur losses or other expenses as well.

***Host's ability to service debt incurred to finance the transactions will depend in part on the cash flow generated by the hotels acquired.***

In order to complete the transactions, Host anticipates incurring up to \$1.5 billion of indebtedness, including the assumption of approximately \$704 million of debt and an approximate \$716 million draw on the bridge loan facility. Host's pro forma indebtedness as of September 9, 2005 (as described in Host Marriott Corporation Unaudited Pro Forma Financial Statements beginning on page 149), is approximately \$6.6 billion. Host's ability to service its increased debt will depend in part on the cash flow generated by the properties acquired in the transactions. The cash flow production of the hotels acquired is subject to changes in the national, regional and local economic climate; changes in business and leisure travel patterns; local market conditions such as an oversupply of hotel rooms or a reduction in lodging demand; the attractiveness of such hotels to consumers relative to Host's competition; the performance of the managers of such hotels; changes in room rates and increases in operating costs due to inflation and other factors. There can be no assurance that the hotels acquired



**Table of Contents**

will meet Host's management's expectations with respect to cash flow production, or that they will produce cash flow sufficient to service Host's increased indebtedness. In addition, the increased levels of debt could, among other things:

require Host to dedicate a substantial portion of its cash flow from operations to make payments on its debt, thereby reducing funds available for working capital, capital expenditures, dividends, acquisitions and other purposes;

increase Host's vulnerability to, and limit flexibility in planning for, adverse economic and industry conditions;

affect Host's credit rating;

limit Host's ability to obtain additional financing to fund future working capital, capital expenditures, additional acquisitions and other general corporate requirements;

create competitive disadvantages compared to other companies with less indebtedness; and

limit Host's ability to apply proceeds from an offering or asset sale to purposes other than the repayment of debt.

***The consummation of the transactions will expand Host's business into new markets outside of the United States in which Host is not currently involved and expose Host to the general economic conditions of those markets.***

Host may have difficulty managing its expansion into new geographic markets where Host has limited knowledge and understanding of the local economy, an absence of business relationships in the area or unfamiliarity with local governmental and permitting procedures. Upon completion of the transactions, Host will own hotels in eight foreign countries, representing approximately 9% of its entire portfolio (by revenues) on a pro forma basis. There are risks inherent in conducting business internationally. These include:

employment laws and practices in foreign countries;

tax laws in foreign countries, which may provide for tax rates that exceed those of the U.S. and which may provide that Host's foreign earnings are subject to withholding requirements or other restrictions;

the structure pursuant to which Starwood will operate certain of the acquired European hotels for Host after closing;

unexpected changes in regulatory requirements or monetary policy; and

other potentially adverse tax consequences.

Any of these factors could adversely affect our ability to obtain all of the intended benefits of the transactions.

If Host does not effectively manage its geographic expansion and successfully integrate the foreign hotels into its organization, Host's operating results and financial condition may be materially adversely effected and the value of Host common stock may decline.

*Exchange rate fluctuations could adversely affect our financial results.*

As a result of the expansion of Host's international operations, currency exchange rate fluctuations could affect its results of operations and financial position. Host expects to generate an increasing portion of its revenue and its expenses in such foreign currencies as the Euro, the British Pound, the Polish Zloty, the Chilean Peso and the Canadian and Fijian Dollar. Although Host may enter into foreign exchange agreements with financial institutions to reduce its exposure to fluctuations in the value of these and other foreign currencies relative to its debt or receivable obligations, these hedging transactions, if entered into, will not eliminate that risk entirely. In

## **Table of Contents**

addition, to the extent that Host is unable to match revenue received in foreign currencies with costs paid in the same currency, exchange rate fluctuations could have a negative impact on Host's results of operations and financial condition. Additionally, because Host's consolidated financial results are reported in US Dollars, if Host generates revenues or earnings in other currencies the translation of those results into US Dollars can result in a significant increase or decrease in the amount of those revenues.

## **Financial Risks and Risks of Operation**

*Host depends on external sources of capital for future growth and Host may be unable to access capital when necessary.*

Unlike regular C corporations, Host's ability to reduce its debt and finance its growth largely must be funded by external sources of capital because Host is required to distribute to its stockholders at least 90% of its taxable income (other than net capital gains) in order to qualify as a REIT, including taxable income it recognizes for federal income tax purposes but with regard to which it does not receive corresponding cash. Host's ability to access the external capital it requires could be hampered by a number of factors, many of which are outside of its control, including declining general market conditions, unfavorable market perception of its growth potential, decreases in its current and estimated future earnings, excessive cash distributions or decreases in the market price of Host common stock. In addition, Host's ability to access additional capital may also be limited by the terms of its existing indebtedness, which, among other things, restricts its incurrence of debt and the payment of distributions. The occurrence of any of these above-mentioned factors, individually or in combination, could prevent Host from being able to obtain the external capital it requires on terms that are acceptable to it or at all and the failure to obtain necessary external capital could have a material adverse effect on Host's ability to finance its future growth.

*Host has and will continue to have substantial leverage.*

As of September 9, 2005, Host and its subsidiaries had total indebtedness of approximately \$5.5 billion. In connection with the transactions, Host also intends to incur substantial indebtedness, including the assumption of the SHC indebtedness and the offering of the SHC guarantees, the assumption of additional mortgage debt and borrowings under a new bridge loan facility Host intends to enter into in connection with the transactions. On September 9, 2005, as adjusted to give effect to the transactions and the additional indebtedness incurred in connection therewith and Host's assumed conversion of all its 6 ¾% convertible quarterly income preferred securities, or Convertible Preferred Securities, and the \$492 million of Convertible Subordinated Debentures underlying the Convertible Preferred Securities, Host and its subsidiaries would have had total indebtedness of approximately \$6.6 billion (of which approximately \$3.7 billion would have consisted of senior notes, approximately \$2.1 billion would have been secured by mortgage liens on various of its hotel properties with related assets, and the balance would have consisted of other debt).

Host's substantial indebtedness has important consequences. It currently requires Host to dedicate a substantial portion of its cash flow from operations to payments of principal and interest on its indebtedness, which reduces the availability of its cash flow to fund working capital, capital expenditures, expansion efforts, distributions to its partners and other general purposes. Additionally, it could:

make it more difficult for Host to satisfy its obligations with respect to its indebtedness;

limit Host's ability in the future to undertake refinancings of its debt or obtain financing for expenditures, acquisitions, development or other general business purposes on terms and conditions acceptable to Host, if at all; or

affect adversely Host's ability to compete effectively or operate successfully under adverse economic conditions.

**Table of Contents**

Because Host must distribute most of its taxable income in order to maintain its qualification as a REIT, it depends upon external sources of capital for future growth. If Host's cash flow and working capital were not sufficient to fund its expenditures or service its indebtedness, it would have to raise additional funds through:

sales of its equity;

the incurrence of additional permitted indebtedness by Host LP; or

the sale of its assets.

Host cannot assure you that any of these sources of funds would be available to Host or, if available, would be on terms that it would find acceptable or in amounts sufficient for Host to meet its obligations or fulfill its business plan.

***Host's revenues and the value of its properties are subject to conditions affecting the lodging industry.***

The lodging industry experienced a down-turn from 2001 to 2003, and operations generally declined during this period. The decline was attributed to a number of factors including a weak economy, the effect of terrorist attacks, terror alerts in the United States and the war in Iraq, all of which changed the travel patterns of both business and leisure travelers. While Host's operations have improved in 2004 and 2005, it cannot provide assurance that changes in travel patterns of both business and leisure travelers are permanent or whether they will continue to evolve creating new opportunities or difficulties for the industry. Any forecast Host makes regarding its results of operations may be affected and can change based on the following risks:

changes in the national, regional and local economic climate;

changes in business and leisure travel patterns;

local market conditions such as an oversupply of hotel rooms or a reduction in lodging demand;

the attractiveness of our hotels to consumers relative to our competition;

the performance of the managers of our hotels;

changes in room rates and increases in operating costs due to inflation and other factors; and

unionization of the labor force at our hotels.

***Future terrorist attacks or changes in terror alert levels could adversely affect Host.***

Previous terrorist attacks in the United States and subsequent terrorist alerts have adversely affected the travel and hospitality industries over the past several years. The impact which terrorist attacks in the United States or elsewhere could have on Host's business in particular and the U.S. economy, the global economy and global financial markets in general is indeterminable. It is possible that such attacks or the threat of such attacks could have a material adverse effect on Host's business, Host's ability to finance its business, Host's ability to insure its properties and on its results of operations and financial condition as a whole.

***Host's expenses may not decrease if its revenue drops.***

Many of the expenses associated with owning and operating hotels, such as debt payments, property taxes, insurance, utilities, and employee wages and benefits, are relatively inflexible and do not necessarily decrease in tandem with a reduction in revenue at the hotels. Host's expenses will also be affected by inflationary increases, and in the case of certain costs, such as wages, benefits and insurance, may exceed the rate of inflation in any given period. Host's managers may be unable to offset any such increased expenses with higher room rates. Any of Host's efforts to reduce operating costs or failure to make scheduled capital expenditures could adversely affect the growth of Host's business and the value of its hotel properties.



**Table of Contents**

***Host's ground lease payments may increase faster than the revenues it receives on the hotels situated on the leased properties.***

Currently, 33 of Host's hotels are subject to third-party ground leases (encumbering all or a portion of the hotel). In addition, in connection with the transactions, 12 of the hotels Host intends to acquire will be subject to similar third-party ground leases. These ground leases generally require increases in ground rent payments every five years. Host's ability to service its debt could be adversely affected to the extent that its revenues do not increase at the same or a greater rate than the increases in rental payments under the ground leases. In addition, if Host were to sell a hotel encumbered by a ground lease, the buyer would have to assume the ground lease, which may result in a lower sales price.

***Host does not control its hotel operations and is dependent on the managers of its hotels.***

Because federal income tax laws restrict REITs and their subsidiaries from operating a hotel, Host does not manage its hotels. Instead, Host leases substantially all of its hotels to subsidiaries which qualify as taxable REIT subsidiaries under applicable REIT laws, and Host's taxable REIT subsidiaries retain third-party managers to operate its hotels pursuant to management agreements. In the case of hotels to be acquired by Host from Starwood and its subsidiaries, operations-related services will be provided pursuant to an operating agreement as well as a license agreement (and any other related agreements) for each hotel. Host's cash flow from the hotels may be adversely affected if its managers fail to provide quality services and amenities or if they or their affiliates fail to maintain a quality brand name. While Host's taxable REIT subsidiaries monitor the hotel managers' performance, Host has limited specific recourse under its management agreements if Host believes that the hotel managers are not performing adequately. In addition, from time to time, Host has had, and continues to have, differences with the managers of its hotels over their performance and compliance with the terms of the management agreements. Host generally resolves issues with its managers through discussions and negotiations. However, if Host is unable to reach satisfactory results through discussions and negotiations, Host may choose to litigate the dispute or submit the matter to third-party dispute resolution. Failure by Host's hotel managers to fully perform the duties agreed to in its management agreements could adversely affect Host's results of operations. In addition, Host's hotel managers or their affiliates manage, and in some cases own or have invested in, hotels that compete with Host's hotels, which may result in conflicts of interest. As a result, Host's hotel managers have in the past made and may in the future make decisions regarding competing lodging facilities that are not or would not be in Host's best interests. Following the transactions, Starwood or its subsidiaries will manage or operate all of the hotels to be acquired by Host. As such, these risks that arise from Host not controlling its hotel operations are relevant to the transactions.

***The terms of Host's debt place restrictions on it and its subsidiaries, reducing operational flexibility and creating default risks.***

The documents governing the terms of Host's existing senior notes and its credit facility contain, and, if the transactions are completed, the new bridge loan facility and the indenture governing the terms of the SHC guarantees will contain, covenants that place restrictions on Host and its subsidiaries. These covenants will restrict, amongst other things, the ability of Host and its subsidiaries to:

conduct acquisitions, mergers or consolidations unless the successor entity in such transaction assumes Host's indebtedness;

incur additional debt in excess of certain thresholds and without satisfying certain financial metrics;

create liens securing indebtedness, unless effective provision is made to secure Host's other indebtedness by such liens;

## Edgar Filing: HOST MARRIOTT CORP/ - Form S-4/A

sell assets without using the proceeds from such sales for certain permitted uses or to make an offer to repay or repurchase outstanding indebtedness;

make capital expenditures in excess of certain thresholds;

raise capital;

**Table of Contents**

pay dividends without satisfying certain financial metrics; and

conduct transactions with affiliates other than on an arms length basis, and in certain instances, without obtaining opinions as to the fairness of such transactions.

In addition, certain covenants in the credit facility require Host and its subsidiaries to meet financial performance tests. The restrictive covenants in the applicable indenture(s), the credit facility and the documents governing Host's other debt (including its mortgage debt) will reduce Host's flexibility in conducting its operations and will limit its ability to engage in activities that may be in its long-term best interest. Host's failure to comply with these restrictive covenants could result in an event of default that, if not cured or waived, could result in the acceleration of all or a substantial portion of its debt. For a detailed description of the covenants and restrictions imposed by the documents governing Host's indebtedness, see Management's Discussion and Analysis of Financial Condition and Results of Operations Financial Condition in Host's Form 10-K for the fiscal year ended December 31, 2004 which has been incorporated into this prospectus/proxy statement.

***Host's ability to pay dividends may be limited or prohibited by the terms of its indebtedness.***

Host is, and may in the future become, party to agreements and instruments which restrict or prevent the payment of dividends on its classes and series of capital stock. Under the terms of Host LP's credit facility, its senior notes indenture, its new bridge loan facility and the indenture that will govern the SHC guarantees, distributions to Host by Host LP, upon which Host depends in order to obtain the cash necessary to pay dividends, are permitted only to the extent that, at the time of the distribution, Host LP can satisfy certain financial covenant tests and meet other requirements.

For example, beginning in the third quarter of 2002 and continuing through the fiscal quarter ended March 26, 2004, Host LP was prohibited from making distributions (other than in the amounts required to permit Host to pay dividends necessary to maintain REIT qualification) because its consolidated EBITDA-to-interest coverage ratio as calculated under the indenture governing our senior notes (which measures the ratio of pro forma consolidated EBITDA to pro forma consolidated interest expense) was below 2.0 to 1.0. Accordingly, during this period, Host LP was only able to make distributions to Host, and Host was only able to pay dividends, to the extent that it had taxable income and was required to make distributions to maintain Host's status as a REIT. While Host's EBITDA-to-interest coverage ratio is currently above 2.0 to 1.0 and as a result it may make distributions in excess of permitted REIT distributions to the extent that it continues to satisfy this and other indenture covenant requirements, a decline in its operations could once again limit the amount of distributions that Host LP could make, and Host's ability to pay dividends, either because Host's EBITDA-to-interest coverage ratio again falls below 2.0 to 1.0 or because it fails to meet other financial covenant tests or meet other requirements in its credit facility or senior notes indenture.

Host intends, during any future period in which Host LP is unable to make restricted payments under the applicable indenture(s) and under similar restrictions under the credit facility, that Host LP will continue its practice of distributing quarterly, based on Host's estimates of taxable income for any year, an amount of available cash sufficient to enable Host to pay quarterly dividends on its preferred and common stock in an amount necessary to satisfy the requirements applicable to REITs under the Internal Revenue Code of 1986, as amended (the Code). In the event that Host LP makes distributions to Host in amounts in excess of those necessary for Host to maintain its status as a REIT, Host LP will be in default under the indenture terms governing all but the SHC guarantees and our outstanding Series O, Series K and Series M senior notes. A default under any series of Host LP's existing senior notes could lead to a default under the SHC guarantees and Series O, Series K and Series M senior notes.

***Host's ability to pay dividends on its common stock may also be limited or prohibited by the terms of its preferred stock and Convertible Subordinated Debentures.***

Under the terms of each of Host's outstanding classes of preferred stock, it is not permitted to pay dividends on its common stock unless cumulative dividends have been paid (or funds for payment have been set aside for payment) on each such class of preferred stock. The amount of aggregate dividends that accrue on its outstanding classes of preferred stock each quarter is approximately \$6 million.

## **Table of Contents**

In the event that Host fails to pay the accrued dividends on its preferred stock for any reason, including because Host is prevented from paying such dividends under the terms of its debt instruments (as discussed above), dividends will continue to accrue on all outstanding classes of its preferred stock and Host will be prohibited from paying any dividends on its common stock until all such accrued but unpaid dividends on its preferred stock have been paid (or funds for such payment have been set aside).

Host may defer interest payments on the Convertible Subordinated Debentures for a period not to exceed 20 consecutive quarters. If interest payments on the Convertible Subordinated Debentures are deferred, so too are payments on the Convertible Preferred Securities. Under this circumstance, Host will not be permitted to declare or pay any cash dividends or debt service with respect to its capital stock or debt securities that rank *pari passu* with or junior to the Convertible Subordinated Debentures.

On January 11, 2006, Host completed the redemption of \$86 million of the Convertible Preferred Securities (and the underlying Convertible Subordinated Debentures) and issued approximately 5.6 million shares of Host common stock. Also, on January 11, 2006, Host announced its intention to exercise its option to cause the conversion rights of the remaining Convertible Preferred Securities to expire effective February 10, 2006. Host is exercising this right because the market price of its common stock has exceeded 120% of the adjusted conversion price for 20 out of the last 30 trading days. Each of the Convertible Preferred Securities are currently convertible into 3.2357 shares of Host common stock per \$50 liquidation amount of the preferred security, which equates to a conversion price of \$15.367. The last reported sale price on February 6, 2006 of Host common stock was \$20.15 and, as a result, the company expects that all of the remaining security holders will elect to convert their interests to common stock. Accordingly, Host has included the assumed conversion of all the Convertible Preferred Securities (and the underlying \$492 million of Convertible Subordinated Debentures) into approximately 30.9 million shares of common stock on a pro forma basis.

*We are subject to risks associated with the employment of hotel personnel, particularly with hotels that employ unionized labor.*

We have entered into management agreements with third-party managers to operate our hotel properties. Our third-party managers are responsible for hiring and maintaining the labor force at each of our hotels. Although we do not directly employ or manage the labor force at our hotels, we are subject to many of the costs and risks generally associated with the hotel labor force, particularly those hotels with unionized labor. From time to time, hotels operations may be disrupted through strikes, lockouts, public demonstrations or other negative actions and publicity. We may also incur increased legal costs and indirect labor costs as a result of contract disputes or other events, and hotels where our managers have collective bargaining agreements with employees (approximately 19% of portfolio revenues, after giving effect to the transactions) are more highly affected by labor force activities than others. In addition, the resolution of labor disputes or re-negotiated labor contracts could lead to increased labor costs, either by increases in wages or benefits or by changes in work rules that raise hotel operating costs. Because collective bargaining agreements are negotiated between the managers of our hotels and labor unions, we do not have the ability to control the outcome of these negotiations.

*Foreclosure on Host's mortgage debt could adversely affect its business.*

As of September 9, 2005, as adjusted to give effect to the transactions and the additional indebtedness that would be incurred, twenty-nine of Host's hotels and assets related thereto were subject to various mortgages in an aggregate amount of approximately \$2.1 billion. Although the debt is generally non-recourse to Host, if these hotels do not produce adequate cash flow to service the debt secured by such mortgages, the mortgage lenders could foreclose on these assets. Host may opt to allow such foreclosure rather than make the necessary mortgage payments with funds from other sources. However, Host LP's senior notes indenture and credit facility contains cross default provisions, which, depending upon the amount of secured debt defaulted on, could cause a cross default under both of these agreements. Host LP's credit facility, which contains the more restrictive cross default provision as compared to its senior notes indenture, provides that it is a credit facility default in the event Host LP defaults on non-recourse secured indebtedness in excess of 1% of its total assets (using undepreciated



**Table of Contents**

real estate values) or default on other indebtedness in excess of \$50 million. For this and other reasons, permitting a foreclosure could adversely affect Host's long-term business prospects.

***Host's mortgage debt contains provisions that may reduce its liquidity.***

Certain of Host's mortgage debt requires that, to the extent cash flow from the hotels which secure such debt drops below stated levels, Host escrows cash flow after the payment of debt service until operations improve above the stated levels. In some cases, the escrowed amount may be applied to the outstanding balance of the mortgage debt. When such provisions are triggered, there can be no assurance that the affected properties will achieve the minimum cash flow levels required to trigger a release of any escrowed funds. The amounts required to be escrowed may be material and may negatively affect Host's liquidity by limiting its access to cash flow after debt service from these mortgaged properties.

***Rating agency downgrades may increase Host's cost of capital.***

Both Host's senior notes and its preferred stock are rated by Moody's and Standard & Poor's. These independent rating agencies may elect to downgrade their ratings on Host's senior notes and its preferred stock at any time. These downgrades negatively affect Host's access to the capital markets and increase its cost of capital.

***Host's management and license agreements could impair the sale or financing of its hotels.***

Under the terms of Host's management agreements and, in the case of Starwood and its subsidiaries, the proposed license agreements, Host generally may not sell, lease or otherwise transfer its hotels unless the transferee is not a competitor of the manager and the transferee assumes the related management agreements and meets specified other conditions. Host's ability to finance or sell its properties, depending upon the structure of such transactions, may require the manager's consent. If, in these circumstances, the manager does not consent, Host may be precluded from taking actions in its best interest without breaching the applicable management agreement.

***The acquisition contracts relating to some hotels limit Host's ability to sell or refinance those hotels.***

For reasons relating to federal and state income tax considerations of the former and current owners of five hotels, Host has agreed to restrictions on selling the hotels, or repaying or refinancing the mortgage debt for varying periods depending on the hotel. Host has also agreed not to sell more than 50% of the original allocated value attributable to the former owners of a portfolio of 11 additional hotels, or to take other actions that would result in the recognition and allocation of gain to the former owners of such hotels for federal and state income tax purposes. As a result, even if it were in Host's best interests to sell these hotels or repay or otherwise reduce the level of the mortgage debt on such hotels, it may be difficult or costly to do so during their respective lock-out periods. Host anticipates that, in specified circumstances, it may agree to similar restrictions in connection with future hotel acquisitions. However, Host will not undertake any additional restrictions on sale or replacement of debt in connection with the hotels it will acquire from Starwood in the transactions.

***Host may be unable to sell properties because real estate investments are illiquid.***

Real estate investments generally cannot be sold quickly. Host may not be able to vary its portfolio promptly in response to economic or other conditions. The inability to respond promptly to changes in the performance of its investments could adversely affect Host's financial condition and its ability to service its debt. In addition, there are limitations under the federal income tax laws applicable to REITs that may limit Host's ability to recognize the full economic benefit from a sale of its assets.

*Applicable REIT laws may restrict certain business activities.*

As a REIT, Host is subject to various restrictions on its income, assets and activities. Business activities that could be impacted by applicable REIT laws include, but are not limited to, activities such as developing alternative uses of real estate, including the development and/or sale of timeshare or condominium units.



## **Table of Contents**

Due to these restrictions, certain business activities, including those mentioned above, may need to occur in one or more of Host's taxable REIT subsidiaries. Host's taxable REIT subsidiaries are taxable as regular C corporations and are subject to federal, state, and, if applicable, local and foreign taxation on their taxable income at applicable corporate income tax rates. In addition, under REIT laws, the aggregate value of all of a REIT's taxable REIT subsidiaries may not exceed 20% of the value of all of the REIT's assets.

### ***Host depends on its key personnel.***

Host's success depends on the efforts of its executive officers and other key personnel. None of Host's key personnel have employment agreements and Host does not maintain key person life insurance for any of its executive officers. Host cannot assure you that these key personnel will remain employed by it. While Host believes that it could find replacements for these key personnel, the loss of their services could have a significant adverse effect on its financial performance.

### ***Litigation judgments or settlements could have a significant adverse effect on Host's financial condition.***

Host is involved in various legal proceedings in the normal course of business. Host is vigorously defending each of these claims. Currently, none of these claims seeks relief that, if granted, would have a material effect on Host's financial condition or results of operations. As a publicly traded owner of hotel properties, however, Host could become the subject of claims by the operators of its hotels, individuals or companies who use its hotels, its investors, or regulating entities, which could have a material adverse effect on Host's financial condition and performance.

### ***Host's acquisition of additional properties may have a significant effect on its business, liquidity, financial position and/or results of operations.***

As part of Host's business strategy, it seeks to acquire upper-upscale and luxury hotel properties. Host may acquire these properties through various structures, including transactions involving portfolios, single assets, joint ventures and acquisitions of all or substantially all of the securities or assets of other REITs or similar real estate entities. Host anticipates that its acquisitions will be financed through a combination of methods, including proceeds from equity offerings of Host, issuance of limited partnership interests in Host LP, advances under its credit facility, and the incurrence or assumption of indebtedness. Host may, from time to time, be in the process of identifying, analyzing and negotiating possible acquisition transactions and it expects to continue to do so in the future. Host cannot assure you that it will be successful in consummating future acquisitions on favorable terms or that it will realize the benefits that it anticipates from one or more acquisitions that it consummates. Host's inability to consummate one or more acquisitions on such terms, or its failure to realize the intended benefits from one or more acquisitions, could have a significant adverse effect on its business, liquidity, financial position and/or results of operations, including as a result of its incurrence of additional indebtedness and related interest expense and its assumption of unforeseen contingent liabilities.

### ***Host may acquire hotel properties through joint ventures with third parties that could result in conflicts.***

Instead of purchasing hotel properties directly, Host may, from time to time, invest as a co-venturer in entities holding hotel properties. Indeed, Host is exploring the possibility of funding part of the cash portion of the purchase price for the transactions with proceeds from a joint venture related to the European assets to be acquired.

## Edgar Filing: HOST MARRIOTT CORP/ - Form S-4/A

Co-venturers often share control over the operation of a joint venture. Actions by a co-venturer could subject the assets to additional risk, including:

Host's co-venturer in an investment might have economic or business interests or goals that are inconsistent with Host's, or the joint venture's, interests or goals;

Host's co-venturer may be in a position to take action contrary to Host's instructions or requests or contrary to Host's policies or objectives; or

## **Table of Contents**

Host's co-venturer could go bankrupt, leaving Host liable for such co-venturer's share of joint venture liabilities.

Although Host generally will seek to maintain sufficient control of any joint venture to permit Host's objectives to be achieved, it might not be able to take action without the approval of its joint venture partners. Because, as described above, Host may enter into joint ventures with third parties in connection with certain European hotels to be acquired, these risks are particularly relevant to the transactions.

### ***Environmental problems are possible and can be costly.***

Host believes that its properties are in compliance in all material respects with applicable environmental laws. Unidentified environmental liabilities could arise, however, and could have a material adverse effect on its financial condition and performance. Federal, state and local laws and regulations relating to the protection of the environment may require a current or previous owner or operator of real estate to investigate and clean up hazardous or toxic substances or petroleum product releases at the property. The owner or operator may have to pay a governmental entity or third parties for property damage and for investigation and clean-up costs incurred by the parties in connection with the contamination. These laws typically impose clean-up responsibility and liability without regard to whether the owner or operator knew of or caused the presence of the contaminants. Even if more than one person may have been responsible for the contamination, each person covered by the environmental laws may be held responsible for all of the clean-up costs incurred. In addition, third parties may sue the owner or operator of a site for damages and costs resulting from environmental contamination emanating from that site. Environmental laws also govern the presence, maintenance and removal of asbestos. These laws require that owners or operators of buildings containing asbestos properly manage and maintain the asbestos, that they notify and train those who may come into contact with asbestos and that they undertake special precautions, including removal or other abatement, if asbestos would be disturbed during renovation or demolition of a building. These laws may impose fines and penalties on building owners or operators who fail to comply with these requirements and may allow third parties to seek recovery from owners or operators for personal injury associated with exposure to asbestos fibers.

### ***Compliance with other government regulations can be costly.***

Host's hotels are subject to various other forms of regulation, including Title III of the Americans with Disabilities Act, building codes and regulations pertaining to fire safety. Compliance with those laws and regulations could require substantial capital expenditures. These regulations may be changed from time to time, or new regulations adopted, resulting in additional costs of compliance, including potential litigation. Any increased costs could have a material adverse effect on Host's business, financial condition or results of operations.

### ***Some potential losses are not covered by insurance.***

Host carries comprehensive insurance coverage for general liability, property, business interruption and other risks with respect to all of its hotels and other properties. These policies offer coverage features and insured limits that Host believes are customary for similar type properties. Generally, Host's all-risk property policies provide coverage that is available on a per occurrence basis and that, for each occurrence, has an overall limit, as well as various sub-limits, on the amount of insurance proceeds it can receive. Sub-limits exist for certain types of claims such as service interruption, abatement, earthquakes, expediting costs or landscaping replacement, and the dollar amounts of these sub-limits are significantly lower than the dollar amounts of the overall coverage limit. Host's property policies also provide that all of the claims from each of its properties resulting from a particular insurable event must be combined together for purposes of evaluating whether the aggregate limits and sub-limits contained in its policies have been exceeded and, in the case of one of its hotels where the manager provides this coverage, any such claims will also be combined with the claims of other owners participating in the manager's program for the same purpose. That means that, if an insurable event occurs that affects more than one of Host's hotels, or, in the case of hotels where coverage is provided by the management company, affects



## **Table of Contents**

hotels owned by others, the claims from each affected hotel will be added together to determine whether the aggregate limit or sub-limits, depending on the type of claim, have been reached and each affected hotel may only receive a proportional share of the amount of insurance proceeds provided for under the policy if the total value of the loss exceeds the aggregate limits available. Host may incur losses in excess of insured limits and, as a result, Host may be even less likely to receive sufficient coverage for risks that affect multiple properties such as earthquakes or certain types of terrorism.

In addition, there are other risks such as war, certain forms of terrorism such as nuclear, biological or chemical terrorism and some environmental hazards that may be deemed to fall completely outside the general coverage limits of Host's policies or may be uninsurable or may be too expensive to justify insuring against. If any such risk were to materialize and materially adversely affect one or more of Host's properties, it would likely not be able to recover its losses.

Host may also encounter challenges with an insurance provider regarding whether it will pay a particular claim that Host believes to be covered under its policy. Should a loss in excess of insured limits or an uninsured loss occur or should Host be unsuccessful in obtaining coverage from an insurance carrier, Host could lose all, or a portion of, the capital it has invested in a property, as well as the anticipated future revenue from the hotel. In that event, Host might nevertheless remain obligated for any mortgage debt or other financial obligations related to the property.

***Host may not be able to recover fully under its existing terrorism insurance for losses caused by some types of terrorist acts, and Federal terrorism legislation does not ensure that it will be able to obtain terrorism insurance in adequate amounts or at acceptable premium levels in the future.***

Host obtains terrorism insurance as part of its all-risk property insurance program. However, as noted above, Host's all-risk policies have limitations such as per occurrence limits and sublimits which might have to be shared proportionally across participating hotels under certain loss scenarios. Also, all-risk insurers only have to provide terrorism coverage to the extent mandated by the Terrorism Risk Insurance Act (TRIA) for certified acts of terrorism namely those which are committed on behalf of non-United States persons or interests. Furthermore, Host does not have full replacement coverage at all of its properties for acts of terrorism committed on behalf of United States persons or interests (noncertified events) as its coverage for such incidents is subject to sublimits and annual aggregate limits. In addition, property damage related to war and to nuclear, biological and chemical incidents is excluded under Host's policies. While TRIA will reimburse insurers for losses resulting from nuclear, biological and chemical perils, TRIA does not require insurers to offer coverage for these perils and, to date, insurers are not willing to provide this coverage, even with government reinsurance. In addition, TRIA terminates on December 31, 2007, and there is no guarantee that the terrorism coverage that it mandates will be readily available or affordable thereafter. As a result of the above, there remains considerable uncertainty regarding the extent and adequacy of terrorism coverage that will be available to protect Host's interests in the event of future terrorist attacks that impact its properties.

## **Risks of Ownership of Host Common Stock**

***There are limitations on the acquisition of Host common stock and changes in control.***

Host's charter and bylaws, the partnership agreement of Host LP, Host's stockholder rights plan and the Maryland General Corporation Law contain a number of provisions, the exercise of which could delay, defer or prevent a transaction or a change in control that might involve a premium price for Host's stockholders or Host LP unit holders or otherwise be in their best interests, including the following:

**Restrictions on ownership and transfer of Host's stock.** To maintain Host's qualification as a REIT for federal income tax purposes, not more than 50% in value of Host's outstanding shares of capital stock may be owned in the last half of the taxable year, directly or indirectly, by five or fewer individuals, as defined in the Code to include some entities. Because such ownership could jeopardize

---

**Table of Contents**

Host's qualification as a REIT, a person cannot own, directly or by attribution, 10% or more of an interest in a Host lessee, nor can a Host lessee of any partnership in which Host is a partner own, directly or by attribution, 10% or more of Host's shares, in each case unless exempted by Host's board of directors.

Host's charter prohibits ownership, directly or by virtue of the attribution provisions of the Code, by any person or persons acting as a group, of more than 9.8% in value or number, whichever is more restrictive, of shares of Host's outstanding common stock, preferred stock or any other stock, each considered as a separate class or series for this purpose. Together, these limitations are referred to as the ownership limit.

Stock acquired or held in violation of the ownership limit will be transferred automatically to a trust for the benefit of a designated charitable beneficiary, and the person who acquired the stock in violation of the ownership limit will not be entitled to any distributions thereon, to vote those shares of stock or to receive any proceeds from the subsequent sale of the stock in excess of the lesser of the price paid for the stock or the amount realized from the sale. A transfer of shares of Host's stock to a person who, as a result of the transfer, violates the ownership limit may be void under certain circumstances, and, in any event, would deny that person any of the economic benefits of owning shares of Host's stock in excess of the ownership limit. These restrictions on transferability and ownership will not apply if Host's board of directors determines that it is no longer in Host's best interests to continue to qualify as a REIT.

**Removal of board of directors.** Host's charter provides that, except for any directors who may be elected by holders of a class or series of shares 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 all the votes entitled to be cast for the election of directors. Vacancies on Host's board of directors may be filled by the concurring vote of a majority of the remaining directors (except that a vacancy resulting from an increase in the number of directors must be filled by a majority vote of the entire board of directors) and, in the case of a vacancy resulting from the removal of a director by the stockholders, by at least two-thirds of all the votes entitled to be cast in the election of directors.

**Preferred shares; classification or reclassification of unissued shares of capital stock without stockholder approval.** Host's charter provides that the total number of shares of stock of all classes that Host has authority to issue is 800,000,000, initially consisting of 750,000,000 shares of common stock and 50,000,000 shares of preferred stock. Host's board of directors has the authority, without a vote of stockholders, to classify or reclassify any unissued shares of stock, including common stock into preferred stock or vice versa, and to establish the preferences and rights of any preferred or other class or series of shares to be issued. Because the board of directors has the power to establish the preferences and rights of additional classes or series of stock without a stockholder vote, Host's board of directors may give the holders of any class or series of stock preferences, powers and rights, including voting rights, senior to the rights of holders of existing stock.

**Consent rights of the limited partners.** Under the partnership agreement of Host LP, Host generally will be able to merge or consolidate with another entity with the consent of partners holding limited partner ownership interests that are more than 50% of the aggregate ownership interests of the outstanding limited partnership interests entitled to vote on the merger or consolidation, including any limited partnership interests held by Host, as long as the holders of limited partnership interests either receive or have the right to receive the same consideration as Host's stockholders. Host, as holder of a majority of the limited partnership interests of Host LP, would be able to control the vote. Under Host's charter, holders of at least two-thirds of Host's outstanding shares of common stock generally must approve a merger or consolidation.

**Maryland business combination law.** Under the Maryland General Corporation Law, specified business combinations, including specified issuances of equity securities, between a Maryland corporation and any person who owns 10% or more of the voting power of the corporation's then outstanding shares, or an affiliate or associate of the corporation who at any time during the two year

**Table of Contents**

period prior to the date in question owned 10% or more of the voting power of the outstanding stock of the corporation (each, an interested stockholder), or an affiliate of the interested stockholder, are prohibited for five years after the most recent date on which the interested stockholder becomes an interested stockholder. Thereafter, any of these specified business combinations must be approved by 80% of the votes entitled to be cast by the holders of outstanding voting shares and by two-thirds of the votes entitled to be cast by the holders of voting shares other than voting shares held by an interested stockholder unless, among other conditions, the corporation's common stockholders receive a minimum price, as defined in the Maryland General Corporation Law, for their shares and the consideration is received in cash or in the same form as previously paid by the interested stockholder. Host is subject to the Maryland business combination statute.

**Maryland control share acquisition law.** Under the Maryland General Corporation Law, control shares 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, by officers or by directors who are employees of the corporation. Control shares are voting shares which, if aggregated with all other voting shares previously acquired by the acquiror or over which the acquiror is able to exercise or direct the exercise of voting power (except solely by virtue of a revocable proxy), would entitle the acquiror to exercise voting power in electing directors within one of the following ranges of voting power: (1) one-tenth or more but less than one-third, (2) one-third or more but less than a majority or (3) a majority or more of the voting power. Control shares do not include shares the acquiring person is then entitled to vote as a result of having previously obtained stockholder approval. A control share acquisition means the acquisition of control shares, subject to specified exceptions. Host is subject to these control share provisions of Maryland law.

**Merger, consolidation, share exchange and transfer of Host's assets.** Pursuant to Host's charter, subject to the terms of any outstanding class or series of capital stock, Host can merge with or into another entity, consolidate with one or more other entities, participate in a share exchange or transfer Host's assets within the meaning of the Maryland General Corporation Law if approved (1) by Host's board of directors in the manner provided in the Maryland General Corporation Law and (2) by Host's stockholders holding two-thirds of all the votes entitled to be cast on the matter, except that any merger of Host with or into a trust organized for the purpose of changing Host's form of organization from a corporation to a trust requires only the approval of Host's stockholders holding a majority of all votes entitled to be cast on the merger. Under the Maryland General Corporation Law, specified mergers may be approved without a vote of stockholders and a share exchange is only required to be approved by a Maryland corporation by its board of directors if the corporation is the successor. Host's voluntary dissolution also would require approval of stockholders holding two-thirds of all the votes entitled to be cast on the matter.

**Certain charter and bylaw amendments.** Host's charter contains provisions relating to restrictions on transferability of Host's stock, fixing the size of the board of directors within the range set forth in the charter, removal of directors and the filling of vacancies, all of which may be amended only by a resolution adopted by the board of directors and approved by Host's stockholders holding two-thirds of the votes entitled to be cast on the matter. Any amendments of these provisions of the charter (setting forth the necessary approval requirements) also would require action of the board of directors and the approval by stockholders holding two-thirds of all the votes entitled to be cast on the matter. As permitted under the Maryland General Corporation Law, Host's bylaws provide that directors have the exclusive right to amend Host's bylaws. These provisions may make it more difficult to amend Host's charter and bylaws to alter the provisions described herein that could delay, defer or prevent a transaction or a change in control or the acquisition of Host common stock, without the approval of the board of directors.

**Stockholder rights plan.** Host adopted a stockholder rights plan which provides, among other things, that when specified events occur, Host's stockholders, other than an acquiring person, will be entitled to purchase from it a newly created class or series of junior preferred stock, subject to Host's ownership



**Table of Contents**

limits described above. The preferred stock purchase rights are triggered by the earlier to occur of (1) ten days after the date of a public announcement that a person or group acting in concert has acquired, or obtained the right to acquire, beneficial ownership of 20% or more of Host's outstanding shares of common stock or (2) ten business days after the commencement of or announcement of an intention to make a tender offer or exchange offer, the consummation of which would result in the acquiring person becoming the beneficial owner of 20% or more of Host's outstanding common stock. The exercise of the preferred share purchase rights would cause substantial dilution to a person or group that attempts to acquire Host on terms not approved by Host's board of directors.

***Shares of Host common stock that are or become available for sale could affect the share price.***

Sales of a substantial number of shares of Host common stock, or the perception that sales could occur, could adversely affect prevailing market prices for Host common stock. For example, in connection with the transactions, Host intends to issue up to in excess of 145 million shares of common stock, representing an increase of approximately 40% over our currently outstanding shares. In addition, holders of units of limited partnership interest in Host LP, or LP units, whose LP units may be redeemed, at Host's election, in exchange for common stock, will be able to sell those shares freely, unless the person is Host's affiliate and resale of the affiliate's shares is not covered by an effective registration statement. Further, a substantial number of shares of Host common stock have been and will be issued or reserved for issuance from time to time under its employee benefit plans, including shares of common stock reserved for options, or pursuant to securities Host may issue that are convertible into shares of Host common stock or securities (other than LP units) that Host LP has issued that are exchangeable for shares of Host common stock. As of September 9, 2005, (i) there are approximately 20 million LP units outstanding that are redeemable and (ii) there are outstanding \$500 million aggregate principal amount of 3.25% Exchangeable Senior Debentures of Host LP exchangeable under certain conditions for shares of Host common stock at an exchange price equivalent to \$18.05 per share for a total of approximately 28 million shares (subject to adjustment for various reasons, including as a result of the payment of dividends to common stockholders). Moreover, additional shares of common stock issued by Host would be available in the future for sale in the public markets. Host can make no prediction about the effect that future sales of common stock would have on the market price of Host common stock.

***Host's earnings and cash distributions will affect the market price of shares of Host common stock.***

Host believes that the market value of a REIT's equity securities is based primarily upon the market's perception of the REIT's growth potential and its current and potential future cash distributions, whether from operations, sales, acquisitions, development or refinancings, and is secondarily based upon the value of the underlying assets. For that reason, shares of Host common stock may trade at prices that are higher or lower than the net asset value per share. To the extent Host retains operating cash flow for investment purposes, working capital reserves or other purposes rather than distributing the cash flow to stockholders, these retained funds, while increasing the value of Host's underlying assets, may negatively impact the market price of Host common stock. Host's failure to meet the market's expectation with regard to future earnings and cash distributions would likely adversely affect the market price of Host common stock.

***Market interest rates may affect the price of shares of Host common stock.***

Host believes that one of the factors that investors consider important in deciding whether to buy or sell shares of a REIT is the dividend rate on the shares, considered as a percentage of the price of the shares, relative to market interest rates. If market interest rates increase, prospective purchasers of REIT shares may expect a higher dividend rate. Thus, higher market interest rates could cause the market price of Host's shares to decrease.

---

**Table of Contents****Federal Income Tax Risks**

*To qualify as a REIT, Host is required (and each of its subsidiary REITs will be required) to distribute at least 90% of its taxable income, irrespective of its available cash or outstanding obligations.*

To continue to qualify as a REIT, Host is required to distribute to its stockholders with respect to each year at least 90% of its taxable income, excluding net capital gain. To the extent that Host satisfies this distribution requirement but distributes less than 100% of its taxable income and net capital gain for the taxable year, it will be subject to federal corporate income tax on its undistributed taxable income and capital gain. In addition, Host will be subject to a 4% nondeductible excise tax on the amount, if any, by which distributions made by it with respect to the calendar year are less than the sum of 85% of its ordinary income and 95% of its capital gain net income for that year and any undistributed taxable income from prior periods less excess distributions from prior years. Host intends to make distributions, subject to the availability of cash and in compliance with any debt covenants, to its stockholders to comply with the distribution requirement and to avoid the nondeductible excise tax and will rely for this purpose on distributions from Host LP and its subsidiaries. However, there are differences in timing between Host's recognition of taxable income and its receipt of cash available for distribution due to, among other things, the seasonality of the lodging industry and the fact that some taxable income will be "phantom" income, which is taxable income that is not matched by corresponding cash flow. Due to some transactions entered into in years prior to Host's conversion to a REIT, Host could recognize substantial amounts of "phantom" income. It is possible that these differences between taxable income and the receipt of related cash could require Host to borrow funds or to issue additional equity to enable it to meet the distribution requirement and, therefore, to maintain its REIT status, and to avoid the nondeductible excise tax. In addition, because the REIT distribution requirement prevents Host from retaining earnings, it will generally be required to refinance debt at its maturity with additional debt or equity. It is possible that any of these sources of funds, if available at all, would not be sufficient to meet Host's distribution and tax obligations.

If the transactions are completed as expected, Host will own, through Host LP, 100% of the outstanding common stock (but not the outstanding preferred stock) of SHC and six other entities that will elect to be treated as REITs. Each of these subsidiary REITs of Host will be subject to the same requirements that Host must satisfy in order to qualify as a REIT and the other rules applicable to REITs, including the distribution requirements described above.

*Adverse tax consequences would apply if Host or any of its subsidiary REITs failed to qualify as a REIT.*

Host believes that it has been organized and has operated in such a manner so as to qualify as a REIT under the Code, commencing with its taxable year beginning January 1, 1999, and Host currently intends to continue to operate as a REIT during future years. In addition, if the transactions are completed as expected, as described above, Host will own, through Host LP, SHC and six other entities that will elect to be treated as REITs. As the requirements for qualification and taxation as a REIT are extremely complex and interpretations of the federal income tax laws governing qualification and taxation as a REIT are limited, no assurance can be provided that Host currently qualifies as a REIT or will continue to qualify as a REIT or that each of Host's subsidiary REITs will qualify as a REIT following its REIT election. If any of the subsidiary REITs were to fail to qualify as a REIT, it is possible that Host itself would fail to qualify as a REIT unless it (or the subsidiary REIT) could avail itself of certain relief provisions. New legislation, treasury regulations, administrative interpretations or court decisions could significantly change the tax laws with respect to an entity's qualification as a REIT or the federal income tax consequences of its REIT qualification. If Host or any of the subsidiary REITs were to fail to qualify as a REIT, and any available relief provisions did not apply, the non-qualifying REIT would not be allowed to take a deduction for distributions to its stockholders in computing its taxable income, and it would be subject to federal and state corporate income tax, including any applicable alternative minimum tax, on its taxable income at regular corporate rates. Moreover, unless entitled to statutory relief, the non-qualifying REIT could not qualify as a REIT for the four taxable years following the year during which REIT qualification is lost.

Edgar Filing: HOST MARRIOTT CORP/ - Form S-4/A

Any determination that Host or one of its subsidiary REITs does not qualify as a REIT would have a materially adverse effect on Host's results of operations and could reduce the value of Host common stock

**Table of Contents**

materially. The additional tax liability of Host or the subsidiary REIT for the year, or years, in which the relevant entity did not qualify as a REIT would reduce its net earnings available for investment, debt service or distributions to stockholders. Furthermore, the non-qualifying entity would no longer be required to make any distributions to stockholders as a condition to REIT qualification and all of its distributions to stockholders would be taxable as regular C corporation dividends to the extent of its current and accumulated earnings and profits. This means, if Host were to fail to qualify as a REIT, that Host's stockholders currently taxed as individuals would be taxed on those dividends at capital gain rates and its corporate stockholders generally would be entitled to the dividends received deduction with respect to such dividends, subject in each case, to applicable limitations under the Code. Host's failure to qualify as a REIT also would cause an event of default under Host LP's credit facility that could lead to an acceleration of the amounts due under the credit facility, which, in turn, would constitute an event of default under Host LP's outstanding debt securities.

***If Host's leases are not respected as true leases for federal income tax purposes, Host and each of its subsidiary REITs would fail to qualify as a REIT.***

To qualify as a REIT, Host must satisfy two gross income tests, under which specified percentages of its gross income must be passive income, like rent. For the rent paid pursuant to Host's leases, which currently constitutes (and is expected to constitute, following the closing transactions) substantially all of Host's and each of its subsidiary REITs' gross income, to qualify for purposes of the gross income tests, the leases must be respected as true leases for federal income tax purposes and not be treated as service contracts, joint ventures or some other type of arrangement. Host believes that the leases will be respected as true leases for federal income tax purposes. There can be no assurance, however, that the IRS will agree with this view. If the leases were not respected as true leases for federal income tax purposes, neither Host nor any of its subsidiary REITs would be able to satisfy either of the two gross income tests applicable to REITs and each would most likely lose its REIT status.

***If Host's affiliated lessees fail to qualify as taxable REIT subsidiaries, Host and each of its subsidiary REITs would fail to qualify as a REIT.***

Rent paid by a lessee that is a related party tenant of Host will not be qualifying income for purposes of the two gross income tests applicable to REITs. As a result of changes in the Code, since January 1, 2001, Host has leased substantially all of its hotels to a subsidiary of Host LP that is taxable as a regular C corporation and that has elected to be treated as a taxable REIT subsidiary with respect to Host. Should the transactions be consummated as expected, each of the hotels acquired from Starwood and Starwood Trust will be leased to either a taxable REIT subsidiary of Host or a taxable REIT subsidiary of a subsidiary REIT. So long as any affiliated lessee qualifies as a taxable REIT subsidiary, it will not be treated as a related party tenant. Host believes that its affiliated lessees have qualified and will continue to qualify, and that the taxable REIT subsidiaries of its subsidiary REITs will qualify, to be treated as taxable REIT subsidiaries for federal income tax purposes. There can be no assurance, however, that the IRS will not challenge the status of a taxable REIT subsidiary for federal income tax purposes or that a court would not sustain such a challenge. If the IRS were successful in disqualifying any of Host's affiliated lessees (including the taxable REIT subsidiaries of its subsidiary REITs) from treatment as a taxable REIT subsidiary, it is possible that Host or a subsidiary REIT would fail to meet the asset tests applicable to REITs and substantially all of its income would fail to qualify for the gross income tests. If this occurred, Host and/or the applicable subsidiary REIT would cease to qualify as a REIT.

***Despite Host's REIT status, it remains subject to various taxes.***

Host or one of its subsidiary REITs will be required to pay federal income tax at the highest regular corporate rate upon its share of any built-in gain recognized as a result of any sale before the expiration of the applicable 10-year holding period of assets, including certain hotels, acquired as part of Host's conversion to a REIT or from Starwood and its affiliates as part of the transactions. The total amount of gain on which Host would be subject to corporate income tax if these built-in gain assets were sold in a taxable transaction prior to



## **Table of Contents**

the expiration of the applicable 10-year holding period would be material to Host. In addition, Host expects that it could recognize other substantial deferred tax liabilities in the future without any corresponding receipt of cash.

Notwithstanding Host's status as a REIT, Host and its subsidiaries (including Host's subsidiary REITs) will be subject to some federal, state, local and foreign taxes on their income and property. For example, Host and its subsidiary REITs will pay tax on certain types of income that is not distributed and will be subject to a 100% excise tax on transactions with a taxable REIT subsidiary that are not conducted on an arm's length basis. Moreover, the taxable REIT subsidiaries of Host and its subsidiary REITs are taxable as regular C corporations and will pay federal, state and local income tax on their net income at the applicable corporate rates, and foreign taxes to the extent they own assets or conduct operations in foreign jurisdictions.

Host LP is obligated under its partnership agreement to pay all such taxes (and any related interest and penalties) incurred by Host.

***If the IRS were to challenge successfully Host LP's status as a partnership for federal income tax purposes, Host would cease to qualify as a REIT and suffer other adverse consequences.***

Host believes that Host LP qualifies to be treated as a partnership for federal income tax purposes. As a partnership, it is not subject to federal income tax on its income. Instead, each of its partners, including Host, is required to pay tax on such partner's allocable share of its income. No assurance can be provided, however, that the IRS will not challenge Host LP's status as a partnership for federal income tax purposes, or that a court would not sustain such a challenge. If the IRS were successful in treating Host LP as a corporation for federal income tax purposes, Host would fail to meet the gross income tests and certain of the asset tests applicable to REITs and, accordingly, cease to qualify as a REIT. If Host LP fails to qualify as a partnership for federal income tax purposes or Host fails to qualify as a REIT, either failure would cause an event of default under Host LP's credit facility that, in turn, could constitute an event of default under Host LP's outstanding debt securities. Also, the failure of Host LP to qualify as a partnership would cause it to become subject to federal and state corporate income tax, which would reduce significantly the amount of cash available for debt service and for distribution to its partners, including Host.

***As a REIT, each of Host and its subsidiary REITs is subject to limitations on its ownership of debt and equity securities.***

Subject to certain exceptions, a REIT is generally prohibited from owning securities in any one issuer to the extent that the value of those securities exceeds 5% of the value of the REIT's total assets or the securities owned by the REIT represent more than 10% of the issuer's outstanding voting securities or more than 10% of the value of the issuer's outstanding securities. A REIT is permitted to own securities of a subsidiary in an amount that exceeds the 5% value test and the 10% vote or value test if the subsidiary elects to be a taxable REIT subsidiary. However, a REIT may not own securities of taxable REIT subsidiaries that represent in the aggregate more than 20% of the value of the REIT's total assets.

***Host or its subsidiary REITs may be required to pay a penalty tax upon the sale of a hotel.***

The federal income tax provisions applicable to REITs provide that any gain realized by a REIT on the sale of property held as inventory or other property held primarily for sale to customers in the ordinary course of business is treated as income from a prohibited transaction that is subject to a 100% penalty tax. Under existing law, whether property, including hotels, is held as inventory or primarily for sale to customers in the ordinary course of business is a question of fact that depends upon all of the facts and circumstances with respect to the particular

## Edgar Filing: HOST MARRIOTT CORP/ - Form S-4/A

transaction. Host intends that it will hold the hotels for investment with a view to long-term appreciation, to engage in the business of acquiring and owning hotels and to make occasional sales of hotels as are consistent with its investment objectives. There can be no assurance, however, that the IRS might not contend that one or more of these sales is subject to the 100% penalty tax.

**Table of Contents**

**CAUTIONARY STATEMENT CONCERNING FORWARD-LOOKING STATEMENTS**

This proxy statement/prospectus and the other documents incorporated by reference into this proxy statement/prospectus contain or may contain forward-looking statements intended to qualify for the safe harbor from liability established by the Private Securities Litigation Reform Act of 1995. These forward-looking statements are identified by their use of terms and phrases such as anticipate, believe, could, estimate, expect, intend, may, plan, predict, project, will, continue and other similar terms and phrases, including statements about the expected scope and of the transactions and expectations as to timing, nature and terms of financing and other sources of funds. Forward-looking statements are not guarantees of future performance and involve known and unknown risks, uncertainties and other factors which may cause the actual results to differ materially from those anticipated at the time the forward-looking statements are made. These risks include, but are not limited to:

the completion of the transactions (either in whole or in part relating to the acquisition of certain hotels) is subject to numerous closing conditions, including but not limited to those listed in this proxy statement/prospectus, and there can be no assurances that the transactions as a whole, or portions of it, will be completed;

national and local economic and business conditions and changes in travel patterns that will affect demand for hotel products and services, the level of room rates and occupancy that can be achieved by such properties and the availability and terms of financing and liquidity;

changes in taxes and government regulations that influence or determine wages, prices, construction procedures and costs;

operating risks associated with the hotel business;

risks associated with the level of Host's indebtedness and Host's ability to meet covenants in its debt agreements;

relationships with property managers;

the ability of Host to maintain its respective properties in a first-class manner, including meeting capital expenditure requirements;

the ability of Host to compete effectively in areas such as access, location, quality of accommodations and room rate;

the ability of Host to complete pending acquisitions and dispositions and the risk that potential acquisitions may not perform in accordance with expectations;

the effect of terror alerts and potential terrorist activity on travel and Host's ability, and prior to the completion of the transactions with respect to hotels to be acquired by Host, Starwood's ability, to recover fully under its existing insurance for terrorist acts and to maintain adequate or full replacement cost all-risk property insurance on its properties;

government approvals, actions and initiatives, including the need for compliance with environmental and safety requirements, and changes in laws and regulations or the interpretation thereof;



the effects of tax legislative action;

the ability of Host and each of the REIT entities currently contemplated to be acquired or established by Host in the transactions to continue to satisfy complex rules in order for it to qualify as a REIT for federal income tax purposes, the ability of Host LP to satisfy the rules to maintain its status as a partnership for federal income tax purposes, the ability of certain of Host LP's subsidiaries to maintain their status as taxable REIT subsidiaries for federal income tax purposes and Host's ability and the ability of its subsidiaries, and similar entities to be acquired or established by Host in the transactions, to operate effectively within the limitations imposed by these rules;

**Table of Contents**

the effect of any rating agency downgrades on the cost and availability of new debt financings;

the relatively fixed nature of property-level operating costs and expenses for Host and the portfolio to be acquired by Host in the transactions; and

other factors discussed under the heading **Risk Factors** beginning on page 18 and in other filings with the SEC.

Although Host believes the expectations reflected in such forward-looking statements are based upon reasonable assumptions, Host can give no assurance that the expectations will be attained or that any deviation will not be material. All information is as of the date of this filing and Host undertakes no obligation to update any forward-looking statement to conform the statement to actual results or changes in expectations, except as required by federal securities laws.

**Table of Contents**

**THE HOST SPECIAL MEETING**

**General**

This proxy statement/prospectus is being provided to Host stockholders as part of a solicitation of proxies by Host's board of directors for use at a special meeting of Host stockholders. This proxy statement/prospectus provides Host stockholders with the information they need to know to be able to vote or instruct their votes to be cast at the special meeting of Host stockholders.

**Date, Time, Place and Purpose of the Host Special Meeting**

The special meeting of Host stockholders will be held on \_\_\_\_\_, 2006 at 10:00 a.m., local time, at \_\_\_\_\_.

The special meeting is being held for the following purposes:

to consider and vote upon a proposal to approve the issuance of shares of Host common stock pursuant to the Master Agreement and Plan of Merger, dated as of November 14, 2005, among Host Marriott Corporation, Host Marriott, L.P., Horizon Supernova Merger Sub, L.L.C., Horizon SLT Merger Sub, L.P., Starwood Hotels & Resorts Worldwide, Inc., Starwood Hotels & Resorts, Sheraton Holding Corporation and SLT Realty Limited Partnership; and

to transact any other business as may properly come before the special meeting or any adjournments or postponements of the special meeting.

**Recommendation of Host's Board of Directors**

Host's board of directors has determined that the master agreement and the transactions contemplated by the master agreement are advisable and in the best interests of Host and its stockholders and has unanimously approved the master agreement and the issuance of shares of Host common stock in the transactions. **Host's board of directors unanimously recommends that Host common stockholders vote FOR the proposal to approve the issuance of shares of Host common stock in the transactions.**

**Record Date; Outstanding Shares; Shares Entitled to Vote**

Only holders of record of Host common stock at the close of business on the record date, \_\_\_\_\_, 2006, are entitled to notice of and to vote at the Host special meeting. As of the record date, there were \_\_\_\_\_ shares of Host common stock outstanding and entitled to vote at the Host special meeting. Each holder of Host common stock is entitled to one vote for each share of common stock owned as of the record date.

**Quorum and Vote Required; Abstentions and Broker Non-Votes**

A quorum of Host common stockholders is necessary to hold a valid meeting. The required quorum for the transaction of business at the Host special meeting is the presence, in person or by proxy, of holders of a majority of the outstanding shares of Host common stock entitled to vote at the Host special meeting. Because there were \_\_\_\_\_ shares of common stock outstanding at the close of business on \_\_\_\_\_, 2006, the presence of holders of \_\_\_\_\_ shares of Host common stock is a quorum.

All shares of Host common stock represented at the Host special meeting, including abstentions and broker non-votes, will be counted as present at the Host special meeting for the purpose of determining whether a quorum is present at the special meeting. Abstentions occur when a stockholder attends a meeting in person or by proxy but abstains from voting. Broker non-votes occur when a nominee holding shares of Host common stock for a beneficial owner returns a properly executed proxy but has not received voting instructions from the beneficial owner and such nominee does not possess or does not choose to exercise discretionary authority with

## **Table of Contents**

respect to such shares. Brokers are not allowed to exercise their voting discretion with respect to the approval of matters which the NYSE determines to be non-routine, such as approval of the issuance of shares of Host common stock in the transactions, without specific instructions from the beneficial owner. Accordingly, if your broker holds your shares of Host common stock in street name, your broker will vote your shares only if you provide instructions on how to vote by filling out the voter instruction form sent to you by your broker with this proxy statement/prospectus.

In accordance with NYSE listing requirements, the approval of the issuance of shares of Host common stock in the transactions requires the affirmative vote of the holders of a majority of shares of Host common stock cast on the proposal, in person or by proxy, provided that the total votes cast on the proposal represent over 50% of the outstanding shares of Host common stock entitled to vote on the proposal. Votes for, votes against and abstentions count as votes cast, while broker non-votes do not count as votes cast. All outstanding shares of Host common stock as of the record date count as shares entitled to vote. Thus, the total sum of votes for, plus votes against, plus abstentions, which is referred to throughout this proxy statement/prospectus as the NYSE votes cast, must be greater than 50% of the total outstanding shares of Host common stock. Once satisfied, the number of votes for the proposal must be greater than 50% of NYSE votes cast. It is expected that brokers and other nominees will not have discretionary voting authority on this proposal and thus broker non-votes will result from this proposal to the extent that specific voting instructions are not provided to brokers or nominees by the beneficial holders of shares of Host common stock. Broker non-votes could have a negative effect on Host's ability to obtain the necessary number of NYSE votes cast but once such number has been cast, broker non-votes will have no effect on the vote. Abstentions will have the same effect as a vote against the proposal.

## **Voting by Host Directors and Executive Officers**

As of the record date for the Host special meeting, the directors and executive officers of Host as a group beneficially owned and were entitled to vote approximately \_\_\_\_\_ shares of Host common stock, or approximately \_\_\_\_\_ % of the outstanding shares of Host common stock on that date.

## **Voting; Proxies; Revocation**

You may vote by proxy or in person at the Host special meeting. Votes will be tabulated and certified by Host's transfer agent, Computershare Trust Company, N.A., or Computershare.

## ***Voting in Person***

If you plan to attend the Host special meeting and wish to vote in person, you will be given a ballot at the special meeting. Please note, however, that if your shares are held in street name, which means your shares are held of record by a broker, bank or other nominee, and you wish to vote at the Host special meeting, you must bring to the special meeting a proxy from the record holder of the shares authorizing you to vote at the Host special meeting.

## ***Voting by Proxy***

## Edgar Filing: HOST MARRIOTT CORP/ - Form S-4/A

Your vote is very important. Accordingly, please complete, sign, date and return the enclosed proxy card whether or not you plan to attend the Host special meeting in person. You should vote your proxy even if you plan to attend the Host special meeting. You can always change your vote at the special meeting. Voting instructions are included on your proxy card. If you properly give your proxy and submit it to Host in time to vote, one of the individuals named as your proxy will vote your shares as you have directed. A proxy card is enclosed for your use.

The method of voting by proxy differs for shares held as a record holder and shares held in street name. If you hold your shares of Host common stock as a record holder, you may vote by completing, dating and signing the enclosed proxy card and promptly returning it in the enclosed, pre-addressed, postage-paid envelope or

## Table of Contents

otherwise mailing it to Host, or by submitting a proxy over the Internet or by telephone by following the instructions on the enclosed proxy card. Internet and telephone voting is available twenty-four hours per day until 11:59 p.m., Eastern time, on \_\_\_\_\_, 2006. If you vote by telephone or the Internet, you do not need to return your proxy card.

If you hold your shares of Host common stock in \_\_\_\_\_ street name \_\_\_\_\_, which means your shares are held of record by a broker, bank or nominee, you will receive instructions from your broker, bank or other nominee that you must follow in order to vote your shares. Your broker, bank or nominee may allow you to deliver your voting instructions over the Internet or by telephone. Please see the voting instructions from your broker, bank or nominee that accompany this proxy statement/prospectus.

All properly signed proxies that are received prior to the Host special meeting and that are not revoked will be voted at the Host special meeting according to the instructions indicated on the proxies or, if no direction is indicated, they will be voted **FOR** approval of the issuance of shares of Host common stock in the transactions.

## *Revocation of Proxy*

You may revoke your proxy at any time before your proxy is voted at the Host special meeting by taking any of the following actions:

delivering to Computershare a signed written notice of revocation, bearing a date later than the date of the proxy, stating that the proxy is revoked;

signing and delivering a new proxy, relating to the same shares and bearing a later date;

submitting another proxy by telephone or on the Internet (your latest telephone or Internet voting instructions are followed); or

attending the Host special meeting and voting in person, although attendance at the special meeting will not, by itself, revoke a proxy.

If your shares are held in \_\_\_\_\_ street name, \_\_\_\_\_ you may change your vote by submitting new voting instructions to your broker, bank or other nominee. You must contact your broker, bank or other nominee to find out how to do so.

Written notices of revocation and other communications with respect to the revocation of Host proxies should be addressed to:

Computershare Trust Company, N.A.

P.O. Box 8611

Edison, New Jersey 08818

**Proxy Solicitation**

Host is soliciting proxies for the Host special meeting from the holders of Host common stock. Host will bear the entire cost of soliciting proxies from its stockholders. In addition to the solicitation of proxies by mail, Host will request that brokers, banks and other nominees send proxies and proxy materials to the beneficial owners of Host common stock held by them and secure their voting instructions, if necessary. Host will, upon request, reimburse those record holders for their reasonable expenses. Host has also made arrangements with MacKenzie Partners, Inc. to assist it in soliciting proxies, and has agreed to pay a fee of approximately \$9,500 plus expenses for those services. Host also may use several of its regular employees, who will not be specially compensated, to solicit proxies from Host stockholders, either personally or by telephone, Internet, telegram, facsimile or special delivery letter.



## **Table of Contents**

### **Other Business; Adjournments**

Host does not expect that any matter other than the proposal presented in this proxy statement/prospectus will be brought before the Host special meeting. However, if other matters incident to the conduct of the Host special meeting are properly presented at the Host special meeting or any adjournment or postponement of the Host special meeting, the persons named as proxies will vote in accordance with their discretion with respect to those matters.

If a quorum is not present or if Host decides that more time is necessary for the solicitation of proxies, the Host special meeting may be adjourned, without further notice other than by an announcement made at the Host special meeting. This adjournment may be done with or without a stockholder vote. If there is a stockholder vote to adjourn, the named proxies will vote all shares of common stock for which they have voting authority in favor of the adjournment. Host does not currently intend to seek an adjournment of the Host special meeting.

### **Assistance**

If you need assistance in completing your proxy card or have questions regarding the Host special meeting, please contact Host's Investor Relations department at (240) 744-1000 or [iiinfo@hostmarriott.com](mailto:iiinfo@hostmarriott.com) or write to Host Marriott Corporation, 6903 Rockledge Drive, Suite 1500, Bethesda, Maryland 20817, Attn: Investor Relations, or contact MacKenzie Partners, Inc. toll-free at (800) 322-2885 or write to MacKenzie Partners, Inc., 105 Madison Avenue, 14<sup>th</sup> Floor, New York, New York 10016.

**Table of Contents****THE TRANSACTIONS**

*The following is a description of the material aspects of the transactions. While we believe that the following description covers the material terms of the transactions, the description may not contain all of the information that is important to you. We encourage you to read carefully this entire proxy statement/prospectus, including the transaction agreements attached to this proxy statement/prospectus as Annex A, Annex B and Annex C, respectively, for a more complete understanding of the transactions.*

**Summary of the Transactions****Structure of the Transactions**

On November 14, 2005, Host announced that it had entered into the master agreement and other transaction agreements described in more detail in the section entitled "Material Terms of the Principal Transaction Agreements" beginning on page 79, pertaining to its acquisition of the following 25 domestic and 13 foreign hotels from Starwood and certain Starwood subsidiaries:

*Domestic Hotels*

<b>Hotel</b>	<b>City</b>	<b>State</b>	<b>Country</b>	<b>Rooms</b>
Sheraton New York Hotel & Towers	New York	NY	USA	1,746
Sheraton Boston Hotel	Boston	MA	USA	1,216
Sheraton San Diego Hotel & Marina	San Diego	CA	USA	1,044
The Westin Seattle	Seattle	WA	USA	891
The Westin Los Angeles Airport	Los Angeles	CA	USA	740
W New York	New York	NY	USA	688
The Westin Indianapolis	Indianapolis	IN	USA	573
Sheraton Indianapolis Hotels and Suites	Indianapolis	IN	USA	560
The Westin Mission Hills Resort & Spa	Rancho Mirage	CA	USA	512
The Westin Cincinnati	Cincinnati	OH	USA	456
Sheraton Stamford Hotel	Stamford	CT	USA	448
The Westin Tabor Center	Denver	CO	USA	430
W Seattle	Seattle	WA	USA	426
The Westin South Coast Plaza	Costa Mesa	CA	USA	390
Sheraton Milwaukee Brookfield Hotel	Brookfield	WI	USA	389
Sheraton Braintree Hotel	Braintree	MA	USA	374
Sheraton Parsippany Hotel	Parsippany	NJ	USA	370
The Westin Waltham-Boston	Waltham	MA	USA	346
The Westin Grand, Washington, D.C.	Washington	DC	USA	263
Sheraton Suites Tampa Airport	Tampa	FL	USA	259
Sheraton Needham Hotel	Needham	MA	USA	247
St. Regis Hotel, Houston	Houston	TX	USA	232
Sheraton Tucson Hotel & Suites	Tucson	AZ	USA	216
Sheraton Providence Airport Hotel	Warwick	RI	USA	206
Capitol Hill Suites	Washington	DC	USA	152

Total Domestic Hotels

13,174

**Table of Contents***International Hotels*

<b>Hotel</b>	<b>City</b>	<b>Province</b>	<b>Country</b>	<b>Rooms</b>
Sheraton Centre Toronto Hotel	Toronto	Ontario	Canada	1,377
Le Centre Sheraton Montreal Hotel	Montreal	Quebec	Canada	825
Sheraton Roma Hotel & Conference Center	Rome		Italy	634
The Westin Palace, Madrid, a Luxury Collection Hotel	Madrid		Spain	468
Sheraton Santiago Hotel and Convention Center	Santiago		Chile	379
Sheraton Skyline Hotel & Conference Centre	Hayes		United Kingdom	350
Sheraton Warsaw Hotel & Towers	Warsaw		Poland	350
Sheraton Hamilton Hotel	Hamilton	Ontario	Canada	301
Sheraton Fiji Resort	Nadi		Fiji	281
Sheraton Royal Denarau Resort(1)	Nadi		Fiji	267
The Westin Palace, Milan, a Luxury Collection Hotel	Milan		Italy	228
The Westin Europa & Regina	Venice		Italy	185
San Cristobal Tower, a Luxury Collection Hotel	Santiago		Chile	139
<b>Total International Hotels</b>				<b>5,784</b>
<b>Total</b>				<b>18,958</b>

- (1) This property is in the process of being converted to the Westin brand. The conversion is expected to be completed in the first quarter of 2006.

All of the transactions contemplated by the master agreement were unanimously approved on November 13, 2005 by Host's board of directors. Under the terms of the master agreement, Host will pay in connection with the transactions approximately \$4.037 billion (based on the issuance of 133,529,412 shares of Host common stock at the exchange price of \$17.00 per share), which amount includes the assumption of certain indebtedness and the issuance of Host common stock, and is subject to adjustments, including an increase in the cash consideration in the amount of the working capital acquired at closing, each as more fully described below under "Consideration for the Transactions" beginning on page 49. See also "Summary The Transactions Consideration for the Transactions" beginning on page 2.

Subject to the terms and conditions of the master agreement and the other transaction agreements, Host's acquisition of the above-listed 38 hotels from Starwood will occur in several transactions that will occur on the same day and in the following order:

the acquisition by Host LP of the equity interests in Starwood Trust, which at the time the transactions are consummated is expected to hold, directly or indirectly, 18 domestic hotels, pursuant to the merger of a direct, wholly owned subsidiary of Host LP with and into Starwood Trust, which is referred to throughout this proxy statement/prospectus as the REIT merger, resulting in Starwood Trust becoming a direct, wholly owned subsidiary of Host LP and SLT Realty Limited Partnership becoming an indirect, majority-owned subsidiary of Host LP; the 18 domestic hotels are expected to be: Capitol Hill Suites, Sheraton Braintree Hotel, Sheraton Indianapolis Hotel and Suites, Sheraton Milwaukee Brookfield Hotel, Sheraton Needham Hotel, Sheraton Providence Airport Hotel, Sheraton Stamford Hotel, Sheraton Suites Tampa Airport, Sheraton Tucson Hotel & Suites, St. Regis Hotel, Houston, The Westin Cincinnati, The Westin Indianapolis, The Westin Los Angeles Airport, The Westin Mission Hills Resort & Spa, The Westin Seattle, The Westin South Coast Plaza, The Westin Tabor Center and The Westin Waltham-Boston;

## Edgar Filing: HOST MARRIOTT CORP/ - Form S-4/A

the acquisition by Host LP of the equity interests in SHC, which, at the time the transactions are consummated is expected to hold, directly or indirectly, three domestic hotels (Sheraton Boston Hotel, Sheraton New York Hotel & Towers and Sheraton San Diego Hotel & Marina) and four foreign hotels (Le Centre Sheraton Montreal Hotel, Sheraton Hamilton Hotel, Sheraton Centre Toronto Hotel and Sheraton Warsaw Hotel & Towers);

**Table of Contents**

the merger of an indirect, wholly owned subsidiary of Host LP with and into SLT Realty Limited Partnership, which is referred to throughout this proxy statement/prospectus as the SLT merger, resulting in the exchange of all outstanding RP units in SLT Realty Limited Partnership and, if the requisite consent of the holders of Class A RP units in SLT Realty Limited Partnership is obtained by Starwood, all outstanding Class A RP units in SLT Realty Limited Partnership into the right to receive cash, and, if such consent is obtained, resulting in SLT Realty Limited Partnership becoming an indirect, wholly owned subsidiary of Host LP;

the acquisition by Host LP of four Starwood domestic hotels (Sheraton Parsippany, W New York, W Seattle and The Westin Grand, Washington, D.C.) in a separate purchase structured to allow Host LP to complete like-kind exchange transactions for federal income tax purposes;

the acquisition by Host LP (through certain subsidiary REITs and foreign subsidiaries formed for this transaction) of nine foreign hotels (Sheraton Roma Hotel & Conference Center, The Westin Europa & Regina, The Westin Palace, Milan, a Luxury Collection Hotel, The Westin Palace, Madrid, a Luxury Collection Hotel, Sheraton Skyline Hotel and Convention Centre, San Cristobal Tower, a Luxury Collection Hotel, Sheraton Santiago Hotel and Convention Center, Sheraton Fiji Resort and Sheraton Royal Denarau Resort) not owned by Starwood Trust, SHC or SLT Realty Limited Partnership through the acquisition of the equity interests in various Starwood subsidiaries;

the acquisition by Host LP (or a subsidiary of Host LP) from SLC Operating Limited Partnership, a Starwood subsidiary, through the acquisition of Starlex LLC, a wholly owned subsidiary of SLC Operating Limited Partnership, of certain real and personal property assets that are related to W New York hotel; and

the acquisition by Host LP (or a designated taxable REIT subsidiary or other subsidiary of Host LP) of domestic working capital and other ancillary assets from Starwood.

In addition to the above-described transactions, the master agreement provides for, among other things:

the preliminary internal restructuring of Starwood and its subsidiaries, including, among other things:

removing from the entities being acquired by Host (including Starwood Trust) interests in a number of hotels not being acquired by Host, all intellectual property (other than certain foreign hotel names being acquired by Host), certain intercompany indebtedness and all other assets related to Starwood's hotel management business and other businesses not being acquired by Host;

redeeming all outstanding shares of Starwood Trust's Class B Exchangeable Preferred Stock;

redeeming all limited partnership interests in SLT Realty Limited Partnership held by Starwood;

redeeming a portion of the Starwood Trust's Class A shares held by Starwood;

distributing earnings and profits of certain entities being acquired by Host; and

de-pairing the paired shares (each of which consists of a share of Starwood common stock and a Class B share of Starwood Trust); and

the internal restructuring of Host and its subsidiaries, including, among other things:

the pre-closing formation of foreign hotel holding structures;

the post-closing restructuring of W&S Denver Corp. and W&S Seattle Corp., each of which will be acquired by Host in the transactions and transfers of various assets among those and other entities being acquired by Host to satisfy REIT requirements under the Code and debt requirements; and

the post-closing issuance of preferred stock by SHC and six subsidiary REITs of Host and SHC identified as foreign currency REITs to satisfy REIT requirements under the Code. For a detailed description of the terms and conditions of these offerings, see *Structure of Host Following the Transactions Sheraton Holding Corporation* and *Foreign Currency REIT Subsidiaries*, in each case, beginning on page 109.

---

## **Table of Contents**

The transactions are subject to a number of terms and conditions that could delay or prevent the closing of the transactions, or result in modifications to the transactions, such as the exclusion of particular hotels from the transactions due to the failure to obtain required consents or certain other developments. For a detailed description of these terms and conditions, see *Material Terms of the Principal Transaction Agreements* beginning on page 79, especially *Conditions to Completion of the Closing Transactions* beginning on page 85 and *Other Agreements Relating to the Period Prior to Closing* *Deferral of Hotels* beginning on page 97.

### ***Consideration for the Transactions***

The total consideration payable by Host for the 38 hotels will be approximately \$4.037 billion, consisting of approximately \$1.063 billion of cash, the assumption by Host of approximately \$704 million of indebtedness and approximately \$2.27 billion of Host common stock (representing 133,529,412 shares of Host common stock at the exchange price of \$17.00 per share), in each case subject to adjustments described under *Material Terms of the Principal Transaction Agreements* *Consideration* *Purchase Price Adjustments* beginning on page 80, including adjustments in the cash consideration for the amount of working capital acquired at closing, the agreed value of any hotels that are removed from the transactions, the amount of certain capital expenditures made by Starwood and the amount of any uninsured cost to repair any casualty to a hotel being acquired by Host.

Of this total consideration, Starwood and its subsidiaries will directly receive amounts not payable in respect of Starwood Trust's Class B shares or Class A Exchangeable Preferred Shares, in the REIT merger, or SLT Realty Limited Partnership's RP units or Class A RP units, in the SLT merger. For a detailed description of the REIT merger consideration and the SLT merger consideration, see the sections entitled *Material Terms of the Principal Transaction Agreements* *Consideration* *REIT Merger Consideration* and *Material Terms of the Principal Transaction Agreements* *Consideration* *SLT Merger Consideration* beginning on pages 81 and 84, respectively. Based on Starwood's estimate that 217,546,651 Class B shares of Starwood Trust (which represents the number of unrestricted Class B shares outstanding as of September 30, 2005) will be outstanding at the effective time of the REIT merger and that the amount of the SLT merger consideration will be approximately \$12,801,426, Host management expects that all of the shares of Host common stock and \$122,510,189 of the cash included in the total consideration will be payable directly to holders of Starwood Trust's Class B shares and Class A Exchangeable Preferred Shares and holders of SLT Realty Limited Partnership's RP units and Class A RP units. Consequently, the total consideration payable to Starwood and its subsidiaries is expected to be approximately \$1,644,489,811, consisting of approximately \$940,489,811 of cash and the assumption of approximately \$704 million of indebtedness, subject to the adjustments described under *Material Terms of the Principal Transaction Agreements* *Consideration* *Purchase Price Adjustments* beginning on page 80.

Because the amount of the merger consideration payable in respect of each Class B share of Starwood Trust is fixed, if the number of Class B shares outstanding as of the effective time of the REIT merger is more or less than 217,546,651, the amount of the total consideration paid directly to Starwood in respect of its indirect ownership of Class A shares of Starwood Trust will be less or more, respectively. If there are less than 217,546,651 Class B shares of Starwood Trust outstanding, Starwood will receive (in respect of its Class A shares of Starwood Trust) additional consideration in the amount and form, including shares of Host common stock, that would have been payable to holders of such Class B shares. If there are more than 217,546,651 Class B shares of Starwood Trust outstanding, the amount of consideration currently contemplated to be paid to Starwood (in respect of its Class A shares of Starwood Trust) will be reduced to reflect the excess consideration payable to holders of such Class B shares. In such an event, as described under *Material Terms of the Principal Transaction Agreements* *Consideration* *Purchase Price Adjustments* beginning on page 80, the additional shares of Host common stock issued to holders of Class B shares of Starwood Trust would be valued at \$17.00 per share (regardless of the then-market price of Host common stock) for the purpose of reducing the cash consideration payable to Starwood.

Although Starwood management currently believes that the number of Class B shares of Starwood Trust outstanding as of the date of the master agreement will not materially change before the effective time of the REIT merger, this number could fluctuate. Starwood has announced that its board of directors has authorized the





**Table of Contents**

repurchase of up to \$1.3 billion paired shares, which could result in a decrease in the number of outstanding Class B shares. However, Starwood Trust has substantial flexibility under the master agreement to issue as many as 19,217,095 Class B shares in excess of the estimated number of 217,546,651 (which represents the number of unrestricted Class B shares outstanding as of September 30, 2005). Accordingly, issuances of Class B shares by Starwood Trust, including due to acquisitions by Starwood or exercises of paired share options, could cause the number of Class B shares to exceed the expected level at the REIT merger effective time. If the number of Class B shares outstanding at the effective time is 206,669,318, or 5% less than the number expected by Starwood, the consideration to be received by Starwood, as opposed to holders of Class B shares and Class A Exchangeable Preferred Shares, would increase to reflect the lower amount of aggregate consideration required to be paid to holders of Class B shares. In that case, the additional consideration to Starwood would include approximately \$5.5 million of the cash and approximately 6.6 million of the shares of Host common stock to be paid or issued by Host in the transactions. If, instead, the outstanding number of Class B shares at the effective time of the REIT merger is 236,763,746, the maximum allowed under the master agreement without Host's consent, the cash payable to Starwood would decrease by approximately \$210 million to reflect the value of the additional aggregate consideration required to be paid in respect of Class B shares.

Currently, each Class A Exchangeable Preferred Share of Starwood Trust is exchangeable for a paired share of Starwood and Starwood Trust. Therefore, in addition to the consideration payable by Host in the transactions, holders of Class A Exchangeable Preferred Shares of Starwood Trust will receive, in respect of each such share, an amount of cash in the REIT merger representing the value of a share of Starwood common stock, based on the average closing price of a paired share of Starwood and Starwood Trust for the 20 consecutive trading days immediately preceding the closing date (net of the value of consideration received by holders of Class B shares of Starwood Trust in the REIT merger). This cash amount will be in addition to the consideration described above and will be payable solely by Starwood. See the section entitled "Material Terms of the Principal Transaction Agreements - Consideration - REIT Merger Consideration" beginning on page 81 for additional information.

The value of the consideration to be received by holders of Class B Shares of Starwood Trust and Class A Exchangeable Preferred Shares of Starwood Trust will vary depending on the market price of Host common stock at the time of the closing. The following table reflects the amount of cash and total per share value of the consideration payable to such holders (other than the cash consideration payable by Starwood to holders of Class A Exchangeable Preferred Shares), together with the total transaction value (rounded to the nearest million), based upon certain market prices of Host common stock:

Market Price of Host Common Stock	Value of Host Common Stock Received in REIT Merger	Amount of Cash Received in REIT Merger	Total Per Share Value of Consideration	Total Consideration Value (1)
\$14.00	\$ 8.571	\$ 0.503	\$ 9.071	\$ 3,636,000,000
\$15.00	\$ 9.183	\$ 0.503	\$ 9.683	\$ 3,770,000,000
\$16.00	\$ 9.795	\$ 0.503	\$ 10.295	\$ 3,903,000,000
\$17.00	\$ 10.407	\$ 0.503	\$ 10.907	\$ 4,037,000,000
\$18.00	\$ 11.020	\$ 0.503	\$ 11.520	\$ 4,171,000,000
\$19.00	\$ 11.632	\$ 0.503	\$ 12.132	\$ 4,304,000,000
\$20.00	\$ 12.244	\$ 0.503	\$ 12.744	\$ 4,437,000,000
\$20.15 (2)	\$ 12.336	\$ 0.503	\$ 12.839	\$ 4,457,000,000
\$21.00	\$ 12.856	\$ 0.503	\$ 13.356	\$ 4,571,000,000

(1) The calculation of the Total Consideration Value column is based on the following assumptions: (i) there will be outstanding as of the effective time of the transactions (A) 217,546,651 Class B shares of Starwood Trust and (B) 562,222 Class A Exchangeable Preferred Shares of Starwood Trust; (ii) the total cash consideration payable by Host in the transactions will be \$1.063 billion and (iii) the total amount of indebtedness assumed by Host in the transactions will be \$704 million.

(2) Closing sale price of Host common stock on February 6, 2006.

## **Table of Contents**

### **Background of the Transactions**

The management and board of directors of Host continually consider and evaluate strategic opportunities, including acquisitions and joint ventures involving single assets and portfolio transactions. Since the capital markets strengthened late in 2003, Host has acquired five properties for approximately \$1.1 billion.

Over the past several years, the management of Starwood and the board of directors of Starwood have considered a number of possible alternatives for restructuring the operations of Starwood including, among other things, disposing of certain hotels owned by Starwood's subsidiaries and de-pairing the shares of Starwood common stock and the Class B shares of Starwood Trust.

Over the past several years, Christopher J. Nassetta, the President and Chief Executive Officer of Host, had occasional conversations with Barry S. Sternlicht, then-Chairman and Chief Executive Officer of Starwood. These conversations were preliminary in nature and generally related to the possibility of transactions between the companies.

In June 2004, Messrs. Nassetta and Sternlicht met at a conference and discussed the prospect of Host becoming an owner of Starwood hotel assets. As a result of that meeting, the companies exchanged preliminary comments on the type of agreement that would establish the relationship between the companies as owner and operator. Such discussions did not lead to any further negotiations.

On August 4 and 5, 2004, at a regular meeting of Starwood's board of directors and Starwood Trust's board of trustees, Starwood management and its financial advisors made presentations to the boards regarding certain strategic opportunities with respect to certain real estate owned by Starwood subsidiaries.

On November 3 and December 3, 2004, at meetings of Starwood's board of directors and Starwood Trust's board of trustees, Starwood management updated the boards regarding the status of a possible sale of a portfolio of hotels as well as other strategic alternatives with respect to certain real estate owned by Starwood's subsidiaries that were being considered.

In early December 2004, Host and Starwood renewed discussions on the form of agreement in a meeting among Mr. Nassetta, members of Host's management team, Mr. Sternlicht, then-Executive Chairman of Starwood, and Stephen J. Heyer, Starwood's Chief Executive Officer, and members of Starwood's management team. On December 21, 2004, at the request of Messrs. Sternlicht and Heyer, senior management of Host, including Mr. Nassetta, met with Messrs. Sternlicht and Heyer and senior management of Starwood to discuss the form of the model license and operating agreements, including the term, economics, capital expenditures and other provisions thereof.

On January 3, 2005, to facilitate ongoing discussions, Host and Starwood entered into a letter agreement providing for the confidential treatment of nonpublic information provided between the parties, as well as mutual standstill obligations. In addition, discussions and negotiations continued among members of senior management on the license and operating agreements.

## Edgar Filing: HOST MARRIOTT CORP/ - Form S-4/A

On February 3, 2005, at a regularly scheduled meeting of Starwood's board of directors and Starwood Trust's board of trustees, Starwood management updated the boards regarding its discussions with Host's management regarding the status of a possible sale of a portfolio of hotels.

On February 4, 2005, at a regular meeting of Host's board of directors, Host management updated Host's board of directors on Host's pursuit of potential acquisitions and other strategic opportunities, including a portfolio of hotels owned by Starwood.

On February 16, 2005, senior management of Host, including Mr. Nassetta, met with senior management of Starwood, including Mr. Heyer, and Starwood presented Host with an overview of a potential transaction and

## Table of Contents

preliminary list of hotels. In addition, senior management of Host and Starwood continued discussions on key terms of the operating and license agreements that Host would execute with Starwood in connection with the proposed transactions, as well as the potential terms of a growth alliance with respect to new development and conversions of existing hotels and a preliminary timeline for a transaction.

On February 23, 2005, Starwood communicated to Host a more detailed summary of the proposed structure of the transactions and the restructuring to be completed by Starwood prior to completing the transactions.

Host subsequently retained Goldman, Sachs & Co. to act as its financial advisor, Latham & Watkins LLP to act as its legal advisor and Hogan & Hartson LLP to act as its legal advisor with respect to certain tax and international matters in connection with the proposed transactions.

On March 18, senior management of Host, including Mr. Nassetta, and Goldman Sachs met with senior management of Starwood, including Mr. Heyer, and Bear Stearns in Bethesda, Maryland to discuss a proposed term sheet for the transactions, including the potential portfolio of hotels that would be included in the proposed transactions, as well as the potential pricing and structure of such transactions. In addition, Host and its financial and legal advisors commenced preliminary due diligence of nonpublic information regarding the proposed portfolio made available by Starwood. The parties met again on March 31, 2005 with their financial advisors to negotiate the preliminary term sheet.

In early April 2005, management of Host and Starwood agreed to a preliminary, non-binding term sheet outlining the basic terms of transactions on which the parties were willing to proceed with negotiations and due diligence. The term sheet contemplated the acquisition by Host (including through entity acquisitions) of 47 hotels for \$4.5 billion including \$2.53 billion of stock based on a trailing 20 business days average of Host's stock price at that time, subject to a minimum and maximum boundary, with the remainder of the consideration consisting of cash and assumption of debt.

On April 20, 2005, representatives of Host, as well as Host's financial and legal advisors, met with representatives of Starwood, and Starwood's financial and legal advisors, at Starwood's White Plains offices to discuss the potential transaction structure proposed by Starwood, including the restructuring required to be completed by Starwood prior to completing the proposed transactions. Representatives of Host and Starwood and their respective advisors continued to discuss the potential transaction structure on calls and at meetings over the following month.

In May 2005, at several meetings of Starwood's board of directors and Starwood Trust's board of trustees, Starwood management and its financial advisors updated the boards regarding the proposed terms and conditions of the term sheet that management had negotiated with Host as well as other strategic alternatives available to the boards with respect to certain hotels owned by Starwood subsidiaries.

At a special meeting on May 2, 2005, Host's board of directors, together with members of Host's management and Host's financial and legal advisors, discussed the terms and conditions of the term sheet and the proposed transactions. Prior to this meeting, Host's board of directors was provided with information relating to the proposed transactions and portfolio, including an investment overview and a copy of the term sheet. Discussion at the meeting included:

Mr. Nassetta and other members of Host management provided an overview of the proposed transactions and portfolio and discussed the status of negotiations and strategic rationale for the transactions;

Edgar Filing: HOST MARRIOTT CORP/ - Form S-4/A

a representative of Goldman Sachs made a financial presentation with respect to the then proposed transactions; and  
  
the board, along with Host's management and legal and financial advisors, discussed the proposed transactions.

**Table of Contents**

On May 10, 2005, representatives of Host and Starwood and their respective financial advisors met to discuss a number of issues with respect to the transactions, including potential changes to the composition of the hotel portfolio and the percentage decline in the trading price of Host common stock after signing of definitive documentation that would allow Starwood to terminate the agreement.

On May 18, 2005, Mr. Heyer attended a dinner with Host's board of directors and delivered a presentation on Starwood's brand strategy. At the Host board's regular meeting on May 19, 2005, Host's board of directors, together with members of Host's management and Host's financial and legal advisors, discussed developments in due diligence and negotiations of the proposed transactions. At the meeting:

Host management reviewed results of preliminary due diligence, details of the proposed transaction structure and the potential timetable for the transactions;

a representative of Latham & Watkins LLP discussed with Host's board of directors its fiduciary duties under Maryland law; and

the board, along with Host's management and legal and financial advisors, discussed the proposed transactions.

On May 31, 2005, Mr. Nassetta attended a meeting of Starwood's board of directors and discussed with the Starwood board Host's business, its strategy and its rationale for the proposed transactions.

On June 8, 2005, Host and Starwood suspended diligence efforts and negotiations due to the failure of Host and Starwood to agree to the hotels to be included in the transactions and the percentage by which Host common stock's price would have to fall after signing before Starwood could terminate the definitive agreement. However, informal discussions between representatives of Host and Starwood occurred over the following weeks in an effort to establish a framework for transactions that Host and Starwood would be willing to consider.

On June 13 and June 28, 2005, at meetings of Starwood's board of directors and Starwood Trust's board of trustees, Starwood management updated the boards regarding the negotiations with Host.

On June 28, 2005, Host and Starwood agreed to exclude four hotels from the portfolio and replace them with three new hotels. In addition, they agreed that a decline in Host's common stock price of 20% or less after signing would not be grounds for termination by Host or Starwood. Accordingly, Host and its advisors resumed due diligence efforts. In addition, representatives of Host and Starwood and their respective legal advisors resumed discussions regarding the potential transactions.

On June 29, 2005, Latham & Watkins LLP, Host's legal advisor, delivered to Starwood and Sidley Austin LLP, Starwood's legal advisor, proposed forms of a master agreement and plan of merger and an indemnification agreement, in order to negotiate more completely the terms of the proposed transactions. Over the following month, representatives of Host and Starwood and their respective financial and legal advisors met on multiple occasions to discuss the terms of the master agreement and indemnification agreement.

On July 14, 2005, Host's board of directors held a regular meeting at which it was briefed by management on the status of discussions between Host and Starwood and reviewed the proposed transactions. Prior to the meeting, the board was provided with materials regarding the proposed

## Edgar Filing: HOST MARRIOTT CORP/ - Form S-4/A

transactions, including information relating to the hotels included in the portfolio and the potential financing for the transactions.

Beginning on July 21, 2005, representatives of Host and Starwood and their respective legal advisors circulated drafts, and began to negotiate, additional transaction agreements and documents, including the tax sharing and indemnification agreement, the right of first offer agreement and the exhibits to the draft master agreement addressing Starwood's internal restructuring.

On July 27 and 28, 2005, at a regular meeting of Starwood's board of directors and Starwood Trust's board of trustees, Starwood management briefed the boards on the status of discussions between Host and Starwood. In addition, representatives of Bear Stearns made a presentation regarding the proposed transactions.



## Table of Contents

On August 4, 2005, representatives of Host and Starwood and their respective legal advisors met to discuss the draft master agreement and indemnification agreement.

Following this meeting and subsequent discussions over the weekend, Latham & Watkins LLP delivered revised drafts of the master agreement and indemnification agreement on August 9, 2005 and August 10, 2005, respectively. On August 11, 2005, representatives of Host and Starwood and their respective legal advisors met to discuss the revised drafts of the master agreement and indemnification agreement.

During the remainder of August 2005, representatives of Latham & Watkins LLP and Sidley Austin LLP discussed remaining issues in the draft master agreement and indemnification agreement, including those identified in proposed revisions circulated by Sidley Austin LLP on August 18, 2005. In addition, during this time, representatives of Host and Starwood and their respective legal advisors continued to draft and negotiate a number of ancillary transaction agreements and arrangements, including the hotel operating and license agreements, the tax sharing and indemnification agreement and registration rights agreement to apply to any shares of Host common stock issued to Starwood and its subsidiaries in the transactions. In addition Host and its legal representatives continued their extensive due diligence with respect to the acquired hotels and entities.

On September 8, 2005 and September 9, 2005, representatives of Host and Starwood and their respective legal advisors met to discuss issues with respect to the draft transaction agreements. At the meeting, Host representatives identified issues with including certain of the hotels proposed to be included in the transactions and the parties discussed removing these hotels from the proposed transactions.

On September 12 and September 23, 2005, at meetings of Starwood's board of directors and Starwood Trust's board of trustees, Starwood management updated the boards regarding the status of discussions with Host as well as certain other strategic alternatives available to Starwood with respect to certain real estate owned by Starwood's subsidiaries.

On Tuesday, September 13, 2005, Messrs. Nassetta and Heyer spoke by telephone to discuss the current state of the negotiations, including the terms of the transactions. Messrs. Nassetta and Heyer agreed that they would meet in person after the next round of negotiations between the parties.

Over the remainder of the week, Starwood responded to the issues discussed in the prior week's meetings. On September 15, 2005, representatives of Host and Starwood spoke by telephone to continue negotiations of these issues.

On September 21, 2005, representatives of Host, including Mr. Nassetta, met with representatives of Starwood, including Mr. Heyer, at Host's Bethesda offices to negotiate the remaining deal issues. At the meeting, Host presented Starwood with a proposal to resolve the remaining issues. Host's proposal included the exclusion of seven hotels from the transactions and pricing of Host common stock to be issued in the transactions. Starwood informed Host that it would have to consider Host's proposal and would respond to Host as soon as possible.

On September 22, 2005, management of Host was informed that Starwood had determined not to proceed with the transactions as described in Host's proposal and had instructed its advisors to suspend all work on the transactions.

## Edgar Filing: HOST MARRIOTT CORP/ - Form S-4/A

On September 28, 2005, Mr. Heyer provided Mr. Nassetta with a revised proposal for the terms of the transactions. This proposal related to the 39 hotels remaining in the original transaction after excluding the seven properties Host proposed be excluded in the September 21 meeting. Mr. Heyer also presented a proposal for an alternative transaction with respect to only seven of the domestic hotels.

On October 3, 2005, Mr. Nassetta responded with a proposal for the 39-hotel portfolio that contemplated a minimum \$17.00 valuation for Host common stock and potential increases to pricing. With the removal of the

## Table of Contents

seven hotels and the consequent reduction in the purchase price to \$4.097 billion, Host and Starwood agreed to reduce the equity portion of the consideration to \$2.3 billion. Over the next week, representatives of Host and Starwood further discussed the structure, pricing and other terms of a proposal on which both parties would be willing to proceed.

During early to mid October 2005, Starwood entered into confidentiality agreements with three public hotel real estate investment trusts and three financial buyers of hotels and provided nonpublic information to these third parties regarding certain hotels owned by Starwood's subsidiaries, including certain hotels to be acquired by Host. Starwood provided information to these third parties in order to identify other available strategic alternatives involving all or a portion of the Host portfolio.

On October 11 and October 27, 2005, at meetings of Starwood's board of directors and Starwood Trust's board of trustees, Starwood management updated the boards regarding the status of discussions with Host as well as certain other strategic alternatives available to Starwood that management was exploring with respect to certain owned real estate.

On October 12, 2005, Host and Starwood agreed to proceed with negotiating the draft transaction agreements and Latham & Watkins LLP delivered a revised draft of the master agreement, followed by a revised draft of the indemnification agreement on October 13, 2005. Starwood also resumed its cooperation with the continuing due diligence efforts of Host and its advisors, and Host and Starwood and their respective legal advisors continued to negotiate the terms of the ancillary agreements.

On October 17, 2005, Sidley Austin LLP delivered proposed revisions to the draft master agreement and indemnification agreement. Host and Starwood and their respective legal advisors met on October 17, 2005 and October 18, 2005 to negotiate the draft master agreement, indemnification agreement and other ancillary agreements. On October 20, 2005, Latham & Watkins LLP delivered revised drafts of the master agreement and indemnification agreement. On October 20, 2005 and October 21, 2005, representatives of Latham & Watkins LLP and Sidley Austin LLP further negotiated the terms of the draft master agreement and indemnification agreement.

On October 23, 2005, Host's board of directors met, together with members of Host's management and financial and legal advisors, to discuss the status of negotiations and due diligence with respect to the proposed transactions. Prior to this meeting, the board was provided with materials including an updated investment overview by Host's management and drafts of the primary transaction agreements, together with a summary by Latham & Watkins LLP of the material terms of those drafts. At the meeting:

Host management made presentations and responded to questions concerning the status of negotiations, the financial terms of the investment, the due diligence findings with respect to the portfolio, the terms, financing and structure of the transactions and the continuing strategic rationale for the transactions;

representatives of Hogan & Hartson LLP reviewed with Host's board of directors additional due diligence relating to tax matters and legal matters concerning hotels located outside the United States;

a representative of Latham & Watkins LLP reviewed with Host's board of directors its fiduciary duties under Maryland law;

a representative of Goldman Sachs discussed its financial analyses;

## Edgar Filing: HOST MARRIOTT CORP/ - Form S-4/A

Host management and representatives of Latham & Watkins LLP reviewed with the board, and responded to questions concerning, the material terms of the draft transaction agreements; and

Host's board of directors, together with Host's management and legal and financial advisors, discussed the proposed transactions.

At the conclusion of the meeting, and after extensive discussion, Host's board of directors authorized management to continue negotiations with Starwood and attempt to resolve the remaining outstanding issues.

## **Table of Contents**

On October 23, 2005, Sidley Austin LLP delivered proposed revisions to the draft master agreement and, on October 24, 2005, Sidley Austin LLP delivered proposed revisions to the draft indemnification agreement. Representatives of Latham & Watkins LLP and Sidley Austin LLP discussed remaining issues with these drafts on October 25, 2005. On October 26, 2005, Latham & Watkins LLP delivered revised drafts of these agreements.

On Friday, October 28, 2005, Latham & Watkins LLP delivered revised drafts of the master agreement and indemnification agreement to reflect discussions between representatives of Host and Starwood. Over the following week, representatives of Host, Latham & Watkins LLP and Sidley Austin LLP continued to negotiate the open issues in the transaction agreements.

On November 4, 2005, at meetings of Starwood's board of directors and Starwood Trust's board of trustees, Starwood management updated the boards regarding the status of discussions with Host as well as certain other strategic alternatives involving selected owned real estate that management was considering.

At a board meeting on November 8, 2005, Host's board of directors, together with Host's management and financial and legal advisors, discussed recent developments in negotiations regarding the proposed transactions and draft transaction agreements. Prior to this meeting, the board was provided with materials including a summary by Latham & Watkins LLP of the material terms of the drafts of the primary transaction agreements and changes made to those drafts since the last board meeting. At the meeting:

Host management made presentations and responded to questions concerning the transactions;

representatives of Goldman Sachs provided an overview of the financial analyses that it expected to perform in connection with the transactions; and

Host management and representatives of Latham & Watkins LLP reviewed with the board, and responded to questions concerning, the material terms of the draft transaction agreements.

At the conclusion of the meeting, and after extensive discussion, Host's board of directors authorized management to continue negotiations with Starwood and attempt to resolve the remaining outstanding issues.

On November 10, 2005, representatives of Host and Starwood and their respective legal advisors held a conference call to negotiate remaining issues in the draft transaction agreements and discussed issues with respect to one of the hotels to be included in the transactions. As a result of those discussions, one hotel was removed from the transactions, resulting in a remaining portfolio of 38 hotels for aggregate consideration of \$4.037 billion, including \$2.27 billion of Host common stock. Following this discussion, Latham & Watkins LLP delivered a revised draft of the master agreement.

Throughout the day on November 13, 2005, and into the morning of November 14, 2005, Latham & Watkins LLP and Sidley Austin LLP exchanged revised drafts of the master agreement and indemnification agreement and representatives of Host and Starwood and their respective legal advisors negotiated resolution to the final remaining issues, including the value to be allocated to each of the hotels in the portfolio, and finalized the forms of the master agreement, indemnification agreement and ancillary agreements.

## Edgar Filing: HOST MARRIOTT CORP/ - Form S-4/A

In the afternoon of November 13, 2005, Host's board of directors held a special telephonic meeting, together with Host's management and financial and legal advisors, to review and discuss the terms and conditions of the proposed transactions and draft transaction agreements, including developments in negotiations since the last board meeting. Prior to this meeting, the board was provided with materials including financial analyses of Goldman Sachs and drafts of the primary transaction agreements, together with a summary by Latham & Watkins LLP of the material terms of those drafts and changes made to those drafts since the last board meeting. At the meeting:

Host management made presentations and responded to questions concerning changes in the terms of the transactions;

Goldman Sachs reviewed with Host's board of directors its financial analyses of the consideration to be paid by Host in the transactions, and delivered to Host's board of directors an oral opinion, which opinion

## **Table of Contents**

was confirmed by delivery of a written opinion dated November 14, 2005, to the effect that, as of the date of the opinion and based on and subject to the factors and assumptions stated in such opinion, the Consideration (as defined in such opinion) in the aggregate to be paid by Host and certain of its subsidiaries for the Assets and Interests (each as defined in such opinion) pursuant to the master agreement was fair, from a financial point of view, to Host; and

after further deliberations, Host's board of directors then unanimously adopted resolutions declaring that the master agreement and the proposed transactions are advisable and in the best interests of Host and its operating partnership and their respective stockholders and partners, approving and adopting the master agreement, directing that the approval of the issuance of Host common stock in the transactions be submitted to a vote at a special meeting of holders of Host common stock, and recommending that the holders of Host common stock approve the issuance of Host common stock in the transactions.

In the afternoon of November 13, 2005, at meetings of Starwood's board of directors and Starwood Trust's board of trustees, Starwood management made presentations regarding the transactions. At the meeting, Starwood's board of directors and Starwood Trust's board of trustees, considered an all cash offer from a financial buyer for a portion of the hotels included in the Host portfolio. The financial buyer's offer was conditioned on the buyer obtaining financing on acceptable terms (with the ultimate purchase price dependent on interest rates at the time of closing), required that Starwood retain an equity interest in the portfolio, required that Starwood make a loan to the entity holding the portfolio to fund future capital expenditures and was based on limited due diligence. After comparing the financial buyer's offer to the Host transaction, including the nominal value of each transaction, the probability of consummation of each transaction, the potential for the terms of each transaction to change and the benefits of a long-term relationship with each buyer, Starwood's board of directors and Starwood Trust's board of trustees determined the Host transaction constituted a superior alternative to the financial buyer's offer. In addition, Bear Stearns delivered a presentation to the boards regarding its financial analyses of the consideration to be paid in the transactions, and delivered to the Starwood board of directors and the Starwood Trust board of trustees an oral opinion, which was subsequently confirmed in writing, that, as of November 13, 2005, and based upon and subject to the assumptions, qualifications and limitations set forth in the written opinion, the aggregate consideration to be received by Starwood, Starwood Trust and their shareholders for the Starwood Portfolio, as defined in Bear Stearns' written opinion, was fair, from a financial point of view, to Starwood and Starwood Trust. After further deliberations, the board of directors of Starwood and the board of trustees of Starwood Trust unanimously adopted resolutions declaring that the master agreement and the proposed transactions are advisable and in the best interests of the stockholders of Starwood and the shareholders of Starwood Trust and approving and adopting the master agreement.

On November 14, 2005, the parties executed the master agreement and certain of the ancillary transaction agreements and Host and Starwood issued separate press releases announcing the transactions.

## **Recommendation of Host's Board of Directors and Its Reasons for the Transactions**

At its meeting on November 13, 2005, Host's board of directors determined that the master agreement and the transactions contemplated by the master agreement are advisable and in the best interests of Host and its stockholders and unanimously approved the master agreement and the transactions contemplated by the master agreement, including the issuance of shares of Host common stock in the transactions. Host's board of directors unanimously recommends that Host common stockholders vote FOR approval of the issuance of Host common stock in the transactions.

In determining whether to approve the master agreement and the proposed transactions, Host's board of directors consulted with Host's senior management, as well as its legal counsel, Latham & Watkins LLP, and its financial advisor, Goldman Sachs, and considered a number of factors, including, among others, the following material factors.

**Table of Contents**

*Strength of Portfolio.* Host's board of directors considered the strength of the portfolio included in the transactions. In particular, Host's board of directors considered that:

the portfolio assets are high-quality, luxury and upper upscale hotels with an average size of approximately 500 rooms and an expected revenue per available room of \$117 for 2005;

approximately 80% of the portfolio revenues are from properties in urban, convention or resort locations, six of which are city-center hotels with over 750 rooms;

the portfolio is geographically diverse, including in Europe and key domestic markets such as New York, Boston, San Diego and Seattle; and

most portfolio assets are located in markets with strong growth profiles and limited near-term supply.

*Enhanced Growth Potential and Brand Diversification.* Host's board of directors considered the benefits of brand diversification and the growth potential arising from the transactions, including:

that the transactions create an important relationship with Starwood, thereby diversifying Host's brand representation, particularly with respect to Westin®, an upper-upscale brand that continues to gain market share, Sheraton®, a brand that Host believes has significant growth potential driven by recently implemented improvements in its product and service and W Hotels®, a brand that is emerging as the top hotel choice among young professionals and gen-Xers;

that the new relationship with Starwood provides a platform for additional growth;

the opportunity to benefit from improving market share among Starwood's brands; and

the opportunity to work with Starwood to add value to the portfolio through aggressive asset management.

*International Platform.* Host's board of directors considered the fact that the transactions expand Host's geographic distribution into new markets outside of the United States, including that:

six hotels representing 15% of the portfolio (by revenues) are located in Europe;

three hotels representing 10% of the portfolio (by revenues) are in Canada;

four additional hotels are located in Fiji and Chile;



## Edgar Filing: HOST MARRIOTT CORP/ - Form S-4/A

Host management believes many of these international markets are in the early stages of lodging recovery, offering the opportunity for additional growth outside of the domestic lodging cycle; and

the European assets may serve as an initial portfolio for a European joint venture, which if consummated, would reduce Host's ownership percentage in the European assets, but provide an attractive source of financing for the transactions.

*Enhanced Company Profile.* Host's board of directors considered the increase in Host's size and market float due to the transactions and the potential increased liquidity for Host stockholders and reduction in Host's cost of capital as a result of such increased size and float. Upon completion of the transactions, Host expects:

to have a total enterprise value of approximately \$16 billion, which is calculated by multiplying the fully-diluted share count by the current share price, plus debt and less cash and cash equivalents. For this transaction the calculation is based on the issuance of 133,529,412 shares of Host common stock at the exchange price of \$17.00 per share, a fully-diluted share count (including minority holders of operating partnership interests in Host LP) of approximately 570 million shares and net debt of approximately \$6.4 billion; and

to be one of the largest lodging companies in the U.S. and the sixth-largest public REIT based on total enterprise value.

*Financial Considerations.* Host's board of directors considered the attractive financial terms of the transactions, including:

Host management's expectation that the transactions will be accretive to Host's Funds From Operations (FFO) per diluted share in 2006 and modestly improve Host's leverage and coverage ratios;

the fact that the multiple of purchase price to forecasted 2006 EBITDA for the portfolio was less than Host's implied multiple to its forecasted 2006 EBITDA;

---

**Table of Contents**

the fact that the purchase price for the portfolio represented a 25-30% discount to replacement cost;

the fact that Host's projected internal rate of return for the portfolio exceeded Host's weighted average cost of capital by approximately 200 basis points;

the fact that the exchange ratio is fixed and will not be adjusted for any decline in the trading price of Host common stock (subject to Starwood's termination right if the trading price falls below \$13.60, as described in more detail in Material Terms of the Principal Transaction Agreements Termination of the Master Agreement Termination by Host or Starwood beginning on page 100); and

the fact that Starwood will pay up to \$50 million of Host's share of transaction expenses if the portfolio's 2005 EBITDA fails to meet Starwood's projections (see Material Terms of the Principal Transaction Agreements Transfer Taxes and Transaction Costs beginning on page 103).

In connection with the evaluation of the financial terms of the transactions by Host's board of directors, Host management discussed with its board a range of estimates of the foregoing financial criteria based on, among other things, different financing assumptions. This information included a multiple of purchase price to forecasted 2006 EBITDA for the acquired properties of approximately 11.1 to 11.4 times, which represented a discount of approximately 40 to 70 basis points from Host's own multiple of total enterprise value to forecasted 2006 EBITDA, and forecasted accretion of \$.03 to \$.05 to Host's FFO per diluted share. The 2006 EBITDA and FFO per diluted share information for the acquired properties were provided on a stand-alone basis, based on information then available, and assumed a January 1, 2006 closing and, in the case of the EBITDA multiples, a market price per share of Host common stock of \$17.00. The effect of the acquisition on Host's results will depend, in part, on when the transactions close.

*Opinion of Host's Financial Advisor.* Host's board of directors considered the financial presentation of Goldman Sachs, including its opinion, dated November 14, 2005, to Host's board of directors to the effect that as of the date of the opinion, and subject to the factors and assumptions stated in such opinion, the Consideration (as defined in such opinion) in the aggregate to be paid by Host and certain of its subsidiaries for the Assets and Interests (each as defined in such opinion) pursuant to the master agreement was fair from a financial point of view to Host.

*Additional Considerations.* Host's board of directors considered the following additional factors as generally supporting its decision:

the terms and conditions of the master agreement and related forms of indemnification agreements, including:

the representations and covenants of Starwood;

the conditions to Host's obligations to complete the transactions;

the ability of Host to defer closing with respect to particular assets (and, ultimately remove them from the transactions) due to certain adverse developments or circumstances, as described in more detail in Material Terms of the Principal Transaction Agreements Conditions to Completion of the Closing Transactions beginning on page 85 and Material Terms of the Principal Transaction Agreements Other Agreements Relating to the Period Prior to Closing Deferral of Hotels beginning on page 97;

terms relating to third party offers, including (1) limitations on the ability of Starwood to solicit competing proposals for the portfolio and (2) the ability of Host to receive a termination fee and an expense reimbursement under certain circumstances; and

Starwood's indemnification of Host for, among other things, retained liabilities relating to pre-closing taxes, pre-closing claims by holders of debt or equity interests in Starwood or hotels and other assets or businesses excluded from the transactions;

## **Table of Contents**

the commitment of Goldman Sachs, Deutsche Bank, Bank of America and Merrill Lynch, described in Financing for the Transactions beginning on page 74, to provide acquisition financing for the cash portion of the purchase price; and

the expectation that the transactions could be completed within a reasonable timeframe.

Host's board of directors also considered a number of potentially negative factors in its deliberations concerning the master agreement and the transactions, including:

the risk that the transactions may not be completed due to the failure to satisfy covenants or closing conditions, including due to Starwood's condition with respect to potential changes in tax law or regulation described in more detail in Material Terms of the Principal Transaction Agreements Conditions to Completion of the Closing Transactions Additional Conditions to the Obligations of Starwood to Effect the Closing Transactions beginning on page 89, and the resulting disruption to Host's business;

the risk that, because the exchange ratio is fixed and would not be adjusted for changes in the trading price of Host common stock, the value of consideration payable by Host could be significantly more than the value of the consideration immediately prior to the announcement of the transactions;

the risk that the transactions may not receive all required consents and approvals, including the risk that, as described in more detail in Material Terms of the Principal Transaction Agreements Conditions to Completion of the Closing Transactions beginning on page 85 and Material Terms of the Principal Transaction Agreements Other Agreements Relating to the Period Prior to Closing Deferral of Hotels beginning on page 97, Starwood could require Host to close without certain assets;

the risk that Host may not realize the accretion to per share funds from operations, or FFO, and other benefits that Host expects from the transactions;

the diversion of management focus and resources from other strategic alternatives and from operational matters while working to implement the merger;

the expected costs of implementing the transactions; and

the restrictions on Host's business and financing activities during the period between signing of the master agreement and completion of the transactions.

The above discussion of the factors considered by Host's board of directors is not intended to be exhaustive, but does set forth the principal positive and negative factors considered by the board. In view of the wide variety of factors considered by Host's board of directors with its evaluation of the master agreement and the transactions and the complexity of these matters, Host's board of directors did not consider it practical and did not attempt to quantify, rank or otherwise assign relative weights to the specific factors it considered in reaching its decision. In considering the factors discussed above, directors considered all of these factors as a whole and individual directors may have given different weights to different factors. Host's board of directors realized that there can be no assurance about future results, including results expected or considered in the factors discussed above. However, Host's board of directors concluded that the potential benefits outweighed the potential risks of entering into the master agreement and consummating the transactions.

## **Starwood's Reasons for the Transactions**

In reaching their decisions to approve the master agreement and the transactions contemplated by the master agreement, the board of directors of Starwood and the board of trustees of Starwood Trust, which are collectively referred to throughout this proxy statement/prospectus as the Starwood boards, consulted with Starwood's senior management, financial advisors and legal counsel for the transactions. The Starwood boards considered both the short-term and long-term interests of Starwood and Starwood Trust, as well as those of the holders of paired shares of Starwood and Starwood Trust. In unanimously approving the master agreement and the transactions contemplated by the master agreement, the Starwood boards considered, among other things, the factors discussed below.

**Table of Contents**

*Positive Factors Considered by the Starwood Boards*

The Starwood boards identified and considered in their deliberations a number of potentially positive factors relating to the REIT merger and the other transactions contemplated by the master agreement, including the following:

The opportunity for Starwood and Host to enter into long-term operating agreements pursuant to which Starwood will continue to manage each of the acquired hotels.

The quality and experience of Host's management team, and Host's commitment to collaboratively work with Starwood to add maximum value to the acquired hotels and to pursue additional growth opportunities.

The opportunity for Starwood to increase its focus on its hotel management, franchise, vacation ownership and related businesses, reduce Starwood's capital requirements for owned real estate and moderate Starwood's exposure to the cyclical nature of the real estate market.

The expectation that the transactions will result in increased cash flows to Starwood which will enable Starwood to pursue its growth strategy and to buy back stock.

The ability of Starwood Trust shareholders both to maintain an equity interest in the divested Starwood properties (and participate in their potential growth) through their ownership of Host common stock following the REIT merger and to realize cash for a portion of their Class B shares.

The terms and conditions of the master agreement and the other documents to be executed in connection with the transactions.

The alternatives for Starwood to a negotiated merger with Host, including the possibility of business combination transactions with other REITs and financial buyers, the possibility of Starwood selling certain hotels, and the possibility of the Starwood Trust de-pairing from Starwood and continuing to operate as an independent company.

The opportunity for Starwood and its shareholders to receive consideration for the portfolio of acquired hotels that Starwood believed represented a fair price.

The provisions of the master agreement that permit the Starwood boards to respond to and engage in discussions or negotiations regarding an unsolicited third party acquisition proposal under specified circumstances if either board concludes in good faith that the proposal is reasonably likely to lead to a superior proposal and, under specified circumstances, to terminate the master agreement and enter into an agreement with respect to the superior proposal.

The absence of any financing condition in the master agreement.

The financial ability and willingness of Host to complete the transactions.

## Edgar Filing: HOST MARRIOTT CORP/ - Form S-4/A

The opinion of Bear Stearns to Starwood's board of directors and Starwood Trust's board of trustees, which was subsequently confirmed in writing, that, as of November 13, 2005 the date of the written opinion, and based upon and subject to the assumptions, qualifications and limitations set forth in the written opinion, the aggregate consideration to be received by Starwood, Starwood Trust and their shareholders for the Starwood Portfolio, as defined in the written opinion, was fair, from a financial point of view, to Starwood and Starwood Trust, and the related financial presentation to Starwood's board of directors and Starwood Trust's board of trustees in connection therewith.

Historical information concerning Host's and Starwood's respective businesses, financial performance and condition, operations, competitive positions and management, including historical market prices, volatility and trading information with respect to Host common stock.

Current industry, market and economic conditions, including current financial and real estate market conditions and the prospects for further increases in interest rates.

**Table of Contents**

The expectation that Starwood's financial condition would improve following the consummation of the transactions through the reduction of a significant portion of indebtedness, which could lead to an improved credit rating.

Starwood management's view of Host's and Starwood's respective businesses, financial condition and results of operations before and after giving effect to the REIT merger.

Presentations from, and discussions with, Starwood's management, financial advisors and legal counsel regarding the results of the due diligence investigations of Host conducted by Starwood's management and its financial advisors and legal counsel.

***Negative Factors Considered by the Starwood Boards***

The Starwood boards also identified and considered in their deliberations a number of potentially negative factors relating to the REIT merger and the other transactions contemplated by the master agreement, including the following:

The fact that a significant portion of the consideration that Starwood Trust shareholders will receive in the REIT merger consists of shares of Host common stock, such that if there is a decrease in the trading price of Host common stock prior to the closing of the REIT merger, the value of the stock portion of the merger consideration to be received by Starwood Trust shareholders will be reduced as described above under **Risk Factors**. The market value of Host common stock that holders of Starwood Trust shares will receive depends on what the market price of Host common stock will be at the effective time of the transactions and will increase or decrease if the market value of Host common stock increases or decreases beginning on page 18.

The possibility that some provisions of the master agreement could have the effect of discouraging alternative proposals for transactions involving Starwood or the hotels to be acquired by Host, including the nonsolicitation provision and the provision requiring that Starwood pay to Host a termination fee of \$100 million and reimburse Host for up to \$20 million of its expenses if the master agreement is terminated under certain circumstances, as described below under **Material Terms of the Principal Transaction Agreements** **Termination of the Master Agreement** **Termination Fees and Expenses** beginning on page 102.

The fact that the consideration paid for Starwood Trust's Class B shares will be taxable to Starwood Trust shareholders, as described below under **Material Federal Income Tax Consequences of the REIT Merger to Holders of Paired Shares of Starwood and Starwood Trust and Holders of Starwood Trust Class A Exchangeable Preferred Shares** beginning on page 116.

The need to obtain Host stockholder approval.

The risk that the transactions might not be consummated and the potential adverse effect of the public announcement of the transactions on the share price and operations of Starwood and Host.

The significant time and cost involved in connection with completing the transactions, including Starwood management's time and effort and the related disruption to Starwood's operations.

The requirement that Starwood or its affiliates remain as employer of all hotel employees, as required by Host's REIT status, particularly in light of the difficulties involved in separating hotel employees from the fee ownership of the hotel in certain foreign jurisdictions.



## Edgar Filing: HOST MARRIOTT CORP/ - Form S-4/A

The risk that Host may not be able to secure financing to complete the transactions as described under Risk Factors If Host is unable to finance the transactions as contemplated, including through borrowings under its anticipated bridge loan facility, the completion of the transactions will be jeopardized beginning on page 22.

The Starwood boards concluded that the potentially negative factors they considered were outweighed by the positive factors to be gained by the completion of the transactions contemplated by the master agreement.

## **Table of Contents**

The above discussion of the material factors considered by the Starwood boards is not intended to be exhaustive, but does set forth the principal factors considered by the Starwood boards. The Starwood boards collectively reached their unanimous decision to approve the master agreement and the transactions contemplated by the master agreement in light of the various factors described above and other factors that each board member felt was appropriate. In view of the wide variety of factors considered by the Starwood boards in connection with their evaluation of the proposed transactions and the complexity of these matters, the boards did not consider it practical, and did not attempt, to quantify, rank or otherwise assign relative weights to the specific factors they considered in reaching their decision. Rather, the Starwood boards made their decision to approve the master agreement and the transactions contemplated by the master agreement based on the totality of information presented to and the investigation conducted by them. In considering the factors discussed above and other factors that each director and trustee deemed appropriate, individual board members likely gave different weights to different factors.

### **Opinion of Host Financial Advisor**

Goldman Sachs rendered its opinion to Host's board of directors to the effect that, as of November 14, 2005 and based upon and subject to the factors and assumptions set forth therein, the Consideration (as defined in such opinion) in the aggregate to be paid by Host and certain of its subsidiaries for the Assets and Interests (each as defined in such opinion) pursuant to the master agreement was fair from a financial point of view to Host.

**The full text of the written opinion of Goldman Sachs, dated November 14, 2005, which sets forth assumptions made, procedures followed, matters considered and limitations on the review undertaken in connection with the opinion, is attached as *Annex D* to this proxy statement/prospectus. Goldman Sachs provided its opinion for the information and assistance of Host's board of directors in connection with its consideration of the master agreement and the transactions. The Goldman Sachs opinion is not a recommendation as to how any holder of Host common stock should vote with respect to the transactions.**

In connection with rendering the opinion described above and performing its related financial analyses, Goldman Sachs reviewed, among other things:

the master agreement;

annual reports to stockholders of Host, holders of units of limited partnership interests of Host LP and holders of beneficial interests of Starwood Trust;

annual reports on Form 10-K of Host, Host LP, Starwood and Starwood Trust for the five fiscal years ended December 31, 2004;

certain interim reports to stockholders of Host, holders of units of limited partnership interests of Host LP and holders of beneficial interests of Starwood Trust, respectively;

quarterly reports on Form 10-Q of Host, Host LP and Starwood Trust;

certain other communications from Host to its stockholders, Host LP to the holders of its units of limited partnership interests and Starwood Trust to the holders of shares of beneficial interest of Starwood Trust;

## Edgar Filing: HOST MARRIOTT CORP/ - Form S-4/A

financial information of the business of the hotels to be acquired by Host in the transactions, which is referred to throughout this proxy statement/prospectus as the Acquired Business, for the three fiscal years ended December 31, 2004 and for the eight months ending August 31, 2005;

certain internal financial analyses and forecasts for the Acquired Business prepared by Starwood's management;

certain internal financial analyses and forecasts for Host prepared by its management; and

certain financial analyses and forecasts for the Acquired Business prepared by the management of Host, which is referred to throughout this proxy statement/prospectus as the Forecasts.

## Table of Contents

Goldman Sachs also held discussions with members of the senior management of Host regarding their assessment of the strategic rationale for, and the potential benefits of, the transactions and with members of the senior managements of Host and Starwood regarding the past and current business operations, financial condition, and future prospects of Host, Host LP and the Acquired Business, as the case may be. In addition, Goldman Sachs reviewed the reported price and trading activity for the shares of Host common stock, compared certain financial and stock market information for Host and certain financial information for the Acquired Business with similar financial and stock market information for certain other companies the securities of which are publicly traded, reviewed the financial terms of certain recent business combinations involving the hotel industry specifically and in other industries generally and performed such other studies and analyses, and considered such other factors, as Goldman Sachs considered appropriate.

Goldman Sachs relied upon the accuracy and completeness of all of the financial, accounting, legal, tax and other information discussed with or reviewed by Goldman Sachs and assumed such accuracy and completeness for purposes of rendering the opinion described above. In that regard, Goldman Sachs assumed, with Host's consent, that the Forecasts have been reasonably prepared on a basis reflecting the best currently available estimates and judgments of Host. Goldman Sachs also assumed that all governmental, regulatory or other consents and approvals necessary for the consummation of the transactions will be obtained without any adverse effect on Host, Host LP or the Acquired Business or on the expected benefits of the transactions in any way meaningful to Goldman Sachs' analysis and Goldman Sachs assumed that all of the conditions to the obligations of Host and Host LP under the master agreement will be satisfied without any waiver of those conditions. Goldman Sachs' opinion does not address the value or price of any particular property being acquired by Host or its subsidiaries. In addition, Goldman Sachs made no independent evaluation or appraisal of the assets and liabilities (including any contingent, derivative or off-balance-sheet assets and liabilities) of Host, Host LP, the Acquired Business or Starwood Trust or any of their respective subsidiaries and was not furnished with any such evaluation or appraisal. Goldman Sachs' opinion did not address the underlying business decision of Host to engage in the transactions, nor does Goldman Sachs express any opinion as to the prices at which shares of Host common stock will trade at any time. In rendering its opinion, Goldman Sachs did not express any view regarding the fairness from a financial point of view of the transactions to Host LP or the holders of Host LP units. The opinion is necessarily based on economic, monetary, market and other conditions as in effect on, and the information made available to Goldman Sachs as of, the date of the opinion.

The following is a summary of the material financial analyses delivered by Goldman Sachs to Host's board of directors in connection with rendering the opinion described above. The following summary, however, does not purport to be a complete description of the financial analyses performed by Goldman Sachs, nor does the order of analyses described represent relative importance or weight given to those analyses by Goldman Sachs. Some of the summaries of the financial analyses include information presented in tabular format. The tables must be read together with the full text of each summary and are alone not a complete description of Goldman Sachs' financial analyses. Except as otherwise noted, the following quantitative information, to the extent that it is based on market data, is based on market data as it existed on or before November 13, 2005 and is not necessarily indicative of current market conditions.

*Selected Companies Analysis.* In connection with the use of Host common stock as consideration in the transactions, Goldman Sachs reviewed and compared certain financial information for Host to corresponding financial information, ratios and public market multiples for the following publicly traded corporations in the upper upscale lodging industry:

LaSalle Hotel Properties

Strategic Hotel Capital, Inc.

MeriStar Hospitality Corporation

Sunstone Hotel Investors, Inc.

FelCor Lodging Limited Partnership

Hospitality Properties Trust

**Table of Contents**

Although none of the selected companies is directly comparable to Host, the companies included were chosen because they are publicly traded companies with operations that for purposes of analysis may be considered similar to certain operations of Host.

The multiples and ratios for Host were based on Host's share price as of November 11, 2005 and on estimates from Host's management of earnings before interest, taxes, depreciation and amortization (EBITDA) and funds from operations (FFO) and for the comparable companies were based on their share prices as of November 11, 2005, publicly available information filed with the SEC and the most recent analysts consensus estimates from the Institutional Broker Estimate Services (IBES) that were available on November 13, 2005. With respect to Host and the comparable companies, Goldman Sachs calculated and compared:

enterprise value (meaning the market value of common equity plus the book value of debt less cash) as a multiple of estimated 2005 and 2006 EBITDA; and

current share price as a multiple of 2005E and 2006E FFO.

The following table presents the range and median results of this analysis:

	<u>Range</u>	<u>Median</u>
EV/2005E EBITDA	11.9x-14.9x	12.4x
EV/2006E EBITDA	8.6x-12.7x	11.3x
P/2005E FFO	11.6x-16.1x	12.1x
P/2006E FFO	9.1x-13.5x	10.3x

Goldman Sachs compared these amounts to the multiples for Host of enterprise value to EBITDA for Host of 13.5x and 11.8x and of price to FFO for Host of 15.0x and 12.5x, in each case based on Host's management's estimates for 2005 and 2006, respectively.

*Discounted Cash Flow Analysis.* Goldman Sachs performed a discounted cash flow analysis on the portfolio using Host's management's estimates of the unlevered free cash flows from the portfolio for the years 2006 through 2015, including a sale of the properties in 2015 using terminal values in the year 2015 based on multiples ranging from 9.0x EBITDA to 11.0x EBITDA. Goldman Sachs then calculated the implied net present enterprise values of the portfolio using discount rates ranging from 7.70% to 8.70%, which represented a potential range of weighted average cost of capital for Host based on information provided by Host's management. Based on the assumptions set forth above, Goldman Sachs calculated a range of implied enterprise values for the portfolio of \$4.465 billion to \$5.335 billion.

*Selected Transactions Analysis.* Goldman Sachs analyzed certain information relating to selected transactions in the upper upscale lodging industry since October 2003.

For each of the selected transactions, Goldman Sachs calculated and compared (where available) the price per room and the twelve month forward EBITDA multiple based on research reports around the time of the announcement of those transactions and press releases relating to these transactions.

The following table presents the results of this analysis:

	<u>Price Per Room</u>	<u>Forward EBITDA Multiple</u>
High	\$ 396,015	14.4x
Mean	\$ 244,980	12.4x
Median	\$ 244,813	12.4x
Low	\$ 140,329	10.6x

**Table of Contents**

Goldman Sachs then compared these amounts and multiples to amounts and multiples for Host based on estimates from Host's management, and for the properties being acquired based on the price being paid in the transactions and the allocations from the master agreement and estimates from Host's management:

Company	Enterprise Value Multiples		Price per Room
	2005E	2006E	
Host	13.55x	11.85x	\$220,167
Portfolio Purchase Price	12.97x	11.43x	\$215,965

*Earnings Accretion/Dilution Analysis.* Goldman Sachs prepared an accretion/dilution analysis for 2006E FFO based on estimates provided by Host's management's for its expected case, which assumes that a portion of the cash for the transactions is funded with \$353,000,000 of proceeds from the sale of two Host hotels and the conservative case, which assumes no asset sale proceeds financed the transactions. Such analysis indicated an FFO increase of 3.5% in the expected case and 3.0% in the conservative case compared to Host's estimates for Host's FFO that do not take into account the transaction. To the extent that Host common stock is valued in the public markets by reference to its FFO, an increase in FFO should have a positive effect on the public market price of Host common stock.

The preparation of a fairness opinion is a complex process and is not necessarily susceptible to partial analysis or summary description. Selecting portions of the analyses or of the summary set forth above, without considering the analyses as a whole, could create an incomplete view of the processes underlying Goldman Sachs' opinion. In arriving at its fairness determination, Goldman Sachs considered the results of all of its analyses and did not attribute any particular weight to any factor or analysis considered by it. Rather, Goldman Sachs made its determination as to fairness on the basis of its experience and professional judgment after considering the results of all of its analyses. No company or transaction used in the above analyses as a comparison is directly comparable to Host or the contemplated transaction.

Goldman Sachs prepared these analyses for purposes of Goldman Sachs' providing its opinion to Host's board of directors as to the fairness from a financial point of view of the Consideration in the aggregate to be paid by Host and certain of its subsidiaries for the Assets and Interests pursuant to the master agreement. These analyses do not purport to be appraisals nor do they necessarily reflect the prices at which businesses or securities actually may be sold. Analyses based upon forecasts of future results are not necessarily indicative of actual future results, which may be significantly more or less favorable than suggested by these analyses. Because these analyses are inherently subject to uncertainty, being based upon numerous factors or events beyond the control of the parties or their respective advisors, none of Host, Starwood, Goldman Sachs or any other person assumes responsibility if future results are materially different from those forecast.

The Consideration was determined through arms'-length negotiations between Host and Starwood and was approved by Host's board of directors. Goldman Sachs provided advice to Host during these negotiations. Goldman Sachs did not, however, recommend any specific amount of consideration to Host or its board of directors or that any specific amount of consideration constituted the only appropriate consideration for the transactions.

As described above, Goldman Sachs' opinion to Host's board of directors was one of many factors taken into consideration by Host's board of directors in making its determination to approve the master agreement. The foregoing summary does not purport to be a complete description of the analyses performed by Goldman Sachs in connection with the fairness opinion and is qualified in its entirety by reference to the written opinion of Goldman Sachs attached as *Annex D* to this proxy statement/prospectus.



Edgar Filing: HOST MARRIOTT CORP/ - Form S-4/A

Goldman Sachs and its affiliates, as part of their investment banking business, are continually engaged in performing financial analyses with respect to businesses and their securities in connection with mergers and acquisitions, negotiated underwritings, competitive biddings, secondary distributions of listed and unlisted

## Table of Contents

securities, private placements and other transactions as well as for estate, corporate and other purposes. Goldman Sachs has acted as financial advisor to Host in connection with, and has participated in certain of the negotiations leading to, the transactions.

Goldman Sachs is acting as joint lead arranger and joint bookrunner, as well as sole administrative agent, in connection with Host LP's proposed bridge loan facility (aggregate principal amount of up to \$1.67 billion) in connection with the transactions, as well as in a lead role with respect to any indebtedness that may be issued to replace such bridge loan facility. For their role in arranging and participating in the bridge loan facility, Host has agreed to pay Goldman Sachs approximately \$5.4 million in commitment fees, funding fees and other related upfront fees. This amount is based on Goldman Sachs' current 25% share of the bridge loan commitments and assumes full funding of the bridge facility, but would be reduced in the event that Goldman Sachs' share of the financing commitment is reduced prior to funding the bridge loan facility. These fees are in addition to the interest and unused commitment fees (equal to 0.50% per annum times the un-drawn portion of the bridge facility), if any, that will be payable to all lenders under the bridge loan facility following the initial funding thereof. In the event the bridge loan facility is not utilized as a result of our obtaining replacement funding sources, Host will in most cases remain obligated to pay Goldman Sachs a substantial portion of such upfront fees unless the replacement funding source is a permanent financing in which Goldman Sachs is engaged to participate with certain lead roles.

Host has agreed to engage Goldman Sachs on a non-exclusive basis for certain types of permanent financings, including the issuance of debt securities, which could potentially refinance or replace the bridge loan facility. In the event that Goldman Sachs is retained for a permanent financing, Host has agreed to pay Goldman Sachs a fee equal to 1.5% of its pro-rata share of the principal amount of the permanent financing, except in certain cases where the compensation is subject to mutual agreement. Host will be entitled to a partial credit or rebate of the bridge loan facility funding fees paid to Goldman Sachs in the event it is engaged to participate in a permanent financing that refinances or replaces all or a portion of the bridge loan facility, with the amount of the credit or rebate being determined according to a formula that takes into account the timing of the permanent refinancing.

In addition, Goldman Sachs has provided certain investment banking services to Host from time to time, including having acted as co-lead underwriter in the public offering of 27.5 million shares of Host common stock in August 2003, co-manager in the placement of Host's 7/8% Notes due 2013 (aggregate principal amount \$725 million) in October 2003, sole bookrunner in the placement of the Host's 3.25% Exchangeable Senior Debentures due 2024 (aggregate principal amount \$375 million) in March 2004, co-manager in the placement of Host's 7% Series L Senior Notes due 2012 (aggregate principal amount \$350 million) in July 2004, a lender in Host's revolving credit facility in September 2004, bookrunner and co-lead manager in the placement of Host's 6.375% Notes due March 2015 (aggregate principal amount \$650 million) in March 2005 and Host's financial advisor in its tender for its 8% Series E Senior Notes due 2006 (aggregate principal amount \$280 million) in April 2005. In connection with these services, the aggregate fees received by Goldman Sachs for investment banking transactions from Host was approximately \$9 million. Goldman Sachs expects to receive fees for its services in connection with the transactions, all of which are contingent upon consummation of the transactions. Goldman Sachs also has provided certain investment banking services to Starwood and its affiliates from time to time. Goldman Sachs may also provide investment banking services to Host, Host LP, and their respective affiliates in the future. In connection with the above-described services Goldman Sachs has received, and may receive, compensation.

Goldman Sachs is a full service securities firm engaged, either directly or through its affiliates, in securities trading, investment management, financial planning and benefits counseling, risk management, hedging, financing and brokerage activities for both companies and individuals. In the ordinary course of these activities, Goldman Sachs and its affiliates may provide such services to Host, Host LP, Starwood, Starwood Trust and their respective affiliates, may actively trade the debt and equity securities, or related derivative securities, of Host, Host LP, Starwood and Starwood Trust for their own account and for the accounts of their customers and may at any time hold long and short positions of such securities.

## **Table of Contents**

Host's board of directors selected Goldman Sachs as its financial advisor because it is an internationally recognized investment banking firm that has substantial experience in transactions similar to the transactions. Pursuant to a letter agreement dated March 3, 2005, Host engaged Goldman Sachs to act as its financial advisor in connection with a possible transaction with Starwood and Starwood Trust. Pursuant to the terms of this letter, if the aggregate consideration is equal to or greater than \$4 billion, but less than or equal to \$5 billion, Host has agreed to pay Goldman Sachs upon completion of the transactions a transaction fee equal to 0.33% of the aggregate Consideration not to exceed \$15 million (if the aggregate consideration is less than \$4 billion or greater than \$5 billion, the transaction fee would be mutually agreed upon by Host and Goldman Sachs). In the event that the transaction is not consummated, Goldman Sachs would not be paid a fee for this transaction (other than as a result of a termination in connection with which a break-up fee is payable). In addition, Host has agreed to reimburse Goldman Sachs for its expenses, including attorneys' fees and disbursements, and to indemnify Goldman Sachs and related persons against various liabilities, including certain liabilities under the federal securities laws.

### **Opinion of Starwood and Starwood Trust's Financial Advisor**

Starwood's board of directors and Starwood Trust's board of trustees retained Bear Stearns to act as their financial advisor with respect to a possible transaction with Host and Host LP. In selecting Bear Stearns, Starwood's board of directors and Starwood Trust's board of trustees considered the fact that Bear Stearns is an internationally recognized investment banking firm with substantial experience advising companies in the lodging industry as well as substantial experience providing strategic advisory services. Bear Stearns, as part of its investment banking business, is continuously engaged in the valuation of businesses and securities in connection with mergers and acquisitions, negotiated underwritings, secondary distributions of listed and unlisted securities, private placements and valuations for corporate and other purposes.

At the November 13, 2005 meeting of Starwood's board of directors and Starwood Trust's board of trustees, Bear Stearns delivered its oral opinion, which was subsequently confirmed in writing, that, as of November 13, 2005, and based upon and subject to the assumptions, qualifications and limitations set forth in the written opinion, the aggregate consideration to be received by Starwood, Starwood Trust and their shareholders for the Starwood Portfolio, as defined in the Bear Stearns' written opinion, was fair, from a financial point of view, to Starwood and Starwood Trust.

The full text of Bear Stearns' written opinion is attached as *Annex E* to this proxy statement/prospectus and you should read the opinion carefully and in its entirety. The opinion sets forth the assumptions made, some of the matters considered and qualifications and limitations of the review undertaken by Bear Stearns. The Bear Stearns opinion is subject to the assumptions and conditions contained therein and is necessarily based on economic, market and other conditions and the information made available to Bear Stearns as of the date of the Bear Stearns opinion. In reading the discussion of the fairness opinion set forth below, you should be aware that Bear Stearns' opinion:

was provided to Starwood and Starwood Trust's board of directors solely for their benefit and use;

did not constitute a recommendation to either of the boards in connection with the transactions;

does not constitute a recommendation to the board of directors of Host or any shareholder of Host as to how to vote in connection with the transactions; and

did not address Starwood or Starwood Trust's underlying business decision to pursue the transactions, the relative merits of the transactions as compared to any alternative business strategies that might exist for Starwood or Starwood Trust, the distribution of the aggregate consideration to be received or the effects of any other transaction in which Starwood or Starwood Trust might engage.

Edgar Filing: HOST MARRIOTT CORP/ - Form S-4/A

Although Bear Stearns evaluated the fairness of the aggregate consideration to be received, from a financial point of view, to Starwood and Starwood Trust, the aggregate consideration itself was determined by Starwood

**Table of Contents**

and Host through arm's-length negotiations. Starwood did not provide specific instructions to, or place any limitations on, Bear Stearns with respect to the procedures to be followed or factors to be considered by it in performing its analyses or providing its opinion.

In connection with rendering its opinion, Bear Stearns:

reviewed the master agreement in substantially final form;

reviewed Starwood's Annual Reports to Shareholders and Starwood's and Starwood Trust's Annual Reports on Form 10-K for the years ended December 31, 2002, 2003 and 2004, their Quarterly Reports on Form 10-Q for the periods ended March 31, 2005 and June 30, 2005 and their Current Reports on Form 8-K for the three years ended November 13, 2005;

reviewed certain operating and financial information, including estimates (the "Estimates") for 2005 and 2006 for the Starwood Portfolio, relating to Starwood's, Starwood Trust's and the Starwood Portfolio's businesses and prospects, all as prepared and provided to Bear Stearns by Starwood's and Starwood Trust's management;

met with certain members of Starwood's and Starwood Trust's senior management to discuss Starwood's, Starwood Trust's and the Starwood Portfolio's businesses, operations, historical and estimated financial results and future prospects;

reviewed Host's Annual Reports to Shareholders and Annual Reports on Form 10-K for the years ended December 31, 2002, 2003 and 2004, its Quarterly Reports on Form 10-Q for the periods ended March 25, 2005, June 17, 2005 and September 9, 2005 and its Current Reports on Form 8-K for the three years ended November 13, 2005;

reviewed certain operating and financial information relating to Host's business and prospects, all as prepared and provided to Bear Stearns by Host's management;

met with certain members of Host's senior management to discuss Host's business, operations, historical and estimated financial results and future prospects;

reviewed the historical prices, trading multiples and trading volumes of the paired shares of Starwood and the common stock of Host;

reviewed publicly available financial data, stock market performance data and trading multiples of companies which Bear Stearns deemed generally comparable to Starwood, Host and the Starwood Portfolio;

reviewed the terms of recent mergers and acquisitions involving companies and portfolios of lodging assets which Bear Stearns deemed generally comparable to Starwood and the Starwood Portfolio;

reviewed the pro forma financial results, financial condition and capitalization of Starwood and Host giving effect to the transactions; and

conducted such other studies, analyses, inquiries and investigations as Bear Stearns deemed appropriate.

## Edgar Filing: HOST MARRIOTT CORP/ - Form S-4/A

Bear Stearns relied upon and assumed, without independent verification, the accuracy and completeness of the financial and other information provided to it by Starwood, Starwood Trust and Host, including, without limitation, the Estimates, or which was available to it from public sources. With respect to Starwood's, Starwood Trust's and Host's estimated financial results, Bear Stearns relied on representations that they were reasonably prepared on bases reflecting the best currently available estimates and judgments of the senior managements of Starwood and Host as to the expected future performance of Starwood, Starwood Trust, the Starwood Portfolio and Host, respectively. Bear Stearns did not assume any responsibility for the independent verification of any such information or of the estimates provided to it, and Bear Stearns further relied upon the assurances of the senior managements of Starwood and Host that they are unaware of any facts that would make the information and estimates provided to it incomplete or misleading.

## **Table of Contents**

In arriving at its opinion, Bear Stearns did not perform or obtain any independent appraisal of the assets or liabilities (contingent or otherwise) of Starwood, Starwood Trust, the Starwood Portfolio or Host, nor was Bear Stearns furnished with any such appraisals. During the course of Bear Stearns' engagement, Bear Stearns was informed by the board of directors of Starwood, the board of trustees of Starwood Trust and management of Starwood of interest from various third parties regarding a transaction with Starwood and Starwood Trust, and Bear Stearns considered the results of such inquiries in rendering its opinion. Bear Stearns assumed that the transactions contemplated by the master agreement will be consummated in a timely manner and in accordance with the terms of the master agreement without any limitations, restrictions, conditions, amendments or modifications, regulatory or otherwise, that collectively would have a material effect on Starwood, Starwood Trust or Host. Bear Stearns assumed that Starwood will not have the right to terminate the master agreement pursuant to Section 9.1(g) of the master agreement. Bear Stearns understands from Starwood that, for U.S. federal income tax purposes, the consideration paid to the holders of the Class B Shares of Starwood Trust is expected to be paid in a taxable transaction.

Bear Stearns did not express any opinion as to the price or range of prices at which the shares of common stock of Host or the paired shares of Starwood may trade subsequent to the announcement or consummation of the transactions contemplated by the master agreement.

## ***Summary of Analyses***

The following is a brief summary of the material financial analyses performed by Bear Stearns and presented to Starwood's board of directors in connection with rendering its fairness opinion.

Some of the financial analyses summarized below include summary data and information presented in tabular format. In order to understand fully the financial analyses, the summary data and tables must be read together with the full text of the analyses. Considering the summary data and tables alone could create a misleading or incomplete view of Bear Stearns' financial analyses.

*Calculation of the Enterprise Value of the Starwood Portfolio.* For purposes of analyzing the aggregate consideration to be received by Starwood, Starwood Trust and the shareholders of Starwood Trust, Bear Stearns calculated the enterprise value, referred to in this summary as *Enterprise Value* of the Starwood Portfolio by adding the equity value of the Host common stock consideration of \$2.33 billion, cash of \$1.06 billion and Starwood debt of \$0.70 billion to be assumed by Host pursuant to the master agreement. The Host common stock consideration was calculated by multiplying 133,529,412 shares of Host common stock to be issued by \$17.44, Host's closing share price on November 11, 2005, the last full trading day prior to the meetings of Starwood's board of directors and Starwood Trust's board of trustees on November 13, 2005 at which Bear Stearns delivered its opinion. In calculating Enterprise Value, Bear Stearns did not include any estimate of value for the management contracts between Starwood and Host which will encumber the properties within the Starwood Portfolio on an ongoing basis. However, based on information provided to it by Starwood management, Bear Stearns believed that the value of these contracts would have a positive effect on Starwood.

Bear Stearns calculated multiples of the Starwood Portfolio's Enterprise Value to the Starwood Portfolio's earnings before interest, taxes, depreciation and amortization, referred to in this summary as *EBITDA*, for the estimated fiscal years ending December 2005 and 2006, which resulted in multiples of 13.0x and 11.5x, respectively.

*Comparable Company Analysis.* Bear Stearns analyzed selected historical and 2005 and 2006 estimated operating information related to the Starwood Portfolio provided by management of Starwood and compared this data to that of seven publicly traded lodging real estate investment trusts ( *REITS* ) deemed by Bear Stearns to be generally comparable to the Starwood Portfolio. No company or transaction used in the analyses described below is directly comparable to the Starwood Portfolio or the contemplated transactions. The analyses performed by Bear Stearns are

not necessarily indicative of actual values or future results, which may be significantly more



**Table of Contents**

or less favorable than suggested by these analyses. Bear Stearns used the earnings forecasts for these companies from publicly available data, First Call and selected Wall Street equity research reports. In conducting its analysis, Bear Stearns analyzed the multiples of the following comparable companies:

Host Marriott Corporation

Felcor Lodging Trust

Highland Hospitality Corporation

MeriStar Hospitality Corporation

LaSalle Hotel Properties

Strategic Hotel Capital, Inc.

Sunstone Hotel Investors, Inc.

Bear Stearns reviewed, among other things, the comparable companies' multiples of Enterprise Value to fiscal year 2005 and 2006 estimated (2005E and 2006E) EBITDA. The multiples are based on closing stock prices of the companies on November 11, 2005. The following table summarizes the analysis:

**ENTERPRISE VALUE/EBITDA**

	<u>2005E</u>	<u>2006E</u>
Host Marriott Corporation	13.5x	11.8x
Felcor Lodging Trust	11.9	11.0
Highland Hospitality Corporation	16.9	10.0
MeriStar Hospitality Corporation	13.1	13.4
LaSalle Hotel Properties	17.8	13.5
Strategic Hotel Capital, Inc.	13.0	10.3
Sunstone Hotel Investors, Inc.	16.1	11.9
Harmonic Mean	14.5	11.3

The harmonic mean gives equal weight to equal dollar investments in the securities whose ratios are being averaged. The harmonic mean presented above excluded MeriStar Hospitality Corporation due to news at the time that it was potentially in discussions to be sold.

Bear Stearns compared the multiples above to the implied multiple of 13.0x Enterprise Value to 2005E EBITDA and 11.5x Enterprise Value to 2006E EBITDA for the Starwood Portfolio. Bear Stearns also noted that several of the publicly traded lodging REITs have engaged in significant transactions during 2005, making their 2005E EBITDA multiples less comparable. Bear Stearns used a reference range of 12.0x to 13.5x and 10.0x to 12.0x 2005E and 2006E EBITDA, respectively, to calculate a range of implied enterprise values for the Starwood Portfolio. The results of Bear Stearns' analysis indicated a range of implied enterprise values for the Starwood Portfolio of approximately \$3.78 billion to \$4.25 billion and \$3.58 billion to \$4.29 billion, using the reference ranges above for 2005 and 2006, respectively.

*Comparable Precedent Transactions Analysis.* Bear Stearns analyzed publicly available financial information relating to nine merger and acquisition transactions involving companies in the lodging industry which Bear Stearns deemed generally comparable to the Starwood Portfolio and the transactions contemplated by the master agreement. Four of these precedent transactions involved strategic acquisitions by a lodging company and five of the precedent transactions involved acquisitions by a financial sponsor. No company or transaction used in the analyses described below is directly comparable to the Starwood Portfolio or the contemplated transactions. The analyses performed by Bear Stearns are not necessarily indicative of actual values or future results, which may be significantly more or less favorable than suggested by these analyses.

Bear Stearns reviewed, among other things, the ratio of the comparable companies' Enterprise Value implied in the respective transactions to their current year expected EBITDA, referred to in this summary as *CYE EBITDA*.

**Table of Contents**

The precedent transactions in the Bear Stearns analysis were (Target/Acquiror):

Strategic Transactions:

AmeriSuites/Hyatt Hotels and Resorts

Baymont Inns & Suites/La Quinta Corporation

KSL Recreation Corporation/CNL Hospitality Properties, Inc.

RFS Hotel Investors, Inc./CNL Hospitality Properties, Inc.

Financial Sponsor Transactions:

La Quinta Corporation/The Blackstone Group

Wyndham International, Inc./The Blackstone Group

Boca Resorts/The Blackstone Group

Prime Hospitality Corporation/The Blackstone Group

Extended Stay America, Inc./The Blackstone Group

The following table summarizes the analysis:

**ENTERPRISE VALUE/CYE EBITDA**

	<b>CYE</b>
	<b>_____</b>
Strategic Transactions:	
High	11.9x
Mean	11.1
Median	11.0
Low	10.4
Financial Sponsor Transactions:	
High	13.8x
Mean	12.9
Median	12.8

Bear Stearns compared the current year expected mean and median multiples above to the implied multiple of 13.0x current year expected EBITDA for the Starwood Portfolio. Further, Bear Stearns considered how the multiples have varied over time and some of the factors involved in some of the transactions. Bear Stearns used a reference range of 11.0x to 13.0x current fiscal year EBITDA to calculate a range of implied enterprise values for the Starwood Portfolio. The results of Bear Stearns' analysis indicated a range of implied enterprise values for the Starwood Portfolio of approximately \$3.47 to \$4.10 billion.

*Comparison of Host Common Stock Consideration to Historical Host Trading Ranges.* Bear Stearns observed the volume of Host common stock traded at various prices per share for the periods six months and one year preceding November 11, 2005 (the last full trading day prior to the meetings of Starwood's board of directors and Starwood Trust's board of trustees on November 13, 2005 at which Bear Stearns delivered its opinion). Bear Stearns noted that approximately 62.4% and 38.7%, respectively, of Host's trading volume occurred at prices above \$17.00 (the share price used to derive the 133,529,412 shares of Host common stock to be issued to the holders of the Class B Shares pursuant to the master agreement). Bear Stearns further noted that none of Host common stock traded at prices equal to or below \$13.60 (the Host common stock price at which Starwood may terminate the master agreement pursuant to Section 9.1(g) of the master agreement) during the twelve months preceding November 11, 2005.

The preparation of a fairness opinion is a complex process and involves various judgments and determinations as to the most appropriate and relevant assumptions and financial analyses and the application of those methods to the particular circumstances involved. Such an opinion is therefore not readily susceptible to

## **Table of Contents**

partial analysis or summary description, and taking portions of the analyses set out above, without considering the analysis as a whole, would in the view of Bear Stearns, create an incomplete and misleading picture of the processes underlying the analyses considered in rendering the Bear Stearns opinion. Bear Stearns did not form an opinion as to whether any individual analysis or factor, whether positive or negative, considered in isolation, supported or failed to support the Bear Stearns opinion. In arriving at its opinion, Bear Stearns considered the results of all its analyses and did not attribute any particular weight to any one analysis or factor. Bear Stearns arrived at its ultimate opinion based on the results of all analyses undertaken by it and assessed as a whole and believes that the totality of the factors considered and analyses performed by Bear Stearns in connection with its opinion operated collectively to support its determination as to the fairness of the aggregate consideration to be received by Starwood, Starwood Trust and the holders of Class B Shares. The analyses performed by Bear Stearns, particularly those based on estimates and projections, are not necessarily indicative of actual values or actual future results, which may be significantly more or less favorable than suggested by such analyses. With respect to the analysis of comparable companies and the analysis of precedent transactions summarized above, no public company utilized as a comparison is identical to the Starwood Portfolio. Accordingly, an analysis of publicly traded comparable companies and comparable precedent transactions is not mathematical; rather it involves complex considerations and judgments concerning the differences in financial and operating characteristics of the companies and precedent transactions and other factors that could affect the value of the Starwood Portfolio and the public trading values of the companies and precedent transactions to which they were compared. The analyses do not purport to be appraisals or to reflect the prices at which any securities may trade at the present time or at any time in the future. In addition, the Bear Stearns opinion was just one of the many factors taken into consideration by Starwood's board of directors. Consequently, Bear Stearns analysis should not be viewed as determinative of the decision of Starwood's board of directors with respect to the fairness of the aggregate consideration to be received, from a financial point of view, by Starwood, Starwood Trust and their shareholders.

Starwood's board of directors engaged Bear Stearns to act as its financial advisor with respect to a possible transaction with Host and Host LP. Pursuant to the terms of Bear Stearns' engagement letter, Starwood has agreed to pay Bear Stearns a transaction fee equal to \$17 million, which is payable upon consummation of the transactions contemplated by the master agreement. If the transactions are terminated, Starwood would not be required to pay Bear Stearns a fee in connection with the transactions. In addition, Starwood has agreed to reimburse Bear Stearns for reasonable out-of-pocket expenses incurred by Bear Stearns in connection with its engagement and the transactions contemplated by the master agreement, including reasonable fees and disbursements of its legal counsel. Also, Starwood has agreed to indemnify Bear Stearns against certain liabilities relating to or arising out of Bear Stearns' engagement. Bear Stearns is also serving as solicitation agent for the SHC consent solicitation in connection with the transactions for which Starwood expects to pay a customary transaction fee for its services.

Bear Stearns has acted as financial advisor to Starwood in connection with, and has participated in certain of the negotiations leading to, the transactions contemplated by the master agreement. Bear Stearns and/or its affiliates have also previously provided various investment banking services to Starwood, Host and their respective affiliates.

In the ordinary course of business, Bear Stearns and its affiliates may actively trade the equity and debt securities and/or bank debt of Starwood, Starwood Trust, Host and their respective affiliates for its own account and for the accounts of its customers and, accordingly, may at any time hold a long or short position in such securities or bank debt.

## **Accounting Treatment**

In accordance with SFAS No. 141, Business Combinations, Host will account for the transactions as a business combination. Upon the consummation of the transactions, Host will record the cash consideration, the market value of Host common stock issued in the transactions, the fair value of the assets and liabilities assumed, as well as the amount of direct transaction costs associated with the transactions. Based on the guidance set forth in Emerging Issues Task Force Issue No. 99-12, the market value of the Host common stock issued in the

## **Table of Contents**

transactions will be determined based on the average of the closing prices of a share of Host common stock for a range of trading days from two days prior to two days subsequent to November 14, 2005, the announcement date, or \$16.97. Any excess of the estimated purchase price over the fair value of net assets acquired will be accounted for as goodwill.

## **Financing for the Transactions**

### ***Permanent Financing***

Host expects to fund the \$1.063 billion cash portion of the purchase price for the transactions through available cash and proceeds from a combination of asset sales of existing assets of approximately \$250 million to \$650 million (including the Ft. Lauderdale Marina Marriott, the Albany Marriott, the Chicago Marriott Deerfield Suites and the Marriott at Research Triangle Park), a joint venture related to the six European assets to be acquired in the transactions (approximately \$580 million, including new debt to be issued by the joint venture, but excluding Host's portion of the capital contributions to the joint venture) and the issuance or other incurrence of indebtedness to repay any draws on the bridge loan facility. Host also expects to assume approximately \$704 million of indebtedness of the entities to be acquired in the transactions as described below under "Assumed Indebtedness" beginning on page 76.

To the extent the contemplated financings for the transactions are not completed prior to consummation of the transactions, Host LP has received financing commitments for a bridge loan facility, which is referred to throughout this proxy statement/prospectus as the bridge loan facility commitments, in an aggregate principal amount of up to \$1.67 billion from certain lenders.

### ***Bridge Loan Facility***

On December 13, 2005, Host LP received the commitments from Goldman Sachs Credit Partners, L.P., Deutsche Bank AG Cayman Islands Branch, Bank of America Bridge LLC and Merrill Lynch Capital Corporation for the bridge loan facility for the purpose of funding a portion of the cash consideration for the transactions. The bridge loan facility commitments will expire on May 14, 2006 if the transactions have not occurred by this date. To the extent not fully drawn on the initial transaction closing date, the bridge loan facility commitments may be drawn up to 180 days thereafter to fund the closing of any assets deferred from the transactions. See "Material Terms of the Principal Transaction Agreements - Other Agreements Relating to the Period Prior to Closing - Deferral of Hotels" beginning on page 97 for a description of deferral triggers and deferral rights.

The facility is subject to customary conditions, including, among other things, (1) the existence of no default under Host LP's revolving credit agreement, senior notes, certain indebtedness assumed or incurred in connection with the transactions or any other indebtedness in an aggregate principal amount in excess of \$50 million, (2) consummation of the transactions in accordance with the terms of the master agreement and (3) Host LP not incurring new debt that matures prior to the maturity of the bridge loan facility or otherwise incurring debt that would cause its pro forma total debt as of September 9, 2005 to exceed \$7.408 billion by more than \$400 million, unless the bridge loan facility commitments are reduced by the amount of such debt in excess of \$400 million. As a condition to the bridge loan facility, Host must also obtain the execution of an amendment to Host LP's revolving credit facility permitting the loans related to the bridge loan facility to share in the collateral currently securing the revolving credit facility and Host LP's senior notes. This amendment was executed and received on January 30, 2006. The lenders to Host LP's revolving credit facility include the following banks: Deutsche Bank Trust Company Americas, Bank of America, N.A., Citicorp North America Inc., Societe Generale, Calyon New York Branch, The Bank of New York, Bear Stearns Corporate Lending Inc., Wachovia National Association, The Bank of Nova Scotia, First Horizon Bank, Octagon Investment Partners, ORIX Finance Corporation, PIMCO and The Royal Bank of Scotland. Host expects to receive the required amendment to permit the bridge loan facility by the end of January.



## **Table of Contents**

Any loans incurred related to the bridge loan facility commitments will have an initial 12 month maturity from the date of the initial borrowing, subject to two six-month extension options being available at Host LP's option subject to the satisfaction of certain customary conditions and the payment of extension fees.

The financing under the bridge loan facility commitments is subject to the negotiation and execution of definitive loan documentation, which is expected to include covenants, representations and events of default that are substantially similar to those contained in Host LP's current revolving credit facility. In addition to including a mandatory prepayment event similar to Host LP's current revolving facility with respect to asset sales, such loan documentation is also expected to include mandatory prepayment events associated with the receipt of casualty insurance proceeds, equity issuance proceeds and debt incurrence proceeds, in each case subject to certain exceptions. The loan documentation is also expected to limit Host LP's acquisitions to \$500 million in the aggregate so long as the sum of the outstanding loans and unused commitments under the bridge loan facility commitments equals or exceeds \$835 million, with such limit thereafter increasing to \$750 million. Financial covenants under the loan documents are expected to be substantially the same as the financial covenants applicable to tranche A borrowings under Host LP's current revolving facility, including covenants for leverage, fixed charge coverage and unsecured interest coverage.

Host LP will pay interest on any loans incurred related to the bridge loan facility commitments at floating interest rates plus a margin (which, in the case of LIBOR-based borrowings, ranges from 2.00% to 4.25%) that is set with reference to the weighted average margin payable under Host LP's current revolving credit facility. Such margin will be increased by 0.5% with respect to any loans pursuant to the bridge loan facility commitments that remain outstanding after the expiration of the first extension term. Also, to the extent that amounts under the bridge loan facility commitments remain unused and such commitments remain outstanding, Host LP will pay a quarterly commitment fee on the average undrawn portion of the bridge loan facility commitments.

The loans related to the bridge loan facility commitments will be guaranteed by certain of Host LP's currently existing and to be acquired subsidiaries and secured by pledges of equity interests in certain of Host LP's currently existing and to be acquired subsidiaries. Such guarantees and pledges would also ratably benefit Host LP's revolving credit facility, notes outstanding under Host LP's senior note indenture and certain indebtedness that may be assumed in connection with the transactions.

## ***Summary of the Sheraton Holding Corporation Consent Solicitation***

In connection with the transactions, Host will acquire all of the equity interests in SHC which at the time the transactions are consummated will hold, directly or indirectly, three domestic and four foreign hotels. The master agreement provides for the preliminary internal restructuring of SHC prior to Host's acquisition of it. The restructuring will include, among other things, removing from SHC hotels, intellectual property (other than certain foreign hotel names being acquired by Host) and other assets, in each case not being acquired by Host. In connection with the transactions, the parties intend that the 7<sup>3</sup>/<sub>8</sub>% debentures due November 15, 2015 and the 7<sup>3</sup>/<sub>4</sub>% debentures due November 15, 2025 of SHC, which are referred to throughout this proxy statement/prospectus as the SHC indebtedness, will remain outstanding and be an obligation of a subsidiary of Host. Host and certain of Host's subsidiaries are offering to fully and unconditionally guarantee the SHC indebtedness, which is referred to throughout this proxy statement/prospectus as the SHC guarantees, subject to, among other things, SHC's receipt of the consents of the holders of the SHC indebtedness to certain distributions of assets by SHC prior to the SHC acquisition and to certain proposed amendments to the indentures governing both series of SHC indebtedness and the supplemental indenture containing such consents and proposed amendments having been effective and operative, and the consummation of the transactions. Starwood is a guarantor under the SHC indebtedness and the terms of its guarantee provide that upon a sale of SHC, the guarantee will terminate. Such offering together with the solicitation of the consents of the holders of the SHC indebtedness by SHC are part of a plan to integrate SHC into Host's operating structure and to simplify the credit structure of SHC and Host such that the financial risks associated with investing in the indebtedness of either of the companies is similar to investing in the indebtedness of the other of the companies. If the required consent is not obtained from holders





**Table of Contents**

of the SHC indebtedness, Starwood intends to assume all of SHC's obligations under the SHC indebtedness and the applicable indenture and, thereafter, SHC will be released from all of its liabilities and obligations under the indenture and the SHC indebtedness and neither Host nor any of its subsidiaries will guarantee the SHC indebtedness. Starwood has informed Host that, in the event that Starwood assumes the SHC indebtedness, Starwood's management believes it will likely decide to redeem the 7<sup>3</sup>/<sub>4</sub>% debentures due November 15, 2025, which debentures are currently redeemable at a redemption price equal to 103.186% of the principal amount of such debentures.

**Assumed Indebtedness**

Host intends to acquire in the transactions certain assets and entities that are subject to approximately \$704 million of indebtedness, including the SHC indebtedness (see Summary of the Sheraton Holding Corporation Consent Solicitation above) and certain mortgage indebtedness. In the event Starwood assumes the SHC indebtedness, Host and its subsidiaries will not be responsible for such indebtedness and the cash consideration payable by Host in the transactions will increase by the amount of the SHC indebtedness assumed by Starwood. The following table summarizes the outstanding indebtedness to be acquired by Host and scheduled amortization and maturities related to such indebtedness as of August 31, 2005 (in millions):

	Balance as of						
	August 31,						
	2005	2005	2006	2007	2008	2009	Thereafter
<b>Mortgage Debt</b>							
Nomura Loan, 9.214%, due March 11, 2022 (1)	\$ 37	\$ 1	\$ 1	\$ 1	\$ 1	\$ 1	\$ 33
Nomura Loan, 8.505%, due December 11, 2023 (2)	41	1	1	1	1	1	37
Westpac Loan, 4.300%, due December 31, 2009 (3)	26					26	
<b>Total mortgage debt</b>	<b>104</b>	<b>2</b>	<b>2</b>	<b>2</b>	<b>2</b>	<b>28</b>	<b>70</b>
<b>SHC Indebtedness</b>							
SHC debentures, 7 <sup>3</sup> / <sub>8</sub> %, due November 15, 2015	450						450
SHC debentures, 7 <sup>3</sup> / <sub>4</sub> %, due November 15, 2025	150						150
<b>Total SHC Indebtedness</b>	<b>600</b>						<b>600</b>
<b>Total mortgage debt and SHC indebtedness (4)</b>	<b>\$ 704</b>	<b>\$ 2</b>	<b>\$ 2</b>	<b>\$ 2</b>	<b>\$ 28</b>	<b>\$ 670</b>	
	<b>704</b>						

- (1) This mortgage debt is secured by the Westin Indianapolis and has certain restrictive covenants. Beginning in 2009, the interest rate on this loan increases at least 500 basis points and all excess cash (defined as the difference between gross revenues of the hotel and the sum of the withdrawals from the deposit account applied for taxes and insurance, the required debt service reserve, management expenses and servicing expenses) at the hotel is applied to principal. The amortization shown does not assume any additional principal payments based on cash flow.
- (2) This mortgage debt is secured by the Westin Tabor Center and has certain restrictive covenants. Beginning in 2013, the interest rate on this loan increases at least 500 basis points and all excess cash flow (defined as the difference between gross revenues of the hotel and the sum of operating expenses, interest and principal payments paid on the note, any other debt then due and payable to the lender and deposits made into the required reserve accounts) at the hotel is applied to principal. The amortization shown does not assume any additional principal payments based on cash flow.
- (3) This mortgage debt is secured by the Sheraton Fiji Resort and the Sheraton Royal Denarau Resort and has certain restrictive covenants. The interest rate on this mortgage debt is variable based on the prime rate of Westpac Banking Corporation less 169 basis points. The rate

is currently set at 4.300%.

- (4) Host will record the debt assumed at fair value. On a pro forma basis as of September 9, 2005, the SHC indebtedness has bonds have a fair value of \$654 million and the mortgage debt has a fair value of \$116 million.

## **Table of Contents**

### **No Dissenters' Rights of Appraisal**

Under Maryland law, Host stockholders are not entitled to dissenters' or appraisal rights in connection with the issuance of Host common stock in the transactions.

Except for the sole holder of the Class A shares of Starwood Trust, which waived any appraisal, dissenters' or similar rights to which it is entitled with respect to such shares pursuant to its approval of the REIT merger, no holder of shares of Starwood Trust, paired shares of Starwood and Starwood Trust or units of SLT Realty Limited Partnership is entitled under applicable law or the organizational documents of Starwood Trust, Starwood or SLT Realty Limited Partnership to appraisal, dissenters' or similar rights as a result of the consummation of the transactions.

### **Regulatory Matters**

Neither Host nor Starwood is aware of any material federal or state regulatory requirements that must be complied with or approvals that must be obtained in connection with the transactions. However, there are foreign antitrust requirements that must be satisfied in Canada and Italy in connection with Host's acquisition of hotels located in these countries. With respect to the Canadian antitrust approval, the Canadian Competition Bureau issued a no-action letter on January 24, 2006 indicating that it will not challenge the transactions at this time. With respect to the Italian antitrust requirement, Host and Starwood are required to file a notice with the Italia Competition Authority. The Italia Competition Authority has 30 days after such filing to review the transactions. In the event the Italian antitrust requirement is not satisfied, either Host or Starwood can defer any affected hotel or entity currently contemplated to be acquired by Host in the transactions from the initial closing of the transactions without the other's consent, and, if neither party elects to defer the affected hotels and entities, neither party will be required to complete the transactions until such approvals are obtained. In addition, because both the Westin Palace Milan and the Westin Europa & Regina will be affected by any failure to satisfy the Italian antitrust requirement, if such requirement is not obtained, Host can elect to defer all acquired hotels located outside the United States, Canada and Poland. See Risk Factors beginning on page 18 and Material Terms of the Principal Transaction Agreements - Other Agreements Relating to the Period Prior to Closing - Deferral of Hotels beginning on page 97 for a detailed description of the exclusion of particular hotels from the transactions due to the failure to obtain required approvals or certain other developments.

### **Stock Exchange Listing and Related Matters**

Host will use reasonable best efforts to cause the shares of Host common stock to be issued in connection with the transactions to be approved for listing on the NYSE, subject to official notice of issuance, prior to the closing of the transactions.

Prior to the date the REIT merger is completed, the paired shares of Starwood and Starwood Trust will be de-paired. After the REIT merger is completed, Starwood Trust's Class B shares will be delisted from the NYSE and deregistered under the Exchange Act, and Starwood Trust will no longer file periodic reports with the SEC. Pursuant to the de-pairing, the shares of Starwood common stock will continue to be listed on the NYSE and will trade independently of the Class B shares of Starwood Trust.

### **Restrictions on Sales of Shares of Host Common Stock Received in the Transactions**

*Affiliates*

The shares of Host common stock to be issued in connection with the transactions will be registered under the Securities Act and will be freely transferable, except for shares of Host common stock issued to any person who is deemed to be an affiliate of Starwood Trust under the Securities Act prior to the completion of the transactions. Persons who may be deemed to be affiliates of Starwood Trust prior to the completion of the transactions include individuals or entities that control, are controlled by or are under common control with, Starwood Trust prior to the consummation of the transactions, and may include officers and directors, as well as significant stockholders of Starwood Trust prior to the consummation of the transactions. Affiliates of Starwood Trust prior to the consummation of the transactions may not sell any of the shares of Host common stock received by them in connection with the transactions except pursuant to:

an effective registration statement under the Securities Act covering the resale of those shares;

**Table of Contents**

an exemption under paragraph (d) of Rule 145 under the Securities Act; or

any other applicable exemption under the Securities Act.

Host's registration statement on Form S-4, of which this proxy statement/prospectus is a part, does not cover the resale of shares of Host common stock to be received by affiliates of Starwood Trust in the transactions. As of December 31, 2005, there were approximately 100,349 paired shares of Starwood and Starwood Trust outstanding and held by affiliates of Starwood Trust not subject to vesting and/or other transfer restrictions. Based on these holdings, Host will issue approximately 61,434 shares of Host common stock to affiliates of Starwood Trust in the transactions. Host is not contractually required to file a resale registration statement for any shares of Host common stock to be received by affiliates of Starwood Trust (other than subsidiaries of Starwood, if any, receiving shares) in the transactions, but Starwood does not expect that the shares received by any individual affiliates will exceed the volume limitations applicable to resales by affiliates under paragraph (d) of Rule 145 under the Securities Act.

***Registration Rights of Starwood***

Based on Starwood's belief that the number of Class B shares of Starwood Trust outstanding as of the date of the master agreement will not materially change before the effective time of the REIT merger, Host management expects that all of the shares of Host common stock included in the total consideration will be payable directly to holders of Starwood Trust's Class B shares and Class A Exchangeable Preferred Shares. However, in the event the number of outstanding Class B shares of Starwood Trust at the effective time of the REIT merger is sufficiently less than Starwood's estimate, Starwood may receive shares of Host common stock in the transactions as more fully described above under Summary of the Transactions - Consideration for the Transactions beginning on page 49. Host and Starwood have agreed to enter into a Registration Rights Agreement addressing the sale by Starwood of any shares of Host common stock it receives in the transactions. The Registration Rights Agreement would require that Host effect registration of the shares to be acquired by Starwood upon closing of the transactions, and to maintain such effectiveness for a period not exceeding one year. This agreement would contain customary provisions with respect to cooperation and provision of information by Starwood to Host. In addition, this agreement would contain customary indemnification obligations by Host relating to misstatements contained in the registration statement, except to the extent that such misstatements were made in reliance upon information furnished by Starwood. Finally, the Registration Rights Agreement would provide that in the event that Starwood receives shares of Host common stock with a value in excess of \$150 million (based on the value of such shares at closing), then Starwood will be restricted from selling such excess shares for a period of 30 days.

**Table of Contents**

**MATERIAL TERMS OF THE PRINCIPAL TRANSACTION AGREEMENTS**

**General**

The following is a summary of the material terms of the principal transaction agreements but does not describe each of the provisions of the transaction agreements. This summary is qualified in its entirety by reference to the complete text of:

the master agreement, a copy of which is attached to this proxy statement/prospectus as *Annex A* and is incorporated herein by reference;

the indemnification agreement, a copy of which is attached to this proxy statement/prospectus as *Annex B* and is incorporated herein by reference; and

the tax sharing and indemnification agreement, a copy of which is attached to this proxy statement/prospectus as *Annex C* and is incorporated herein by reference.

You should read each of the transaction agreements annexed hereto carefully and in its entirety because this summary may not contain all of the information about these agreements that is important to you.

The master agreement contains representations and warranties as described below. This description of the representations and warranties has been included in this proxy statement/prospectus to provide investors with information regarding the terms of the master agreement. The assertions embodied in the representations and warranties are qualified by information in confidential disclosure letters that the parties have exchanged in connection with signing the master agreement. The disclosure letters contain information that modifies, qualifies and creates exceptions to the representations and warranties. Moreover, certain representations and warranties may not be complete or accurate as of a particular date because they are subject to a contractual standard of materiality that is different from those generally applicable to shareholders and/or were used for the purpose of allocating risk among the parties rather than establishing certain matters as facts. Finally, information concerning the subject matter of these representations or warranties may have changed since the date of the master agreement. Accordingly, you should not rely on the representations and warranties as characterizations of the actual state of facts at the time they were made or otherwise. Notwithstanding the foregoing, any specific facts that contradict the representations and warranties in the master agreement in any material respect have been disclosed in this proxy statement/prospectus.

**Structure of the Closing Transactions**

The master agreement provides for, among other things, (1) the internal restructuring of Host and Starwood and their respective subsidiaries, including the de-pairing of the paired shares of Starwood and Starwood Trust prior to the date of the REIT merger, (2) the REIT merger, (3) the acquisition by Host LP of the equity interests in SHC, (4) the SLT merger, (5) the acquisition by Host LP of selected domestic hotels in a separate purchase structured to facilitate like-kind exchange transactions for federal income tax purposes and (6) the acquisition by Host LP of certain foreign hotels and other assets not owned by Starwood Trust, SHC or SLT Realty Limited Partnership through the acquisition of equity interests, assets or other rights. The transactions contemplated by the master agreement to occur at closing, including those described in clauses (2)-(6) above, are referred to throughout this proxy statement/prospectus as the closing transactions.

**Completion of the Closing Transactions**

The completion of the closing transactions, or the closing, will take place on a Monday to be mutually agreed upon by Host and Starwood within two business days after the conditions to completion of the closing transactions are satisfied or waived. In the event Host and Starwood are unable to mutually agree upon such date, Host will, within four business days of the satisfaction or waiver of the closing conditions, deliver a closing notice to Starwood setting the closing for the first Monday that is at least three business days from the date of



## **Table of Contents**

Host's closing notice. The REIT merger will become effective upon the acceptance of the articles of merger for record by the State Department of Assessments and Taxation of Maryland. The SLT merger will become effective upon the acceptance of the certificate of merger for record by the Secretary of State of the State of Delaware.

Host and Starwood are working to complete the closing transactions as soon as practicable. However, because completion of the closing transactions is subject to governmental approvals and other conditions, Host and Starwood cannot predict the actual timing. See the section entitled "Conditions to Completion of the Closing Transactions" beginning on page 85.

## **Consideration**

### ***General***

The total consideration payable by Host in the closing transactions is expected to be approximately \$4.037 billion, consisting of approximately \$1.063 billion of cash, the assumption by Host of approximately \$704 million in indebtedness and approximately \$2.27 billion of Host common stock (representing 133,529,412 shares of Host common stock based on the exchange price of \$17.00 per share), in each case subject to adjustments described below under "Purchase Price Adjustments".

Of this total consideration, Starwood and its subsidiaries will directly receive amounts not payable in respect of Starwood Trust's Class B shares or Class A Exchangeable Preferred Shares, in the REIT merger, or SLT Realty Limited Partnership's RP units or Class A RP units, in the SLT merger. For a detailed description of the REIT merger consideration and the SLT merger consideration, see the sections entitled "REIT Merger Consideration" and "SLT Merger Consideration" beginning on pages 81 and 84, respectively. As described in more detail below and in "The Transactions" Summary of the Transactions" beginning on page 46, based on Starwood's estimate that 217,546,651 Class B shares of Starwood Trust (which represents the number of unrestricted Class B shares outstanding as of September 30, 2005) will be outstanding at the effective time of the REIT merger and that the amount of the SLT merger consideration will be approximately \$12,801,426, Host management expects that all of the shares of Host common stock and \$122,510,189 of the cash included in the total consideration will be payable directly to holders of Starwood Trust's Class B shares and Class A Exchangeable Preferred Shares and holders of SLT Realty Limited Partnership's RP units and Class A RP units. Consequently, the total consideration payable to Starwood and its subsidiaries is expected to be approximately \$1,644,489,811, consisting of approximately \$940,489,811 in cash and the assumption of approximately \$704 million in indebtedness, subject to the adjustments described below under "Purchase Price Adjustments".

In addition, holders of Class A Exchangeable Preferred Shares of Starwood Trust will receive, in respect of each such share, an amount of cash in the REIT merger representing the value of a share of Starwood common stock, based on the average closing price of a paired share of Starwood and Starwood Trust for the 20 consecutive trading days immediately preceding the closing date (net of the value of consideration received by holders of Class B shares of Starwood Trust in the REIT merger). This cash amount will be in addition to the consideration described above and will be payable solely by Starwood.

See "Transfer Taxes and Transaction Costs" beginning on page 103 for a description of the allocation of certain expenses between Host and Starwood, including potential adjustments to that allocation arising from any shortfall in the projected aggregate amount of hotel EBITDA for 2005 for all hotels being acquired by Host.

*Purchase Price Adjustments*

The amount and form of consideration payable by Host in the closing transactions is subject to a number of potential adjustments.

---

**Table of Contents**

The amount of cash consideration payable by Host will be increased by (1) the amount of net working capital at closing, if positive, (2) any amount by which assumed indebtedness at closing is less than \$704 million, (3) the amount of any capital expenditures made by Starwood with respect to 2006 capital projects at the hotels being acquired by Host in excess of the sum of any unspent amount from the 2005 capital budget and 5% of 2006 revenues of such hotels and (4) with respect to each share of Host common stock issued in the closing transactions, any amount by which Host's quarterly dividend prior to closing exceeds \$0.15 per share. Except with respect to the cash payment due to excess dividends, described in clause (4) (which will be payable to holders of Starwood Trust's Class A shares, Class B shares and Class A Exchangeable Preferred Shares), all increases in the cash consideration will be payable to Starwood and its subsidiaries.

The amount of cash consideration payable by Host will be decreased by (1) any amount by which the assumed indebtedness at closing exceeds \$704 million, (2) the amount of any uninsured cost to repair any casualty (except to the extent the total cost of repair exceeds the agreed value of the applicable hotel), (3) any amount by which the sum of any unspent amount from the 2005 capital budget and 5% of 2006 revenues of the hotels being acquired by Host exceeds the amount of capital expenditures made by Starwood with respect to 2006 capital projects at such hotels, (4) the amount of net working capital at closing, if negative and (5) the agreed value of any hotels that are removed from the closing transactions as described in more detail under "Other Agreements Relating to the Period Prior to Closing - Deferral of Hotels" beginning on page 97. All decreases in the cash consideration described above will reduce the amount payable to Starwood and its subsidiaries.

In addition, in the event the number of shares of Host common stock payable in the closing transactions exceeds 133,529,412, which could occur if the number of Class B shares of Starwood Trust outstanding at closing exceeds Starwood's estimate, the cash consideration payable to Starwood and its subsidiaries will be reduced by \$17.00 for each excess share. Unless Host consents otherwise, Starwood is required to ensure that the number of shares of Host common stock issued in the closing transactions does not exceed 145,294,118 shares, or \$2.47 billion based on the exchange price of \$17.00 per share.

***REIT Merger Consideration***

At the effective time and as a result of the REIT merger, without any further action:

each Class B share of Starwood Trust outstanding immediately prior to the effective time of the REIT merger will be converted into and become exchangeable for 0.6122 shares of Host common stock and \$0.503 of cash from Host, plus 61.22% of any excess dividends paid on Host common stock described above under "Purchase Price Adjustments" beginning on page 80;

each Class A Exchangeable Preferred Share of Starwood Trust outstanding immediately prior to the effective time of the REIT merger will be converted into and become exchangeable for (1) from Host, 0.6122 shares of Host common stock and \$0.503 of cash, plus 61.22% of any excess dividends paid on Host common stock described above under "Purchase Price Adjustments" beginning on page 80 and (2) from Starwood, an amount of cash representing the value of a share of Starwood common stock, based on the average closing price of a paired share of Starwood and Starwood Trust for the 20 consecutive trading days immediately preceding the closing date (net of the value of consideration received by holders of Class B shares of Starwood Trust in the REIT merger);

the Class A shares of Starwood Trust outstanding immediately prior to the effective time of the REIT merger, all of which will be held by a direct, wholly owned subsidiary of Starwood, will be converted into and become exchangeable for, in the aggregate, (1) the amount of cash payable to Starwood and its subsidiaries allocated to the REIT merger and (2) in the event 133,529,412 exceeds the number of shares of Host common stock that are either issued to holders of Starwood Trust's Class B Shares and Class A Exchangeable Preferred Shares in the REIT merger or issued to Starwood and allocated to other closing transactions, such excess number of shares of Host common stock, plus 61.22% of any excess dividends paid on Host common stock described above under "Purchase Price Adjustments"



## **Table of Contents**

beginning on page 80; in each case stock and cash consideration payable to Starwood and its subsidiaries will be allocated among the closing transactions based upon, among other things, the relative value, as of the closing, of the hotels being acquired by Host which are held by Starwood Trust and the other hotels being acquired by Host;

each share of Starwood Trust held by (1) Host or any wholly owned subsidiary of Host or (2) Starwood Trust or any wholly owned subsidiary of Starwood Trust (except, in each case, for shares of Starwood Trust held on behalf of third parties) immediately prior to the effective time of the REIT merger will be automatically cancelled and extinguished, and none of Host, Starwood Trust or any of their respective wholly owned subsidiaries will receive any securities of Host or Starwood or other consideration in exchange for those shares; and

each outstanding membership interest of the REIT merger subsidiary will be automatically converted into and exchanged for one validly issued, fully paid and non-assessable Class A share of Starwood Trust, and these shares will, collectively, represent all of the outstanding shares of Starwood Trust.

The exchange ratio in the REIT merger and the cash consideration will be appropriately adjusted to reflect the effect of any reclassification, recapitalization, stock split, split-up, combination or exchange of shares, or stock dividend or other like change with respect to Host common stock, Starwood common stock or Starwood Trust shares having a record date on or after November 14, 2005 and prior to completion of the REIT merger.

### *Fractional Shares*

Host will not issue fractional shares of Host common stock in the REIT merger. As a result, each holder of shares of Starwood Trust who would otherwise be entitled to receive fractional shares of Host common stock in the REIT merger will be entitled to an amount of cash, without interest, rounded to the nearest cent, equal to the product of (1) the amount of the fractional share interest in a share of Host common stock to which that shareholder would otherwise be entitled to receive and (2) an amount equal to the average of the closing price of a share of Host common stock on the NYSE for the 20 consecutive trading days immediately preceding the closing date.

### *Appraisal Rights*

Except for the sole holder of the Class A shares of Starwood Trust, which waived its rights, no holder of shares of Starwood Trust is entitled under applicable law or the organizational documents of Starwood Trust to appraisal, dissenters' or similar rights as a result of the REIT merger.

### *Exchange of Certificates*

Host and Starwood will use commercially reasonable efforts to cause American Stock Transfer & Trust Company, the exchange agent for the REIT merger, no later than the fifth business day after the closing date of the transactions, to mail a letter of transmittal to each holder of certificates previously representing issued and outstanding Class A Exchangeable Preferred Shares of Starwood Trust or paired shares of Starwood and Starwood Trust. The letter of transmittal will contain instructions with respect to the surrender of such certificates in exchange for the applicable REIT merger consideration and a new certificate representing the number of shares of Starwood common stock equal to the number of shares of Starwood common stock represented by such certificate prior to the effective time of the REIT merger, together with any dividends and other distributions to which such holder is entitled and cash, if any, payable in lieu of fractional shares.

Commencing immediately after the effective time of the REIT merger, if a holder of certificates that previously represented issued and outstanding Class A Exchangeable Preferred Shares of Starwood Trust or paired shares of Starwood and Starwood Trust surrenders such certificates for cancellation in accordance with the instructions in the letter of transmittal, together with a properly completed and signed letter of transmittal, to the exchange agent, the holder of those certificates will receive the applicable REIT merger consideration and a new certificate representing the number of shares of Starwood common stock equal to the number of shares of

## **Table of Contents**

Starwood common stock represented by such certificate prior to the effective time of the REIT merger, together with any dividends and other distributions to which such holder is entitled and cash, if any, payable in lieu of fractional shares. The surrendered certificates will be cancelled.

After the effective time of the REIT merger, each certificate that previously represented Class A Exchangeable Preferred Shares of Starwood Trust or paired shares of Starwood and Starwood Trust will represent only the right to receive upon surrender of that certificate the applicable REIT merger consideration and, with respect to the paired shares of Starwood and Starwood Trust, a new certificate representing the number of shares of Starwood common stock equal to the number of shares of Starwood common stock represented by such certificate prior to the effective time of the REIT merger, together with any dividends and other distributions to which such holder is entitled and cash, if any, payable in lieu of fractional shares.

Starwood Trust's share transfer books will be closed at the effective time of the REIT merger and, thereafter, there will be no further registration of transfers on the share transfer books nor will there be any further issuances of shares of Starwood Trust.

### *Dividends and Distributions*

A holder of certificates that previously represented Class A Exchangeable Preferred Shares of Starwood Trust or paired shares of Starwood and Starwood Trust will receive any accumulated dividends and other distributions, without interest, payable on Host common stock or Starwood common stock, as applicable, after and with respect to a record date following the effective time of the REIT merger upon such holder surrendering those certificates to the exchange agent.

### *Lost Certificates*

If any certificate that previously represented Class A Exchangeable Preferred Shares of Starwood Trust or paired shares of Starwood and Starwood Trust is lost, stolen or destroyed, the holder thereof must make an affidavit of that fact to the exchange agent in order to receive the applicable REIT merger consideration and a new certificate representing the number of shares of Starwood common stock equal to the number of shares of Starwood common stock represented by such certificate prior to the effective time of the REIT merger, together with any dividends and other distributions to which the holder of such certificate is entitled and cash, if any, payable in lieu of fractional shares, in respect of such lost, stolen or destroyed certificate. In addition, Host, Starwood or the exchange agent may require the holder of such certificate to post a bond as indemnity against any claim that may be made against any of them with respect to the lost, stolen, or destroyed certificate.

### *Tax Withholding*

The exchange agent will deduct and withhold from the consideration otherwise payable to a holder of certificates that previously represented Class A Exchangeable Preferred Shares of Starwood Trust or paired shares of Starwood and Starwood Trust such amounts as are required to be deducted and withheld under the Code or under any provision of tax law.

### *Termination of Exchange Fund; No Liability*

On the first anniversary of the effective time of the REIT merger, the exchange agent will, upon Starwood's request, deliver to Starwood any portion of (1) the cash payable by Starwood to holders of Class A Exchangeable Preferred Shares of Starwood Trust in the REIT merger and (2) the shares of Starwood common stock (and certain dividends and other distributions thereon) that remain undistributed to the former holders of Starwood Trust shares. In addition, on that date, the exchange agent will, upon Host's request, deliver to Host any other portion of the REIT merger consideration (and certain dividends or other distributions thereon) that remains undistributed to the former holders of Starwood Trust shares. After that date, any former holders of Starwood



## **Table of Contents**

Trust shares who have not already exchanged their certificates for the applicable REIT merger consideration and new certificates representing the number of shares of Starwood common stock equal to the number of shares of Starwood common stock represented by such certificates prior to the effective time of the REIT merger, together with any dividends and other distributions to which the holders of such certificates are entitled and cash, if any, payable in lieu of fractional shares, will have no recourse against the exchange agent and will look only to (1) Starwood for (A) if applicable, the cash payable by Starwood to holders of Class A Exchangeable Preferred Shares of Starwood Trust in the REIT merger and (B) the shares of Starwood common stock and (2) Host for the other applicable REIT merger consideration (in each case, including dividends and other distributions thereon), to which they are entitled. None of Host, Starwood, Starwood Trust or the exchange agent will be liable to any person in respect of any of the REIT merger consideration, shares of Starwood common stock, cash payable in lieu of fractional shares or dividends or other distributions delivered to a public official pursuant to any applicable abandoned property, escheat or similar laws.

### *Transfers of Ownership*

The exchange agent will only issue REIT merger consideration, shares of Starwood common stock, cash in lieu of fractional shares and any dividends or other distributions that may be applicable in a name other than the name in which a surrendered certificate that previously represented Class A Exchangeable Preferred Shares of Starwood Trust or paired shares of Starwood and Starwood Trust is registered if the certificate is properly endorsed or otherwise in proper form for transfer and any applicable stock transfer taxes have been paid.

### *Equity Awards*

Prior to the effective time of the REIT merger, Starwood will cause all options, rights to receive restricted shares and other equity awards with respect to shares in Starwood Trust to be converted into rights to receive Starwood common stock only. In addition, immediately prior to the effective time of the REIT merger, each Class B share of Starwood Trust subject to vesting and/or transfer restrictions will be converted into an award with respect to Starwood common stock only, in accordance with the applicable equity plan and/or the terms of the award agreement evidencing such restricted stock.

### ***SLT Merger Consideration***

At the effective time of the SLT merger, without any further action:

each RP unit of SLT Realty Limited Partnership outstanding immediately prior to the effective time of the SLT merger will be converted into and become exchangeable for a cash amount representing the value of all consideration paid with respect to a Class B share of Starwood Trust in the REIT merger, calculated by adding (1) 61.22% of the sum of (A) the average closing price of a share of Host common stock for the 20 consecutive trading days immediately preceding the date on which the closing date is determined and (B) any excess dividends paid on Host common stock described above under Purchase Price Adjustments beginning on page 80 and (2) \$0.503;

each Class A RP unit of SLT Realty Limited Partnership outstanding immediately prior to the effective time of the SLT merger, if the holders of such Class A RP units consent to the SLT merger, will be converted into and become exchangeable for a cash amount determined by Starwood prior to closing, based in part on the value of the paired share of Starwood and Starwood Trust into which each such Class A RP unit would be convertible;

## Edgar Filing: HOST MARRIOTT CORP/ - Form S-4/A

each unit of SLT Realty Limited Partnership held by Host or any wholly owned subsidiary of Host other than the surviving entity in the REIT merger or any wholly owned subsidiary of such entity (except, in each case, for units of SLT Realty Limited Partnership held on behalf of third parties) immediately prior to the effective time of the SLT merger will be automatically cancelled and extinguished without any payment and will cease to exist;

## **Table of Contents**

the percentage interest held by the surviving entity in the REIT merger in its capacity as general partner of SLT Realty Limited Partnership will not be amended or modified in any respect by virtue of the SLT merger;

each outstanding limited partnership interest of the SLT merger subsidiary will be automatically converted into and exchanged for that number of RP units of SLT Realty Limited Partnership equal to the number of units of SLT Realty Limited Partnership outstanding immediately prior to the effective time of the SLT merger that are converted into cash in the SLT merger; and

the general partnership interest of the SLT merger subsidiary will be automatically cancelled and extinguished without any payment and will cease to exist.

In the event holders of a majority of Class A RP units of SLT Realty Limited Partnership do not approve the SLT merger, the Class A RP units of SLT Realty Limited Partnership will remain outstanding. Each such Class A RP unit, if any, that remains outstanding will be exchangeable, at the election of each holder thereof, into 0.6122 shares of Host common stock and one share of Starwood common stock. In such event, Starwood will retain other liabilities and obligations with respect to such Class A RP units, including the exchange of such Class A RP units into shares of Starwood common stock, an amount equal to the sum, in cash, of the fair market value of all operating and liquidating distributions by SLC Operating Limited Partnership and an amount equal to the cash amount paid by Host to a Class B shareholder in the REIT merger.

### *Appraisal Rights*

No holder of units of SLT Realty Limited Partnership is entitled under applicable law or the organizational documents of SLT Realty Limited Partnership to appraisal, dissenters' or similar rights as a result of the SLT merger.

### *Procedures*

Host and Starwood will establish, prior to the closing, appropriate procedures, consistent with the procedures established for the exchange of certificates in the REIT merger, with respect to the SLT merger.

### *Other Closing Transactions*

In consideration of the closing transactions other than the REIT merger and the SLT merger, Host will pay Starwood and its subsidiaries the consideration not payable to holders of Starwood Trust's Class B shares or Class A Exchangeable Preferred Shares or holders of SLT Realty Limited Partnership's RP units or Class A RP units, allocated among the closing transactions based upon, among other things, the relative value, as of the closing, of the hotels being acquired by Host which are held by Starwood Trust and the other hotels being acquired by Host.

### **Conditions to Completion of the Closing Transactions**

*Conditions to Each Party's Obligations to Effect the Closing Transactions*

The obligations of Host and Starwood to consummate the closing transactions are subject to the satisfaction or waiver, if legally permissible, of the following conditions:

Host common stockholders must have approved the issuance of Host common stock in the closing transactions;

antitrust requirements in Canada and Italy must have been satisfied (although, Host or Starwood generally may elect to complete the closing transactions other than those subject to this type of requirement in which case the parties would be obligated to subsequently close on the deferred hotels or entities, so long as the applicable antitrust approval was satisfied within ninety days of the initial closing);

shares of Host common stock to be issued in the closing transactions must be approved for listing on the NYSE, subject to official notice of issuance;

**Table of Contents**

Host's registration statement of which this proxy statement/prospectus is a part must be declared effective under the Securities Act and not be subject to any stop order or proceedings seeking a stop order;

the transactions contemplated by the master agreement must not be prohibited by law or subject to any temporary restraining order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction;

the articles of merger effecting the REIT merger must have been accepted for record by the State Department of Assessments and Taxation of Maryland;

the 20-trading day average closing price of a share of Host common stock must not be less than \$13.60 on the date on which the closing date is determined; and

there must not be any state of facts, change, development, effect, condition or occurrence that, individually or in the aggregate, has had or would reasonably be expected to have a material adverse effect with respect to the business of Starwood currently contemplated to be acquired by Host in the case of conditions to Host's obligations or with respect to Host in the case of conditions to Starwood's obligations.

A material adverse effect, when used in reference to Host or the business of Starwood currently contemplated to be acquired by Host, means a material adverse effect on the business, assets, financial condition or results of operations of the applicable company or business, as the case may be, taken as a whole. However, any state of facts, change, development, effect, condition or occurrence will not be deemed to have a material adverse effect if they arise out of or result primarily and directly from:

any change in the market price or trading volume of the publicly-traded stock of the applicable company (but not the underlying cause(s) of such change);

changes in the United States economy (or the economy of another country in which any hotel currently contemplated to be acquired by Host is located) generally which do not disproportionately affect the applicable company or business in any material respect;

the announcement and pendency of the transactions contemplated by the master agreement;

seasonal fluctuations in the applicable company or business; or

changes in GAAP or in law or regulation generally affecting the hotel and leisure industry, except in each case to the extent the applicable company or business is disproportionately affected in any material respect.

Notwithstanding the foregoing, no state of facts, change, development, effect, condition or occurrence will be disregarded when determining the existence a material adverse effect if it results from (i) the commencement or material worsening of a war or armed hostilities or other national or international calamity or (ii) any terrorist activities.

## **Table of Contents**

The following chart provides an outline of the required stockholder, landlord, lender and bondholder consents and regulatory approvals that must be obtained prior to closing. While the Host stockholder consent is a condition to closing for the entire transaction, the other consents relate to hotels or debt that could be excluded from the transactions. See **Material Terms of the Principal Transaction Agreements** **Other Agreements Relating to the Period Prior to Closing** **Deferral of Hotels** on page 97.

### **Host Stockholder Consent**

Host common stockholders must have approved the issuance of Host common stock in the closing transactions.

### **Landlord Consents**

The consent of the following landlords under the applicable ground leases must have been obtained in order to transfer to Host the applicable properties:

- The Corporation of the City of Hamilton (Sheraton Hamilton);
- The Corporation of the City of Toronto (Sheraton Centre Toronto)
- The San Diego Unified Port District (Sheraton San Diego Hotel & Marina);
- The Native Land Trust Board (Sheraton Fiji Resort and the Sheraton Royal Denarau Resort); and
- Secor Properties (The Westin South Coast Plaza).

### **Lender Consents**

The consent of the lenders under the following mortgage loans must have been obtained in order to transfer to Host the applicable properties:

- The Westin Indianapolis, Nomura Loan, 9.214%, due March 11, 2022;
- The Westin Tabor Center, Nomura Loan, 8.505%, due December 11, 2023; and
- Sheraton Fiji Resort and Sheraton Royal Denarau Resort, Westpac Loan, 4.300%, due December 31, 2009.\*

In addition, while not a closing condition under the master agreement, Host obtained the consent of its credit facility banks (identified on page 74) both in order to enter into the bridge loan facility and to provide the guarantee of SHC indebtedness necessary as part of the consent solicitation for this indebtedness.

### **Bondholder Consents**

As a condition to the following debentures remaining obligations of SHC following the closing, the consent of the holders of such debentures must have been obtained:

- SHC debentures, 7 3/8%, due November 15, 2015; and
- SHC debentures, 7 3/8%, due November 15, 2025.

### **Regulatory Approvals**

The following regulatory approvals must be obtained in order to transfer to Host the applicable properties:

#### *Canada:*

- An advance ruling certificate issued by the Commissioner of Competition or her designee under Section 102 of the Competition Act (Canada);\*\* and
- An advance income tax ruling from the Canada Revenue Agency.

#### *Fiji:*

- A foreign investment registration certificate from the Fiji Islands Trade and Investment Bureau;
- Reserve Bank of Fiji approval; and
- Fiji Island Reserve and Customs Authority approval.

#### *Italy:*

- The sale of the capital stock of the entity owning The Westin Europa & Regina may trigger the applicability of the right of first refusal of the state due to recent case law and as such, the sale could be subject to two 60-day right of first refusal periods by the Italian Ministry of Cultural Heritage; and
- Notification to the Italia Competition Authority (Autorita Garante della Concorrenza e del Mercato) under the Italian Law on Competition No. 287 of 10 October 1990.

#### *Spain:*

- The sale of The Westin Palace, Madrid, a Luxury Collection Hotel, may trigger the first refusal right and repurchase right of the Regional Education and Sports Ministry of the Autonomous Community of Madrid and the Town Council of Madrid and, as such, the sale could be subject to a 60-day waiting period.

---

\* Consent previously obtained by Starwood.

\*\* Consent previously obtained by Host.

---

**Table of Contents**

***Additional Conditions to the Obligations of Host to Effect the Closing Transactions***

The obligations of Host to consummate the closing transactions are subject to the satisfaction or waiver, if legally permissible, of the following additional conditions:

the representations and warranties of Starwood and Starwood Trust, disregarding all qualifications and exceptions relating to materiality, material adverse effect, material impairment or specified numerical threshold, must be true and correct as of November 14, 2005 and as of closing (except to the extent that the representations and warranties speak as of another date, in which case such representations and warranties must be true and correct as of such other date), except where the failure of the representations and warranties to be true and correct would not, individually or in the aggregate, reasonably be expected to have a material adverse effect or result in a material default by Starwood under any of the operating agreements, license agreements or sublease agreements to be entered into with Host at closing; *provided, however*, that the representations and warranties of Starwood relating to due organization, power, authority, certain line items of financial statements and exemption from anti-takeover statutes must be true and correct in all material respects as of November 14, 2005 and as of closing (except to the extent that the representations and warranties speak as of another date, in which case such representations and warranties must be true and correct as of such other date);

Starwood must have performed in all material respects all obligations required to be performed by it under the master agreement;

Host must have received an opinion of Sidley Austin LLP that (1) certain private REIT subsidiaries of Starwood Trust were organized and have been operated in conformity with the requirements for qualification as a REIT under the Code and (2) SLT Realty Limited Partnership has been, and continues to be, treated for federal income tax purposes as a partnership;

hotels currently contemplated to be acquired by Host with respect to which any Host deferral trigger has occurred or Starwood has exercised its deferral rights, collectively, must not:

include any of the following hotels: Sheraton New York Hotel & Towers, W New York, W Seattle and Westin Grand, Washington D.C.;

include any two or more of the following hotels: Sheraton Boston Hotel, Westin Seattle, Westin Tabor Center and Westin Indianapolis; or

have an aggregate agreed value of more than \$1 billion (except for certain deferred foreign hotels);

See Other Agreements Relating to the Period Prior to Closing Deferral of Hotels beginning on page 97 for a description of deferral triggers and deferral rights.

with respect to any Starwood asset not currently contemplated to be acquired by Host but that Host is required to hold on behalf of Starwood pursuant to the master agreement:

Host must have not made a good faith determination that holding such asset could reasonably be expected to cause a significant risk with respect to its REIT status under the Code; and



## Edgar Filing: HOST MARRIOTT CORP/ - Form S-4/A

the transfer of such asset to a taxable REIT subsidiary of Host, and the holding of such asset by such taxable REIT subsidiary, must not require a consent or approval that has not been obtained and would not reasonably be expected to cause a REIT status failure under the Code;

Host must have received a study prepared for Starwood by Deloitte & Touche LLP, PricewaterhouseCoopers LLP or Ernst & Young LLP to the effect that, immediately after the consummation of the closing transactions, (1) no entity being acquired by Host that is domestic and is treated as a corporation for federal income tax purposes will have any C corporation earnings and profits and (2) the aggregate amount of C corporation earnings and profits of the entities being

**Table of Contents**

acquired by Host that are foreign and are treated as corporations for federal income tax purposes will not exceed \$50 million;

Host's internal restructuring prior to closing must have been completed and there must not exist any material consents for certain of Host's post-closing internal restructuring transactions to be completed;

there must not have occurred (or be or have been any state of facts, change, development, effect, condition or occurrence that, individually or in the aggregate, would reasonably be expected to result in) a Trust Assumption Event (as such term is defined in Section 11.21(b) of the indenture for Starwood's outstanding convertible bonds), which would result in Starwood Trust assuming obligations under such indenture

certain financial statements and certificates required to be delivered by Starwood must have been delivered;

Starwood's internal restructuring must have satisfied certain parameters generally designed to maintain certain of Host's intended tax positions with respect to the hotels being acquired by Host;

all lenders and other third parties relating to the assumption of certain specified indebtedness by Host must have provided consents and other approvals required as a result of the closing transactions; and

there must not be or have been any state of facts, change, development, effect, condition or occurrence that, individually or in the aggregate, with notice or the passage of time or both, would reasonably be expected to result in a material default by Starwood under any of the operating agreements, license agreements or sublease agreements to be entered into with Host at closing.

***Additional Conditions to the Obligations of Starwood to Effect the Closing Transactions***

The obligations of Starwood to consummate the closing transactions are subject to the satisfaction or waiver, if legally permissible, of the following additional conditions:

the representations and warranties of Host, disregarding all qualifications and exceptions relating to materiality, material adverse effect or specified numerical threshold, must be true and correct as of November 14, 2005 and as of closing (except to the extent that the representations and warranties speak as of another date, in which case such representations and warranties must be true and correct as of such other date), except where the failure of the representations and warranties to be true and correct would not, individually or in the aggregate, reasonably be expected to have a material adverse effect or result in a material default by Host under any of the operating agreements, license agreements or sublease agreements to be entered into with Starwood at closing; *provided, however*, that the representations and warranties of Host relating to due organization, power and authority must be true and correct in all material respects as of November 14, 2005 and as of closing (except to the extent that the representations and warranties speak as of another date, in which case such representations and warranties must be true and correct as of such other date);

Host must have performed in all material respects all obligations required to be performed by it under the master agreement, and the receipt of a certificate of an executive officer of Host to that effect;

Starwood must have received an opinion of Hogan & Hartson LLP that (1) Host was organized and has operated in conformity with the requirements for qualification as a REIT under the Code and (2) after giving effect to the REIT merger, Host's proposed method of operation will enable it to continue to meet the requirements for qualification as a REIT under the Code;

## Edgar Filing: HOST MARRIOTT CORP/ - Form S-4/A

hotels or entities currently contemplated to be acquired by Host with respect to which any Starwood deferral trigger has occurred or Host has exercised its deferral rights, collectively, must not:

include SHC;

include any one of the following hotels: Sheraton New York Hotel & Towers, Sheraton Boston Hotel or Sheraton San Diego Hotel & Marina;

## **Table of Contents**

include any five or more of the following hotels: Capitol Hill Suites DC, San Cristobal Tower, Sheraton Braintree Hotel, Sheraton Hotel Parsippany, Sheraton Indianapolis Hotel & Suites, Sheraton Milwaukee Brookfield Hotel, Sheraton Needham Hotel, Sheraton Providence Airport Hotel, Sheraton Roma Hotel & Conference Centre, Sheraton Santiago Hotel & Convention Centre, Sheraton Skyline Hotel & Conference Center, Sheraton Stamford Hotel, Sheraton Suites Tampa Airport, Sheraton Tucson Hotel & Suites, Westin Cincinnati, Westin Indianapolis, Westin Los Angeles Airport, Westin Mission Hills Resort, Westin South Coast Plaza or Westin Tabor Center; or

have an aggregate agreed value of more than \$400 million of assets in Starwood Trust;

See Other Agreements Relating to the Period Prior to Closing Deferral of Hotels beginning on page 97 for a description of deferral triggers and deferral rights.

there must not have occurred any actual or proposed change in tax law or regulation with respect to consolidated tax return rules that would reasonably be expected to result in a material risk of Starwood incurring an economic cost of more than \$200 million that Starwood did not expect to bear from the transactions contemplated by the master agreement, which is referred to throughout this proxy statement/prospectus as a substantial tax detriment; and

there must not be or have been any state of facts, change, development, effect, condition or occurrence that, individually or in the aggregate, with notice or the passage of time or both, would reasonably be expected to result in a material default by Host under any of the operating agreements, license agreements or sublease agreements to be entered into with Starwood at closing.

Host and Starwood are diligently pursuing the required material governmental and regulatory consents, approvals, orders and authorizations required to complete the closing transactions. There are a number of conditions, however, that, by their nature, can only be satisfied in the future or at the time of completion of the REIT merger. There can be no assurance that these conditions will be satisfied, including: obtaining the requisite stockholder approval; the absence of court orders or injunctions prohibiting the closing transactions; the absence of events that have had or would reasonably be expected to have a material adverse effect; and the receipt of required material governmental and regulatory approvals. In the unlikely event that a condition is not fulfilled, the parties may, but would not be required to, waive the condition and complete the closing transactions if the necessary stockholder approval has been obtained and the law allows the parties to do so.

## **Representations and Warranties**

The master agreement contains customary representations and warranties of each of Host and Starwood as to itself and its subsidiaries, which are subject to qualifications in many respects for materiality including material adverse effect and knowledge. The representations and warranties contained in the master agreement relate to, among other things:

due organization, valid existence, good standing, qualification to do business and requisite power;

ownership of subsidiaries;

capital structure and payment of dividends;

Edgar Filing: HOST MARRIOTT CORP/ - Form S-4/A

authorization to enter into the transaction agreements and to consummate the closing transactions;

validity and enforceability of the transaction agreements;

absence of any conflict with, violation of or default under organizational documents, debt instruments, permits or material agreements as a result of entering into the master agreement and consummating the closing transactions;

absence of any governmental or third party consent, approval, order or authorization necessary to consummate the closing transactions;

**Table of Contents**

compliance with the rules and regulations of the SEC and its reporting requirements, including the Sarbanes-Oxley Act of 2002;

accurate and compliant filings with the SEC and financial statements;

absence of certain changes and events since December 31, 2004;

absence of material pending or threatened litigation and outstanding or threatened governmental orders;

absence of violations or liabilities under environmental laws;

tax matters, including qualification as a REIT;

broker s and finder s fees;

possession of all permits and regulatory approvals and compliance with applicable laws;

validity and absence of violations of or defaults under material contracts;

various insurance matters;

required stockholder approval for the closing transactions;

information supplied for inclusion in this proxy statement/prospectus;

with respect to Host only, ownership and activities of the merger subsidiaries; and

with respect to Starwood only,

various matters relating to owned and leased real property,

certain related party transactions,

appropriate funding of pension and employee benefit plans and compliance with applicable regulations,

labor and other employment matters,

ownership and validity of intellectual property rights,

guarantees and letters of credit,

title to personal property and sufficiency of assets, and

inapplicability of anti-takeover statutes.

***Survival of Representations and Warranties***

Except as specified below, the representations and warranties are of no further force or effect after the closing.

Starwood's representations and warranties regarding title to personal property and sufficiency of assets survive six months following the closing, as do all representations and warranties (other than representations regarding title to real property and taxes) with respect to breaches of which, at closing, (1) Starwood's Chief Financial Officer, General Counsel, Treasurer or President of the Real Estate Group had actual knowledge and (2) Host's Chief Financial Officer, General Counsel and Executive Vice President of Acquisitions and Development did not have actual knowledge.

Starwood's and Host's representations and warranties regarding due organization, power, authority and required stockholder approvals survive six years following the closing.

Starwood's and Host's representations and warranties regarding capitalization and broker's fees survive indefinitely.

## **Table of Contents**

### **Covenants Regarding the Conduct of Business Prior to the Closing**

#### ***General Restrictions on Activities***

Host and Starwood have agreed to restrictions on their respective activities until the earlier of the closing or the termination of the master agreement, except as specifically permitted by the master agreement or, in certain cases, as required by the SEC, applicable law or GAAP, as applicable. In general, each of Host and Starwood is required to (and, in the case of Starwood, the following apply only to the business, hotels, assets and entities to be acquired by Host):

use its commercially reasonable efforts to preserve intact its business organizations and goodwill as a whole as in effect on December 31, 2004;

not change in any material manner any of its methods, principles or practices of accounting;

duly and timely file all material reports, tax returns and other documents required to be filed with governmental authorities;

not amend its organizational documents, except (1) with respect to Host, to the extent necessary to authorize or designate additional shares or classes of capital stock or other equity interests or reflect the admission of additional limited partners (2) with respect to each of Host and Starwood, to the extent necessary to reflect certain transactions that can be made without a vote of limited partners;

not (1) acquire or agree to acquire (by merger, consolidation, acquisition of stock or assets or otherwise) any corporation, partnership or other business organization or any division thereof or any equity interest therein or asset thereof or enter into any other business combination or (2) sell or otherwise dispose of any material portion of its business if (in the case of clause (1) or (2)), such acquisition, combination, sale or other disposition is reasonably likely to prevent or delay, in any material respect, the consummation of the closing transactions; and

not enter into any contract or otherwise agree to do any of the foregoing actions.

#### ***Additional Restrictions on Host's Activities***

In addition, Host has agreed that, prior to closing (and, with respect to the restrictions on issuances of equity interests in Host or Host LP, until the 60th day after closing), unless otherwise approved by Starwood, which consent will not be unreasonably withheld, conditioned or delayed, or as permitted by the master agreement, it will not:

enter into any reorganization;

except in connection with the use of Host common stock to pay the exercise price or tax withholding in connection with equity-based employee benefit plans by the participants therein, (1) authorize, declare or pay any dividend or make any other distribution or



## Edgar Filing: HOST MARRIOTT CORP/ - Form S-4/A

payment with respect to Host common stock or Host LP units or (2) make any change in the number of issued and outstanding shares of capital stock, membership interests or units of partnership interest or any option, warrant or right to acquire, or security convertible into, shares of capital stock, membership interests, or units of partnership interest of Host or Host LP, except for:

redemptions of Host common stock required to preserve its REIT status under the Code;

declarations or payments of a dividend or other distribution (or an increase in such dividend or distribution) by Host or Host LP (1) reasonably believed by it to be necessary to maintain its REIT status under the Code, avoid the incurrence of certain taxes or avoid the need to make one or more extraordinary or disproportionately larger dividends or distributions to meet any of the preceding objectives, (2) except for any special or extraordinary dividend, any quarterly

**Table of Contents**

dividends contemplated by Host's current dividend policy or (3) with respect to Host preferred stock, at their respective stated dividend or distribution rates;

redemptions of Host LP units, whether or not outstanding on November 14, 2005, under the organizational documents of Host LP in which shares of Host common stock are utilized;

redemptions, exchanges or conversions of interests in Host or any of its subsidiaries in accordance with the terms of those interests that were in effect as of November 14, 2005 (or, in the case of interests issued after November 14, 2005, as of such later date);

issuances of Host common stock or rights to acquire Host common stock (1) to employees, officers or directors pursuant to benefit or compensation plans or (2) to any third party in consideration for the sale by such third party of any assets to Host so long as (in the case of clause (2)) such common stock will be subject to a lock-up for at least sixty days after the closing;

issuances of Host LP units subject to a lock-up for at least sixty days after the closing;

issuances of shares of Host preferred stock or other preferred securities that are not convertible into Host common stock prior to the sixtieth day after the closing; and

enter into any contract or otherwise agree to do any of the foregoing actions.

***Additional Restrictions on Starwood's Activities***

In addition, Starwood has agreed that, prior to closing, unless otherwise approved by Host, which consent will not be unreasonably withheld, conditioned or delayed, or as permitted by the master agreement, it will:

conduct the operations (including with respect to maintenance and repairs) of each hotel being acquired by Host, and the business of each entity being acquired by Host, in the ordinary course of business consistent with past practice;

promptly notify Host of the occurrence of any loss, breakage or damage to a hotel being acquired by Host in excess of \$1 million (irrespective of any insurance or third party proceeds which have been or may be received);

provide Host with (1) copies of all material notices and reports regarding the hotels being acquired by Host (including financial reports, capital expenditure reports and any material notices or reports received from any third party (or any affiliate of Starwood that is a hotel manager) with respect to any such hotel) and (2) as reasonably requested by Host, copies of all reports with respect to all bookings for the use and occupancy of the guest rooms and the meeting, restaurant and banquet facilities of each such hotel;

deliver to Host, as soon as reasonably practicable following receipt of such information, preliminary monthly operating results for each of the hotels being acquired by Host and use commercially reasonable efforts to deliver, within 20 days after month end, reasonably detailed monthly operating reports that reflect the operational results of each such hotel;

## Edgar Filing: HOST MARRIOTT CORP/ - Form S-4/A

use commercially reasonable efforts to pursue the completion of capital expenditure projects in accordance with the Starwood capital budget and not undertake any capital expenditures not in accordance therewith unless such expenditures are related to life safety, compliance with laws or maintenance and repair in the ordinary course of business consistent with past practice, are substantially completed prior to closing or would be permitted to be undertaken without Host's consent under the operating agreements or sublease agreements to be entered into with Host at closing;

with respect to the business being acquired by Host, maintain in full force and effect insurance coverage substantially similar to insurance coverage maintained on November 14, 2005 (except in the case of a material increase in premium levels since November 14, 2005, in which case insurance coverage is to be maintained to the extent it is maintained at similar hotels owned by Starwood), and pay all insurance premiums as and when they become due;

**Table of Contents**

with respect to any entity being acquired by Host, not make or rescind any express or deemed material tax election that (1) materially adversely affects such entity's tax liabilities in taxable years following the closing as a result of a reduction in the tax basis of an asset or a change in depreciation or (2) could reasonably be expected to cause a significant risk that Starwood Trust or private REIT subsidiaries of Starwood Trust, or, after the closing, SHC, Host or certain Host affiliates that are REITs would fail to qualify as a REIT under the Code;

except with respect to indebtedness with respect to which all liabilities that are fully discharged at or prior to closing or that does not constitute certain specified indebtedness to be assumed by Host at closing, not, with respect to an entity being acquired by Host, (1) incur, or enter into any commitment to incur, indebtedness other than certain specified indebtedness to be assumed by Host at closing or (2) modify, amend or terminate, or enter into any commitment to modify, amend or terminate, any indebtedness;

not make any change in the number of issued and outstanding shares of beneficial interest, capital stock, membership interests, units of limited partnership interest or other interests (other than (1) the issuance or repurchase of paired shares of Starwood and Starwood Trust or securities convertible or exchangeable therefor or (2) the redemption of Class B Exchangeable Preferred Shares of Starwood Trust for cash in accordance with the master agreement) of any entity being acquired by Host other than the redemption or cancellation of interests in such entities pursuant to Starwood's internal restructuring plan;

notwithstanding the foregoing restriction, Starwood is free to issue or repurchase paired shares of Starwood and Starwood Trust so long as it complies with its obligation under the master agreement to limit the number of outstanding Class B shares of Starwood Trust immediately prior to closing so that not more than \$2.47 billion of Host common stock (\$200 million of which would offset cash consideration), based on a \$17.00 per share value, would be issuable in the closing transactions.

not sell, lease, mortgage, subject to encumbrance (other than permitted title exceptions) or otherwise dispose of any of the entities or assets being acquired by Host, except for disposals of inventories, consumables and FF&E in the ordinary course of business consistent with past practice;

with respect to the business being acquired by Host or any equity holder claims arising out of the closing transactions, not pay, discharge, settle or satisfy any claims or liabilities other than the payment, discharge, settlement or satisfaction (1) in the ordinary course of business consistent with past practice, (2) in full of claims or liabilities which involve an amount no greater than \$150,000 (or \$1 million where such claims or liabilities relate to injury or damage to a hotel being acquired by Host and are covered by insurance) with respect to an individual claim or liability, or one or more related claims or liabilities, and do not impose any material liability other than the payment of money, (3) with respect to equity holder claims, if, after such payment, discharge, settlement or satisfaction, such equity holder does not hold any interest in a entity being acquired by Host or (4) in accordance with their terms, of liabilities reflected or reserved against in the most recent quarterly consolidated financial statements (or the notes thereto) of Starwood furnished to Host prior to November 14, 2005;

with respect to an entity or hotel being acquired by Host, not guarantee the indebtedness of another person, enter into any keep well or other agreement to maintain any financial statement condition of another person or enter into any arrangement having the economic effect of any of the foregoing unless such guarantee or other arrangement terminates (with no surviving liability) at or prior to the closing;

not enter into any commitment between any entity being acquired by Host or, with respect to the business being acquired by Host, any seller, on the one hand, and any officer or director of Starwood or any of its retained subsidiaries, on the other hand, unless such commitment relates to a change in compensation or benefits of an officer or director employed in connection with the business being acquired by Host located outside of the United States;

except in the ordinary course of business consistent with past practice or as would be permitted without Host's consent after the closing, not (1) materially increase any aggregate compensation and benefits



## **Table of Contents**

payable to employees of the business being acquired by Host, (2) adopt or become liable for any employee plan that would materially increase the liability of any entity being acquired by Host or, with respect to the business being acquired by Host, any seller, (3) enter into or renegotiate any collective bargaining agreement with respect to employees of the business being acquired by Host or (4) incur any withdrawal liability under any multiemployer plan that could result in a liability to Host with respect to such business;

not materially amend, terminate or waive compliance with the terms of or breaches under, any ground lease or material contract unless, except in the case of any ground lease, such amendment or waiver would not reasonably be expected to result in a material increase in any liability to be assumed by Host at the closing or otherwise adversely affect the business or any entity being acquired by Host in any material respect, or enter into a new ground lease or material contract unless, except in the case of any ground lease, it is terminable by Host after the closing without any penalty, premium, termination payment or other liabilities upon not more than ninety days notice; provided that Starwood is generally not restricted with respect to its national or regional operating agreements;

with respect to any entity being acquired by Host, not settle or compromise without notifying and obtaining input from Host, any material tax liability to the extent such settlement or compromise would reasonably be expected to materially reduce the tax basis of Host in an asset being acquired;

not take any action, or omit to take any action reasonably requested by Host, that could reasonably be expected to cause a significant risk that Starwood Trust or private REIT subsidiaries of Starwood Trust, or, after closing, SHC, Host or certain Host affiliates would fail to qualify as a REIT under the Code;

not (1) approve any operating plan for calendar year 2006 or (2) hire any general manager of a hotel being acquired by Host without affording to Host the review, consultation and consent rights which Host would have after the closing;

provide Host with notice of any allegation of any violation of Starwood's Code of Conduct and Business Ethics that Starwood's Global Compliance Group receives for investigation with respect to the business being acquired by Host; and

not enter into any contract or otherwise agree to do any of the foregoing actions.

## **No Solicitation**

Each of Starwood and Starwood Trust has agreed that neither it nor any of its subsidiaries will authorize or permit, directly or indirectly, any officer, director, trustee, employee, agent, investment banker, financial advisor, attorney, accountant, broker, consultant or other agent or representative to:

invite, initiate, solicit or encourage the making or submission of any takeover proposal or related inquires;

engage in any discussions or negotiations with or provide any confidential or non-public information to, or afford access to properties, books or records to, any third party relating to, or that may reasonably be expected to lead to, a takeover proposal;

enter into any agreement relating to a takeover proposal or the abandonment, termination or other failure to consummate the closing transactions;

propose publicly to agree to do any of the foregoing; or

otherwise facilitate any effort or attempt to make or implement a takeover proposal.

Each of Starwood and Starwood Trust may, however, before February 12, 2006, in response to an unsolicited *bona fide* written takeover proposal that Starwood's board of directors or Starwood Trust's board of trustees, as applicable, determines in good faith is reasonably likely to result in a superior proposal, furnish

## **Table of Contents**

information with respect to Starwood (including with respect to the entities, assets and business currently contemplated to be acquired by Host) to the third party making such takeover proposal and its representatives pursuant to a customary confidentiality agreement, which agreement is not materially less restrictive of such third party than the confidentiality agreement entered into by Starwood with Host, and participate in discussions or negotiations with such third party and its representatives regarding any takeover proposal. The master agreement also provides that Starwood may respond to a third-party tender offer as required by the federal securities laws.

A takeover proposal means any inquiry, proposal or offer with respect to any transaction or series of transactions, other than the closing transactions, that would reasonably be expected to result, directly or indirectly, in any:

merger, consolidation, business combination, reorganization, recapitalization, liquidation, dissolution or similar transaction involving any entity currently contemplated to be acquired by Host;

sale, acquisition, tender offer, exchange offer, offering, spin-off, share exchange or other transaction or series of related transactions that, if consummated, would result in the issuance of securities representing, or the sale, exchange or transfer of, 10% of more of the outstanding voting equity securities or other interests (measured by voting power or economic interest) of any entity currently contemplated to be acquired by Host; or

sale, lease, exchange, mortgage, license, pledge, transfer or other disposition of any of the assets or entities currently contemplated to be acquired by Host.

However, a takeover proposal will not include any inquiry, proposal or offer that relates to a merger, consolidation, share exchange or other similar business combination that relates solely to Starwood assets or entities not currently contemplated to be acquired by Host or Starwood's retained subsidiaries.

A superior proposal means any unsolicited *bona fide* written offer made by a third party to acquire, directly or indirectly, assets currently contemplated to be acquired by Host representing more than 42% of the aggregate agreed amount of all assets currently contemplated to be acquired by Host, on terms which a majority of Starwood's board of directors or a majority of Starwood Trust's board of trustees, as applicable, determines in good faith, after consultation with outside financial advisors, to be more favorable to the holders of Starwood common stock or Starwood Trust shares, as applicable, than the transactions contemplated by the master agreement (and any revised proposal made by Host), taking into account the likelihood of the consummation of such transaction and all legal, financial (including the financing terms of any such proposal), regulatory and other aspects of such proposal and any other relevant factors permitted under applicable law.

Starwood will as promptly as practicable (but in any event within 24 hours) notify Host, orally and in writing, if it (1) receives a takeover proposal or an amendment to a previously received takeover proposal or any request for confidential or non-public information relating to, or for access to any properties, books or records of, the business (or any portion of it) currently contemplated to be acquired by Host and (2) engages in any discussions or negotiations with, or provides confidential or non-public information relating to any portion of the business currently contemplated to be acquired by Host to, any third party with respect to a takeover proposal, including the identity of such third party. Starwood will keep Host reasonably informed as to the material terms of any takeover proposal, indication, request or expression and, if in writing, deliver to Host copies of any takeover proposal or material amendment or change to such takeover proposal.

## **Other Agreements Relating to the Period Prior to Closing**



*Host Stockholders Meeting*

Host is required to recommend that its stockholders approve the issuance of Host common stock in the closing transactions and may not withdraw, modify, amend or qualify, in any manner adverse to Starwood, such recommendation; *provided, however*, that Host is free to make accurate and complete public disclosure of factual

## **Table of Contents**

information regarding Host's or Starwood's respective businesses (and such disclosure is not deemed to be a change in Host's recommendation) so long as Host does not withdraw, modify, amend or qualify, in any manner adverse to Starwood, its recommendation and to the extent Host determines in good faith, on the basis of the advice of outside legal counsel, that this factual information is required to be disclosed under applicable law. Host is also required to include its recommendation in this proxy statement/prospectus and, unless the master agreement has been terminated, submit a proposal to approve the issuance of Host common stock in the closing transactions to its stockholders at the Host stockholders meeting for the purpose of obtaining the requisite stockholder approval.

## ***Stock Exchange Listing***

Host will use reasonable best efforts to cause the shares of Host common stock to be issued in the closing transactions to be approved for listing on the NYSE, subject to official notice of issuance, prior to the closing.

## ***Affiliates***

Starwood has agreed to deliver to Host a letter identifying all persons who may be, at the time of the Host stockholders meeting, affiliates of Starwood for purposes of Rule 145 under the Securities Act and to use its commercially reasonable efforts to cause each of those affiliates to enter into a written agreement not to offer, sell, or otherwise dispose of any of the shares of Host common stock issued to them in the REIT merger in violation of the Securities Act or the rules promulgated thereunder.

## ***Deferral of Hotels***

## ***General***

Host and Starwood have agreed that, in the circumstances described below, one or both of them may elect to defer or temporarily (or, ultimately, permanently) exclude from the closing transactions one or more hotels or entities currently contemplated to be acquired by Host in the closing transactions; provided that neither party will be required to close if the deferrals result in the failure of its applicable closing condition described above in the section entitled Conditions to Completion of the Closing Transactions beginning on page 85. Once a deferral election is made by either party, subject to the cure of the applicable deferral trigger or the basis for the deferral the applicable hotels and entities will be retained by Starwood at the initial closing, with a reduction in the cash portion of the purchase price generally equal to the sum of the amounts allocated to the applicable hotels in the master agreement.

Host and Starwood have agreed to cooperate to cure any deferral triggers prior to closing or after closing until the applicable deadline described below. If, after closing but prior to the applicable deadline, all deferral triggers with respect to any deferred hotel or entity are cured or waived, Host will acquire the applicable hotel or entity from Starwood for a cash amount equal to the amount by which the purchase price was reduced for such hotel or entity at the initial closing; provided that the amount will be subject to adjustments as described above in the section entitled Consideration Purchase Price Adjustments beginning on page 80. If deferral triggers are not cured or waived with respect to a hotel or entity prior to the applicable deadline, that hotel or entity will not be acquired by Host.

## Edgar Filing: HOST MARRIOTT CORP/ - Form S-4/A

For most hotels the applicable deadline for deferral triggers to be cured is 90 days after the initial closing, except as described below in Host s Deferral Rights with respect to certain deferrals of foreign hotels. If the parties disagree regarding whether a deferral trigger exists, such matter will be submitted to binding arbitration; provided that such disputed deferral trigger will be deemed to exist until such time, if ever, that the arbitrator determines, or the parties otherwise agree, that such disputed deferral trigger does not exist. In the event of such a disagreement, the applicable deadline with respect to the disputed hotels and entities will be extended until 30 business days after the resolution of the disagreement.

**Table of Contents**

*Host's Deferral Rights*

Host can defer any hotel or entity currently contemplated to be acquired by Host from the initial closing transactions without Starwood's consent upon the occurrence of any of the following "deferral triggers" related to such hotel or entity:

casualty at a hotel currently contemplated to be acquired by Host that results in cost of repair (without taking into account insurance) in excess of 25% of the value of such hotel;

condemnation of a hotel currently contemplated to be acquired by Host that results in an economic impact (without taking into account any condemnation award) in excess of 25% of the value of such hotel;

after the date of the Host special meeting, one or more of the following that results in an economic impact (without taking into account any indemnification or insurance) in excess of 25% of the value of a hotel or entity currently contemplated to be acquired by Host:

breach of any of the following Starwood representations if the economic effect of such breach exceeds \$500,000: absence of changes, litigation, real property (other than title), environmental matters, compliance with laws and certain types of material contracts;

breach of any of the following Starwood representations if the economic effect of such breach exceeds \$100,000: sufficiency of assets and title to personal property;

breach of any of the following Starwood representations: due organization, power, authorization, necessary governmental or third party consents, capitalization and title to real property; or

failure to obtain a required, but not previously identified, consent;

after the date of the Host special meeting, failure to obtain any consent identified prior to signing the master agreement, including any governmental approvals;

after the date of the Host special meeting, failure of Starwood to complete its restructuring in a manner that satisfies Host's restructuring conditions;

after the date of the Host special meeting, (1) required antitrust approvals are not obtained or (2) any temporary restraining order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction is issued or laws become effective that prevent the closing transactions or make them illegal;

after the date of the Host special meeting, the portion of the costs of certain lease structures attendant to the ownership of certain foreign hotels currently contemplated to be acquired by Host, including consents of works councils, and certain indemnification liabilities, in each case payable by Host, would reasonably be expected to exceed 10% of the EBITDA that would (but for such costs and liabilities) otherwise be received by Host with respect to such foreign hotels during the twelve months immediately following the closing. (In certain countries, the operating relationship between applicable affiliates of Host and Starwood may be reflected in lease structures in lieu of operating agreements, so as to comply with and conform to the legal framework in those countries consistent with

the tax framework under which Host does business in the United States. As a result of these lease structures, certain costs may be incurred by Starwood or its affiliates that would not otherwise be incurred under the more customary operating agreement format. An example of such incremental costs would be additional costs that might be incurred in relation to the consultations with and consents of the works councils, which represent the work force at the hotels, as may be required under the laws of such countries, necessitated by the lease structure, but which would not have been incurred under the operating agreement structure. Host has indemnified Starwood to the extent there are incremental costs resulting from or relating to the implementation of these lease structures.); or

## **Table of Contents**

if Host's closing conditions are satisfied on the overall closing transactions, but a required consent has not been obtained (or there is another deferral trigger) with respect to one of three primary European hotels (i.e., Westin Palace Madrid, Westin Palace Milan and the Westin Europa & Regina), Host can elect to defer all acquired hotels located outside of the United States, Canada and Poland; provided that the applicable deadline for cure of this deferral trigger will be October 17, 2006.

### *Starwood's Deferral Rights*

Starwood can defer any hotel or entity currently contemplated to be acquired by Host from the initial closing transactions without Host's consent upon the occurrence of any of the following deferral triggers related to such hotel or entity:

after the date of the Host special meeting, (1) required antitrust approvals are not obtained or (2) any temporary restraining order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction is issued or laws become effective that prevent the closing transactions or make them illegal;

after the date of the Host special meeting, failure to obtain any consent identified prior to signing the master agreement, including any governmental approvals; or

Starwood does not succeed in obtaining the desired ruling from the Canadian tax authorities with respect to certain Canadian restructuring transactions related to the sale of the Canadian hotels to Host.

If either of the hotels located in Fiji is subject to a deferral trigger, then the other hotel located in Fiji will be deemed to be subject to a deferral trigger.

### *Cooperation with Financing*

Starwood is required to reasonably cooperate with Host in connection with efforts to obtain financing undertaken by Host, including using commercially reasonable efforts to provide financial information, data and projections, answering questions in due diligence sessions, reviewing offering materials, and using commercially reasonable efforts to obtain auditors' comfort letters and consents to the inclusion of its audit reports in any of Host's SEC filings. In connection with this provision, Host and Starwood entered into a Financing Cooperation Indemnification Agreement, pursuant to which Host agreed generally to indemnify Starwood and its representatives against losses arising out of third party claims based on untrue or misleading information in Host's financing offering materials or other specified documents, or similar claims, except to the extent the untrue or misleading information was provided by Starwood for inclusion in the offering materials.

### *Standard of Efforts*

The master agreement contains additional covenants of Host and Starwood, including covenants to use (1) reasonable best efforts to obtain all necessary waivers, consents, approvals, permits and authorizations from governmental entities and third parties to complete the closing transactions and (2) commercially reasonable efforts to take all actions and to do all things, necessary, proper or appropriate to complete the closing transactions, including, among other things:

satisfying the conditions precedent to the obligations of the other party;

defending any lawsuits or legal proceedings that challenge the master agreement;

executing and delivering any additional documents, instruments and conveyances; and

Starwood cooperating with Host's efforts to obtain title policies with respect to the hotels being acquired by Host.

## **Table of Contents**

### ***Nonassignment Provisions***

#### *Excluded Assets*

The master agreement allows Starwood and Host to close over a failure by Starwood to obtain any required consent, approval or amendment, or remove a hotel or other asset not currently contemplated to be acquired by Host from the entities currently contemplated to be acquired by Host, so long as the retention of such excluded asset in an entity to be acquired by Host, or the income derived from such asset, or the transfer of such asset to a taxable REIT subsidiary of Host, would not cause a REIT entity of Host not to qualify as a REIT under the Code. Starwood will bear the economic benefits and burdens post-closing of any excluded assets that Starwood is unable to transfer out of an entity to be acquired by Host. Starwood must continue after closing to try to obtain whatever consent, approval or amendment is required in order to transfer such excluded asset out of the applicable entity. Host must continue to hold any such excluded asset indefinitely until such time, if ever, that (1) such excluded asset can be transferred back to Starwood or (2) Host's continued holding of such excluded asset would cause any REIT entity of Host to fail to qualify as a REIT under the Code. Host will be generally indemnified by Starwood for all losses arising from any such arrangement with respect to excluded assets.

#### *Acquired Assets*

The master agreement also provides that Host will bear the economic benefits and burdens post-closing of any assets that Host was supposed to, but did not, acquire at closing due to Starwood's failure to obtain whatever consent, approval or amendment is required in order to transfer such assets to Host, except that Starwood will be responsible for any excess expenses and liabilities incurred due to such failure. Starwood must continue after closing to try to obtain such required consent, approval or amendment.

### ***Survival of Covenants***

The covenants and agreements of the parties contained in the master agreement generally survive the closing until the expiration of the applicable statute of limitations, except that:

the parties' obligations with respect to the conduct of their respective businesses pre-closing and Starwood's obligations with respect to its restructuring transactions generally survive for only one year following the closing; and

specifically identified covenants, which generally relate to verifiable actions intended to be completed prior to closing, do not survive the closing (although claims for any breaches thereof will survive if made prior to the closing).

### **Termination of the Master Agreement**

#### ***Termination by Host or Starwood***



The master agreement may be terminated at any time prior to the effective time of the REIT merger, whether before or after approval of the issuance of Host common stock in the closing transactions, as follows:

by mutual written consent of Host and Starwood;

by either Host or Starwood if:

any judgment, injunction, order, decree, ruling or action by any court or governmental entity permanently restraining, enjoining or otherwise prohibiting the closing transactions becomes final and non-appealable;

the closing transactions have not been consummated by or on April 17, 2006, except that (1) neither Host nor Starwood may terminate the master agreement if its failure to fulfill any of its obligations has been the cause of the failure of the closing transactions to occur on or before such date and

**Table of Contents**

(2) Starwood may not terminate the master agreement if the announcement or pendency of a transaction that has resulted or will result in a more than 50% change in the ownership of Starwood, or discussions, negotiations or other activities with respect thereto, is the reason that the closing transactions have not been consummated on or before such date;

Host common stockholders do not approve the issuance of Host common stock in the closing transactions at a duly convened stockholders meeting, or at any adjournment or postponement of such stockholders meeting, at which the vote on the proposal to approve such stock issuance was taken;

the 20-trading day average closing price of a share of Host common stock is less than \$13.60 on the date on which the closing date is determined;

any condition to the obligation of such party to consummate the closing transactions becomes incapable of satisfaction prior to April 17, 2006, except that the party whose failure to fulfill any obligation under the master agreement that was the cause of, or resulted in, the failure of such condition may not terminate the master agreement; or

the breach or failure to perform of any of the other party's covenants, agreements, representations or warranties contained in the master agreement would result in the failure to satisfy one or more of the closing conditions, and such breach is incurable or has not been cured within 20 business days following notice of such breach;

by Host if:

Starwood consummates, or enters into any definitive agreement relating to, a transaction that has resulted or will result in a more than 50% change in the ownership of Starwood; or

it delivers to Starwood notice of actual or alleged breaches by Starwood of its representations and warranties and Starwood does not agree that the cap on Host's indemnification will not apply for such identified breaches of representations and warranties;

by Starwood if:

prior to February 12, 2006, (1) Starwood receives a superior proposal as described above under "No Solicitation" beginning on page 95, (2) Starwood's board of directors or Starwood Trust's board of trustees determines in good faith, after consulting with outside counsel, that a termination of the master agreement is consistent with its duties to its stockholders or shareholders, as applicable, under applicable law, (3) Starwood Trust gives Host five business days prior written notice of its intention to terminate the master agreement, (4) the board of Starwood or Starwood Trust, as applicable, determines in good faith, after consulting with its outside financial advisor, that the proposal continues to constitute a superior proposal taking into account any revised proposal made by Host during such five business day period and after taking into account the likelihood of consummation of such proposed transaction and taking into account all legal, financial, regulatory and other aspects of such proposal and any other relevant factors permitted under applicable law, to stockholders or shareholders, as applicable and (5) Starwood pays to Host the termination fee and expenses described below in "Termination Fees and Expenses"; or

it delivers to Host notice of actual or alleged breaches by Starwood of its representations and warranties and Host does not agree to limit to \$50 million Starwood's total liability for Host's indemnification claims for such identified breaches of representations and warranties.

***Effect of Termination***

Except for provisions in the master agreement regarding the effect of termination, confidentiality of nonpublic information, payment of fees and expenses, broker's fees and specified miscellaneous provisions, if the master agreement is terminated as described above, the master agreement will become void and have no effect. In addition, if the master agreement is so terminated, there will be no liability on the part of Host or

## **Table of Contents**

Starwood, except to the extent that the termination results from a breach by any party of any of its representations, warranties, covenants or agreements contained in the master agreement. The confidentiality agreement, dated January 3, 2005, between Host and Starwood will continue in effect notwithstanding any termination of the master agreement.

### *Termination Fees and Expenses*

Except as described immediately below or further below in the section entitled "Transfer Taxes and Transaction Costs" beginning on page 103, all legal, investment banking and other fees and expenses incurred in connection with the closing transactions will be paid by the party incurring such fees and expenses, whether or not the closing transactions are completed.

### *Payments to Host*

Starwood will be required to pay Host a \$100 million termination fee and up to \$20 million of its out-of-pocket expenses reasonably incurred in connection with the master agreement and the closing transactions since April 1, 2005 if Starwood terminates the master agreement in order to accept a superior proposal.

Starwood will be required to pay Host a \$25 million termination fee and up to \$20 million of its out-of-pocket expenses reasonably incurred in connection with the master agreement and the closing transactions since April 1, 2005 if the master agreement is terminated by either party as a result of the occurrence of a substantial tax detriment to Starwood.

Starwood will be required to pay Host up to \$20 million of its out-of-pocket expenses reasonably incurred in connection with the master agreement and the closing transactions since April 1, 2005 if Starwood terminates the master agreement because Host declines to limit to \$50 million Starwood's total liability for Host's claims for identified actual or alleged breaches by Starwood of its representations and warranties.

### *Payments to Starwood*

Host will be required to pay Starwood up to \$20 million of its out-of-pocket expenses reasonably incurred in connection with the master agreement and the closing transactions since April 1, 2005 if the master agreement is terminated by either party due to the failure to obtain the requisite vote of Host stockholders.

### *Maximum Fee Amount*

The termination fee that Host may be entitled to receive will be an amount equal to the lesser of (1) \$100 million or \$25 million, as applicable, and (2) the maximum amount that can be paid to Host without causing Host to fail to meet the REIT income requirements under the Code. The unpaid amount, if any, will be placed in escrow and will be paid in subsequent years to the extent the payment would not cause Host to fail to meet the REIT income requirements under the Code. Starwood's obligations to pay any unpaid portion of the termination fee will terminate on the date that is five years from the date such termination fee otherwise would have been made but for such REIT income requirements.

*Collection of Termination Fee and Expenses*

The master agreement provides that, if either Host or Starwood is required to file suit to seek all or a portion of any termination fee or expenses payable by the other party under the master agreement and prevails in that litigation, it will be entitled to (1) all expenses (including attorney's fees) that it incurs in enforcing its rights under the master agreement and (2) interest on such fee from and including the date payment of the fee was due

## **Table of Contents**

to, but excluding, the date of actual payment at the prime rate of Citibank, N.A. in effect on the date the payment was required to be made.

## **Public Announcements**

Host and Host LP, on the one hand, and Starwood and Starwood Trust, on the other hand, will consult with each other before issuing, and provide each other reasonable opportunity to review and comment upon, any press release or other public statement with respect to the closing transactions and will not issue any such press release or make any public statement prior to consultation with the other, except as may be required by applicable law, court process or by obligations pursuant to any listing agreement with any national securities exchange.

## **Transfer Taxes and Transaction Costs**

Host and Starwood will share equally (1) all stock transfer, real estate transfer, documentary, stamp, recording, registration and other fees, charges, premiums and other similar taxes incurred in connection with the closing transactions, (2) losses incurred in connection with obtaining consents, waivers or amendments from any third party in connection with the closing transactions, (3) certain taxes payable with respect to the transfer of certain hotels, (4) losses incurred in connection with severance or other similar payment obligations to employees attendant to the acquisition of certain foreign hotels, (5) mortgage transfer costs or expenses incurred in connection with the closing transactions, (6) costs associated with the defeasance of Starwood's CMBS indebtedness and (7) certain losses incurred with respect to the assumption by Host of the SHC indebtedness. The sharing by Host and Starwood of these transfer taxes and transaction costs is subject, except in certain circumstances, to a \$50 million cap on Host's obligations.

The amount of all such transfer taxes and transaction costs payable by Host at closing will be reduced by an amount equal to 12.8 multiplied by the difference between Starwood's original projected aggregate amount of hotel EBITDA for 2005 for the hotels (other than the Sheraton Royal Denarau Resort) being acquired by Host and the greater of (i) Starwood's revised projected aggregate amount of hotel EBITDA for 2005 for such hotels and (ii) the actual aggregate amount of hotel EBITDA for 2005 for such hotels.

Separately, Host will generally be responsible for all costs of obtaining title policies, except that Starwood will pay up to \$25,000 for non-imputation endorsements and, in certain circumstances, up to \$250,000 in the aggregate with respect to title policies specified in the master agreement.

## **Tax Treatment**

The parties intend that the REIT merger will be treated as a taxable purchase by Host LP of all of the outstanding shares of Starwood Trust in exchange for the REIT merger consideration. The parties further intend that the SLT merger will be treated as a taxable acquisition by Host LP of the units in SLT Realty Limited Partnership in exchange for the SLT merger consideration. A holder of units in SLT Realty Limited Partnership who participates in the SLT merger will be deemed to have agreed to such characterization of the SLT merger as a result of accepting the SLT merger consideration.

**Amendments, Extensions and Waivers**

*Amendments*

The master agreement may be amended by the parties in writing by action of Host's board of directors, Starwood Trust's board of trustees and Starwood's board of directors (or any authorized committee).

*Extensions and Waivers*

At any time prior to the closing, any party to the master agreement may:

extend the time for the performance of any of the obligations or other acts of the other parties thereto;

## **Table of Contents**

waive any inaccuracies in the representations and warranties of the other parties contained therein or in any document delivered pursuant thereto; and

waive compliance by the other parties with any of the agreements or conditions contained therein.

Any agreement on the part of any party to the master agreement to any extension or waiver will be valid only if set forth in an instrument in writing signed by that party.

## **Indemnification Agreement**

### ***General***

Under the indemnification agreement, and subject to the limitations described below, Starwood has agreed to indemnify and hold Host, its subsidiaries and each of their respective officers, directors, employees, agents, representatives and affiliates harmless from (1) liabilities being retained by Starwood (retained liabilities), (2) breaches of Starwood's covenants and agreements contained in the master agreement and (3) breaches of Starwood's representations and warranties contained in the master agreement. Similarly, subject to the limitations described below, Host has agreed to indemnify and hold Starwood, its retained subsidiaries and each of their respective officers, directors, employees, agents, representatives and affiliates harmless from (1) liabilities being assumed by Host (assumed liabilities), (2) breaches of Host's covenants and agreements contained in the master agreement and (3) breaches of Host's representations and warranties contained in the master agreement.

### ***Retained and Assumed Liabilities***

Starwood will indemnify Host for every dollar of retained liabilities there is no deductible, cap or survival limitation for these claims including, among others:

liabilities related to Starwood's other businesses or assets;

except for certain transfer taxes and transaction costs that Host has agreed to bear in connection with the closing transactions and except to the extent Host receives a credit against the amount of working capital it will acquire at closing, liabilities of Starwood (including the entities being acquired by Host) relating to (i) the internal restructuring of Starwood and its subsidiaries or (ii) the transfer taxes and other costs incurred in connection with the consummation of the closing transactions;

liabilities related to equity holders or creditors of Starwood or any entities being acquired by Host related to any claims regarding fiduciary duties, appraisal or dissenters' rights or securities laws;

with respect to events occurring on or prior to the closing, liabilities under ERISA or employee plans or, except to the extent Host receives a credit against the amount of working capital it will acquire at closing, any other liabilities related to employees;



## Edgar Filing: HOST MARRIOTT CORP/ - Form S-4/A

indebtedness except for certain specified indebtedness being assumed by Host that is either (1) indebtedness for which the purchase price is adjusted or (2) intercompany indebtedness for which Host will acquire the receivable as well as the payable;

liabilities arising out of (i) claims by holders of any interests in the entities that own the Fiji hotels existing on or before the closing date or (ii) six specified litigation matters involving various claims at the following seven hotels: San Cristobal Tower, Sheraton Centre Toronto Hotel, Sheraton New York Hotel & Towers, Sheraton Santiago Hotel & Convention Centre, Westin Palace Madrid, Westin Europa & Regina and Westin Mission Hills Resort; and

liabilities associated with the SLT merger or certain post-closing consequences thereof, including, among others, liabilities arising out of (i) any violations of the SLT limited partnership agreement or any other contracts with respect to SLT units in connection with the execution and delivery of the master agreement, the consummation of the closing transactions or the compliance by Starwood and its

## **Table of Contents**

subsidiaries with the terms of the master agreement, (ii) any Class A RP unit special distributions or liquidation preference distributions or (iii) in the case of any SLT units outstanding after the effective time of the SLT merger, such SLT units other than an amount representing the value of the Host common stock into which such SLT units would be exchangeable after the SLT merger, including dividends paid on Host common stock.

Certain retained liabilities that are taxes are addressed in the tax sharing and indemnification agreement discussed below in the section entitled **Tax Sharing and Indemnification Agreement** beginning on page 106.

Host will indemnify Starwood for every dollar there is no deductible, cap or survival limitation of liabilities, other than retained liabilities, of the entities being acquired by Host or to the extent relating to the business being acquired by Host and the indebtedness being assumed by Host, in each case except to the extent Host is entitled to be indemnified by Starwood with respect to such liabilities.

### ***Breaches of Covenants***

Similar to retained liabilities, the parties will indemnify each other for every dollar of losses arising from a breach of a covenant there is no deductible or cap except that with respect to breaches of covenants relating to the parties' conduct of their respective businesses pre-closing, there is a \$500,000 threshold comparable to the threshold described below for breaches of representations and warranties. However, the parties' respective indemnification obligations are subject to the survival limitations discussed above in the section entitled **Other Agreements Relating to the Period Prior to Closing** **Survival of Covenants** beginning on page 100, and Starwood's indemnification obligations are subject to the limitation discussed below in the section entitled **Tax Sharing and Indemnification Agreement** **Limitation on Tax Indemnification** beginning on page 106.

### ***Breaches of Representations and Warranties***

To the extent a loss results from a breach by one of the parties of its representations or warranties, and such loss does not represent a retained liability or assumed liability or result from a breach of a covenant, the other party's right to indemnification will be subject to the applicable survival period (as discussed above in the section entitled **Representations and Warranties** **Survival of Representations and Warranties** beginning on page 91) and the deductible and cap discussed immediately below.

The indemnification agreement provides that materiality thresholds in the master agreement with respect to representations and warranties will be ignored (other than for certain specified representations), but neither Starwood nor Host will be liable for claims by the other with respect to breaches of representations or warranties involving:

individual losses (aggregating only losses that arise from the same or related facts, events or circumstances) of less than \$500,000 or, in the case of Starwood's representations relating to title to personal property and sufficiency of assets, \$100,000 or, in the case of most of Starwood's environmental representations, \$2,000,000 (and such losses will not be aggregated towards the deductible);

losses that, in the aggregate, are less than \$50 million;

## Edgar Filing: HOST MARRIOTT CORP/ - Form S-4/A

losses in excess of \$100 million (incremental to the deductible) unless, in the case of losses incurred by Host, Starwood agrees prior to closing that the cap will not apply for actual or alleged breaches of Starwood's representations identified in a notice delivered by Host prior to closing (to prevent Host from terminating the master agreement as described above in the section entitled "Termination of the Master Agreement - Termination by Host or Starwood" beginning on page 100); or

in the case of losses incurred by Host, losses in excess of \$50 million to the extent arising from actual or alleged breaches of Starwood's representations identified in a notice delivered by Starwood prior to closing, if Host agrees prior to closing to limit to \$50 million its recourse with respect to the breaches

## **Table of Contents**

identified in Starwood's notice (to prevent Starwood from terminating the master agreement as described above under Termination of the Master Agreement Termination by Host or Starwood beginning on page 100).

The indemnification agreement excludes the following representations and warranties from the mini-baskets, deductible and cap, so that the amount of related damages subject to indemnification will be unlimited in amount: due organization, power, authority, capitalization, ground leases, broker's fees and required stockholder approvals.

### ***Market Capitalization/Transferee Assumption***

Starwood has agreed that, through and until the end of its third full fiscal year beginning after the closing date, it will not sell or transfer any assets with an aggregate value in excess of \$300 million to a third party if, at the time of such sale or transfer (or pro forma, after giving effect to such sale or transfer), Starwood would not maintain a market capitalization of at least \$2 billion unless the transferee of such assets delivers to Host a guaranty unconditionally guaranteeing the liabilities of Starwood under the indemnification agreement in an amount equal to the value of the assets received by such transferee.

### **Tax Sharing and Indemnification Agreement**

#### ***General***

Under the tax sharing and indemnification agreement, and subject to the limitations described below, Starwood has agreed to indemnify and hold Host, its subsidiaries and each of their respective officers, directors, employees, agents, representatives and affiliates harmless from (1) pre-closing taxes of any entity being acquired directly or indirectly by Host, (2) taxes of Starwood and its retained affiliates, (3) certain losses resulting from a breach of Starwood or its affiliates of certain tax indemnification agreements or certain agreements containing tax protection provisions for third parties, (4) certain losses resulting from a breach of Host or its affiliates of certain undisclosed tax indemnification agreements that Starwood or its affiliates entered into prior to closing, (5) interest charges payable with respect to (A) certain dividends that Host or its affiliates pay to mitigate taxes that Starwood is responsible for pursuant to the tax sharing and indemnification agreement or (B) certain dividends paid to reduce earnings and profits in entities being acquired by Host and (6) dividends paid by Host or its affiliates that are required in order to eliminate any excess of the aggregate amount of earnings and profits in foreign entities being acquired by Host over \$50 million. Host has agreed to indemnify and hold Starwood, its subsidiaries and each of their respective officers, directors, employees, agents, representatives and affiliates harmless from taxes associated with certain transactions not expressly permitted or referenced in the master agreement that are out of the ordinary course of business and occur on the closing date.

There is no deductible or cap for claims made pursuant to the tax sharing and indemnification agreement.

#### ***Limitations on Tax Indemnification***

Starwood is not required to indemnify Host under the tax sharing and indemnification agreement for any (1) taxes (or other amounts paid to a governmental authority) attributable to Host's or any of its affiliates that are REITs' failure or potential failure to qualify as a REIT under the Code, (2) taxes (or other amounts paid to a governmental authority) paid by Host or any of its affiliates that are REITs to mitigate a failure or

## Edgar Filing: HOST MARRIOTT CORP/ - Form S-4/A

potential failure to qualify as a REIT under the Code or (3) losses resulting from a failure or potential failure of Host or any of its affiliates that are REITs to qualify as a REIT under the Code, unless in each case losses (including taxes) result from breaches of enumerated provisions of the master agreement that (i) are the result of fraud by Starwood and would otherwise be indemnified against by Starwood or (ii) (A) are the result of willful breach or intentional misrepresentation by Starwood's Senior Vice President of Tax, Chief Financial Officer or Comptroller (or their respective direct reports) and would otherwise be

**Table of Contents**

indemnified against by Starwood, and (B) involve Host's Senior Vice President of Tax not having been informed in writing of such willful breach or intentional misrepresentation, or facts giving rise to such willful breach or intentional misrepresentation, by the Senior Vice President of Tax (or other representative) of Starwood by the date that is no later than the fourteenth day prior to closing.

***Maximum Indemnification Amount***

Starwood will not pay Host any amount under the tax sharing and indemnification agreement that exceeds the maximum amount that can be paid to Host without causing Host to fail to meet the REIT income requirements under the Code. The unpaid amount, if any, will be placed in escrow and will be paid in subsequent years to the extent the payment would not cause Host to fail to meet the REIT income requirements under the Code. Starwood's obligations to pay any unpaid portion will terminate on the date that is five years from the date such indemnification amount otherwise would have been made but for such escrow arrangement. Comparable provisions limiting certain amounts payable by Starwood to Host are set forth in the indemnification agreement and the master agreement.

**Table of Contents**

**STRUCTURE OF HOST FOLLOWING THE TRANSACTIONS**

Set forth below is a summary chart of the structure that Host and its subsidiaries anticipate after consummation of the transactions (including certain post-closing structuring transactions undertaken by Host) subject to the terms and conditions of the master agreement and the other transaction agreements.

**General**

Host is a self-managed and self-administered real estate investment trust (REIT). Host operates through an umbrella partnership (UPREIT) structure in which substantially all of its properties and assets are held by Host LP, of which Host is the sole general partner and will hold approximately 96% of the outstanding partnership interests following the transactions. The remaining approximately 4% of the outstanding Host LP partnership interests are held by approximately 2,600 record holders.

Host LP currently owns 105 hotels directly and indirectly through various subsidiaries, all of which are general or limited partnerships or limited liability companies. The approximately 4% of Host LP partnership

## **Table of Contents**

interests held by parties other than Host are redeemable at the option of each holder, beginning one year after the date of issuance of such holder's partnership interests. Host has the right, however, to acquire any such partnership interest offered for redemption directly from the holder in exchange for one share of Host common stock, instead of a cash redemption.

Upon consummation of the transactions and certain post-closing structuring transactions, Host LP will directly hold four of the acquired hotels located in the United States. The remaining 34 acquired hotels will be held indirectly by Host LP in the manner described below.

The transactions are subject to a number of terms and conditions that could delay or prevent the closing of the transactions, or result in modifications to the transactions, such as the exclusion of particular hotels from the transactions due to the failure to obtain required consents or certain other developments. For a detailed description of these terms and conditions, see *Material Terms of the Principal Transaction Agreements* beginning on page 79, especially *Conditions to Completion of the Closing Transactions* beginning on page 85 and *Other Agreements Relating to the Period Prior to Closing - Deferral of Hotels* beginning on page 97. Any such modifications to the transactions may result in changes to the anticipated structure of Host and its subsidiaries after the consummation of the transactions.

### **Starwood Trust/SLT Realty Limited Partnership**

Immediately after consummation of the REIT merger, Host intends to merge Starwood Trust with and into a direct, wholly owned limited liability company subsidiary of Host LP. The resulting entity (which will be known as HST I LLC) will directly hold three acquired hotels located in the United States. HST I LLC will also be the sole general partner of SLT Realty Limited Partnership and, together with Host LP, will hold all of the outstanding SLT Realty Limited Partnership's RP units and Class A RP units, except to the extent that the Class A RP units remain outstanding after consummation of the SLT merger. For additional information concerning the SLT merger, see the section entitled *Material Terms of the Principal Transaction Agreements - Consideration - SLT Merger Consideration* beginning on page 84. SLT Realty Limited Partnership, directly or indirectly through subsidiaries, will hold 13 of the acquired hotels located in the United States.

### **Sheraton Holding Corporation**

Host intends to retain the existence of SHC as a direct, wholly owned subsidiary of Host LP. Host will own, through Host LP, 100% of the outstanding common stock of SHC. Because REITs are not allowed to hold, directly or indirectly, subsidiaries that are corporations (other than those that qualify as REITs, disregarded entities or taxable REIT subsidiaries), after consummation of the transactions, Host intends to cause SHC to issue a class of preferred stock to approximately 125 stockholders (in order to satisfy the REIT 100 minimum stockholder requirement) and then to elect REIT status for federal income tax purposes. Host intends to cause SHC to offer such preferred stock solely to accredited investors in reliance on the exemptions provided by Regulation D under the Securities Act. Each share of preferred stock will have a liquidation preference of \$1,000 and will entitle the holder of such preferred stock to annual cash dividends at a rate to be determined. If SHC fails to make two consecutive required dividend payments, each holder of preferred stock will have the option to require SHC to repurchase its preferred stock. Host expects to complete the preferred stock offering in 2006 and cause SHC to make its REIT election effective during 2006.

SHC, directly or indirectly through subsidiaries, will hold five of the acquired hotels located in the United States. SHC will also hold, indirectly, through subsidiaries structured as foreign currency REITs, the four acquired hotels located in Canada and Poland. For additional information concerning the foreign currency REITs, see the discussion below.



**Foreign Currency REIT Subsidiaries**

Following the transactions, Host will own, through Host LP, 100% of the outstanding common stock (but none of the preferred stock) of SHC and six Maryland business trusts that will elect to be treated as REITs.

## **Table of Contents**

Following the consummation of the transactions and certain restructuring actions taken by Host, SHC will own nine domestic and foreign hotels and other assets. The other six subsidiary REITs will own one or more of the foreign hotels to be acquired from Starwood or its affiliates in the transactions.

The acquisition of the 13 foreign hotel properties will generally be accomplished via the acquisition, directly or indirectly, of the shares of certain foreign corporations that own the hotel real estate by six foreign currency REITs, 100% of the common stock of which will be owned, directly or indirectly, by Host LP. As with SHC as described above, Host intends to cause each of the foreign currency REITs to issue a class of preferred stock to approximately 125 unrelated third-party stockholders (the total preferred equity to be issued is expected to be less than \$1 million). The offerings will be made solely to accredited investors in reliance on an exemption pursuant to Regulation D under the Securities Act. The terms of the preferred stock will be substantially identical to the terms of the SHC preferred stock. The foreign currency adopted as the functional currency by each foreign currency REIT will correspond to the currency used in the country in which each of the acquired hotels is located. The use of these foreign currency REITs to acquire, directly or indirectly, the foreign hotel properties will eliminate exposure of these foreign currency REITs to foreign exchange gain, which gain is currently non-qualifying REIT gross income. Host currently has a request for a ruling pending with the IRS in order for each of the six foreign currency REITs to adopt a functional currency other than the U.S. dollar.

## **Taxable REIT Subsidiaries (TRSs)**

Since January 1, 2001, the Code has permitted a REIT to lease its hotel properties to a taxable REIT subsidiary (or TRS) without the rents received from that subsidiary being disqualified as rents from real property by reason of the REIT's direct or indirect ownership interest in the subsidiary. A taxable REIT subsidiary is an entity that is taxable as a corporation for federal and state corporate income tax purposes in which a REIT owns an interest, and that has elected, with the REIT, to be treated as a taxable REIT subsidiary under the Code. Substantially all of Host's properties currently are leased to a direct subsidiary of Host LP that is a taxable REIT subsidiary of Host. Because federal income tax laws restrict REITs and their taxable REIT subsidiaries from operating hotels, Host's taxable REIT subsidiaries retain third-party managers (such as Marriott International, Starwood, Hyatt or Hilton) to manage the operation of the hotels pursuant to management agreements. If the transactions are completed, Host or one of its subsidiary REITs will lease each of the hotels acquired from Starwood and Starwood Trust to a subsidiary that qualifies as a taxable REIT subsidiary of Host or the relevant subsidiary REIT owner. Each of these hotels, in turn, will be operated or managed by Starwood or a Starwood affiliate.

In addition to leasing substantially all of Host's hotel properties, because of the restrictions applicable to the income, assets and activities of a REIT, Host may need to conduct certain other business activities in one or more of its taxable REIT subsidiaries. These business activities include alternative uses of real estate, such as the development and/or sale of timeshare or condominium units.

**Table of Contents**

**STRUCTURE OF STARWOOD PRIOR TO AND FOLLOWING THE TRANSACTIONS**

**Pre-Transactions Structure**

Set forth below is a summary chart of the structure of Starwood and its subsidiaries, including Starwood Trust, prior to the consummation of the transactions.

*Starwood and Starwood Trust*

Currently, the shares of Starwood common stock and Starwood Trust Class B shares are paired together and trade as a single unit on the NYSE. The Starwood Trust Class A Exchangeable Preferred Shares, the limited partnership interests of SLT Realty Limited Partnership and the limited partnership interests of SLC Operating Limited Partnership are exchangeable for paired shares of Starwood and Starwood Trust at the option of the holders of such securities, provided that, in certain circumstances, Starwood may elect to satisfy its exchange obligation with cash. Class B Exchangeable Preferred Shares of Starwood Trust may be exchanged at the option of Starwood Trust into Class A Exchangeable Preferred Shares or redeemed for cash; holders of Class B Exchangeable Preferred Shares may require Starwood Trust to redeem or convert such shares. The shares of Starwood and Starwood Trust will be de-paired prior to the date of the merger of Host LP with and into Starwood Trust.

*SLT Realty Limited Partnership*

Starwood Trust currently has an approximately 97% general partnership interest in SLT Realty Limited Partnership. The remaining approximately 3% limited partnership interests in SLT Realty Limited Partnership are held by various limited partners (including Starwood, which owns approximately 2%). Immediately prior to the consummation of the closing transactions, SLT Realty Limited Partnership or one of its subsidiaries will hold 15 acquired hotels located in the United States.

**Table of Contents**

*Sheraton Holding Corporation*

SHC, which was formerly known as ITT Corporation, is a direct, wholly owned subsidiary of Starwood. Immediately prior to the consummation of the closing transactions, SHC and its subsidiaries will hold three of the acquired hotels located in the United States and four acquired hotels located in Canada and Poland.

**Post-Transactions Structure**

Set forth below is a summary chart of the expected structure of Starwood and its subsidiaries upon consummation of the transactions.

After the consummation of the closing transactions, Starwood will no longer have ownership interests in any of Starwood Trust, SHC or SLT Realty Limited Partnership. In addition, as described above, shares of Starwood common stock will no longer be paired with, and will trade independently of, the Starwood Trust Class B shares.

---

**Table of Contents**

**RELATIONSHIP OF HOST AND STARWOOD FOLLOWING THE TRANSACTIONS**

**Operating Agreements and License Agreements**

At the closing, each hotel will become subject to an operating agreement and a license agreement, and in some cases to a corporate level agreement or another agreement, between Starwood and/or its affiliates and Host and/or its affiliates. These agreements will generally include the terms described below. A reference to Starwood in such description of terms includes subsidiaries of Starwood.

*Operational Services.* Under each operating agreement, Starwood would provide comprehensive management services for the hotels for an initial term of 20 years each, with two renewal terms of 10 years each. Starwood generally has under the operating agreement sole responsibility and exclusive authority for all activities necessary for the day-to-day operation of the hotels, including establishing all room rates, processing reservations, procuring inventories, supplies and services, providing periodic inspection and consultation visits to the hotels by technical and operational experts. The operating agreements would provide Host with approval rights over the budget, capital expenditures, certain major programs and key personnel at the hotels and various other matters. Starwood would receive compensation in the form of a base fee of 1% of annual gross operating revenues, and an incentive fee of 20% of annual gross operating profit, after Host has received a priority return of 10.75% on its purchase price and other investments in the hotels.

*License Services.* The license agreements would address matters relating to the subject brand, including rights to use service marks, logos, symbols and trademarks, such as those associated with Westin®, Sheraton® and W®, as well as matters relating to compliance with certain standards and policies and (including through other agreements in the case of certain hotels) the provision of certain system program and centralized services. The license agreements would have an initial term of 20 years each, with two renewal terms of 10 years each at the option of the Starwood licensing entity. Pursuant to the license agreements, the Starwood licensors would receive compensation in the form of license fees of 5% of gross operating revenue attributable to gross room sales and 2% of gross operating revenue attributable to food and beverage sales.

*Executive Supervision and Management Services.* Under the operating agreements, Starwood would provide all managerial and other employees for the hotels, review the operation and maintenance of the hotels, prepare reports, budgets and projections, provide other administrative and accounting support services to the hotels, such as planning and policy services, financial planning, divisional financial services, risk management services, product planning and development, employee staffing and training, corporate executive management and certain in-house legal services.

*Programs and Services.* Under the license agreements or other agreements, Starwood would provide certain system programs and services to all or substantially all the hotels by brand in a licensed area. Such services include participation in reservation services and the marketing program as well as the Starwood Preferred Guest Program. In addition to these services, under the operating agreements, Starwood would furnish centralized operating services to hotels by brand on a system basis. Costs and expenses incurred in providing such system programs and services and centralized operating services under the license and operating agreements or other agreements would be fairly allocated among all hotels in the applicable brand operated or licensed by Starwood or its affiliates.

*Working Capital and Fixed Asset Supplies.* The operating agreements would require Host to provide initial working capital funds with respect to each hotel in amounts to be determined at or before Closing and to fund the cost of certain fixed asset supplies. Host would also be responsible for providing additional working capital funds to meet the ongoing cash needs for hotel operations if at any time the funds available from hotel operations are insufficient to meet the financial requirements of the hotels. With respect to such obligations, for certain of the hotels, Host intends to enter in a Working Capital Concentration Account Agreement, which is described below.

*Furniture, Fixtures and Equipment Replacements.* Under the operating and license agreements, Host would be required to provide all necessary furniture, fixtures and equipment for the operation of the

## **Table of Contents**

hotels (including funding any required furniture, fixtures and equipment replacements). For the purpose of funding, the operator would transfer into a reserve fund account an amount equal to 5% of the gross operating revenue of a hotel for the applicable month. With respect to such obligations, for certain of the hotels, Host intends to enter in a Master Reserve Fund Agreement, which is described below.

*Building Alterations, Improvements and Renewals.* The operator would be required to prepare an annual operating plan that includes an estimate of the expenditures necessary for maintenance, repairs, alterations, improvements, renewals and replacements to the structural, mechanical, electrical, heating, ventilating, air conditioning, plumbing and vertical transportation elements of each hotel, which plan and proposed expenditures Host would review and approve based on the operator's recommendations and Host's judgment.

*Territorial.* Operating agreements for 30 hotels would provide area restrictions for a period of either five or 10 years which would limit the operator and its affiliates from owning, operating or licensing a hotel of the same brand in the area. The area restrictions would vary with each hotel, from city blocks in urban areas to up to a 10 mile radius from the hotel in other areas.

*Sale of the Hotel/Other.* The license agreements would limit Host's ability to sell, lease or otherwise transfer the hotels. Generally, the agreements would require that the transferee assume the related operating agreement and meet specified other conditions, including the condition that the transferee not be a competitor of the licensor. The operating agreements would provide for termination rights beginning in 2016 in the case of the operator's failure to meet certain financial performance criteria. Generally, such rights would arise in the event that the operator fails, for two consecutive years, to generate sufficient operating profit based on the amount of the owner's investment in the hotel, and the RevPAR performance of the hotel falls below that of other competitive hotels in the market during such two year period.

In certain foreign jurisdictions, Host and Starwood have agreed to enter into lease and other arrangements in lieu of operating agreements in order to comply with applicable requirements of local law and to take into account other foreign considerations. Generally, these arrangements are intended to confer comparable economic rights in the aggregate to the parties as would be provided under the operating agreements and any other applicable agreements. To ensure these arrangements achieve such comparable economic rights, the parties will enter into a compensating balance agreement that would provide for certain adjustment payments, if any.

## **Working Capital**

Certain hotels to be acquired from Starwood and/or its affiliates will become subject to the terms of a Working Capital Concentration Account Agreement. Pursuant to that agreement, the working capital accounts which would otherwise be maintained by operators for each of such hotels pursuant to the provisions of the applicable operating agreements would be maintained by Starwood operators on a pooled basis, with operators being authorized to make withdrawals from such pooled account as otherwise contemplated with respect to working capital in accordance with the provisions of the operating agreements. The Working Capital Concentration Account Agreement would contemplate establishment of a minimum balance to be maintained in the pooled account, with any adjustments to such minimum balance being subject to approval of the owners of the subject hotels, and would require that the owners of the subject hotels each provide, upon request, their pro rata share (determined with reference to the then-current balances for each of such hotels) of any additional working capital as necessary to maintain such minimum balance.

## **FF&E and Capital Expenditures**

Certain hotels to be acquired from Starwood and/or its affiliates will become subject to the terms of a Master Reserve Fund Agreement. Pursuant to that agreement, the periodic reserve fund contributions (in the amount of 5% of gross operating revenue) which would otherwise be deposited into reserve fund accounts maintained by operators for each of such hotels would be distributed to the applicable owners, with such owners

being responsible for providing funding of expenditures which would otherwise to be funded from the reserve



## **Table of Contents**

funds for each of the subject hotels as such expenditures become necessary. In addition to routine capital expenditures consisting of maintenance, repairs, alterations, improvements, replacements, renewals and additions to the hotels (including replacements and renewals of FF&E and supplies), the reserve funds for the hotels may also be used for building capital improvements (as contemplated by the provisions of the operating agreements). Consistent with the underlying operating agreements, the Master Reserve Fund Agreement would contemplate that any approved reserve funding in excess of amounts available in the pooled reserve funds will be funded by the owners and result in appropriate increases of owner's investment and owner's priority amounts. Unlike the provisions of the operating agreements, the Master Reserve Fund Agreement would contemplate that any such additional reserve funding will be provided with respect to each of such hotels on a pro rata basis (determined with reference to net operating income for the most recent operating year), with such amounts resulting in corresponding increases in the owner's investment and owner's priority amounts with respect to each of such hotels.

## **Termination on Sale**

Host and Starwood will enter into an agreement at closing that would provide Host with rights to terminate the operating agreements on 18 hotels upon sale of the hotels. With respect to nine hotels, Host would have the right to sell no more than three annually free and clear of their existing operating agreements without the payment of a termination fee. These hotels are the following:

Capitol Hill Suites

Sheraton Braintree Hotel

Sheraton Hamilton Hotel

Sheraton Indianapolis Hotel & Suites

Sheraton Milwaukee Brookfield Hotel

Sheraton Providence Airport Hotel

Sheraton Stamford Hotel

Sheraton Suites Tampa Airport

Sheraton Tucson Hotel & Suites

Host would have a limited right with respect to these hotels except the Sheraton Indianapolis hotel to terminate one license agreement annually. With respect to the remaining nine hotels, Host would have the right, beginning in 2016, to sell 35% of hotels (as measured by EBITDA) free and clear of the existing operating agreement over a period of time without the payment of a termination fee. In connection with any termination of an operating agreement on sale, the proposed purchaser would need to meet the requirements for transfer under the applicable license agreement.

#### **Growth Plan**

Host and Starwood will enter into a growth plan pursuant to which the parties will agree to cooperate with respect to a program of ground-up development, the conversion of existing hotels to Starwood-branded properties and the acquisition of Starwood-branded hotels where the license is at risk of being terminated by the third party hotel owner (including if the owner was entitled to terminate the license upon sale of the applicable hotel). In each case, Host's obligations are subject to such growth opportunity satisfying certain investment criteria.

#### **Right of First Offer**

Starwood has agreed to provide Host with a right of first offer to purchase the hotels known as The Phoenician and The Westin Resort & Spa, Los Cabos in the event Starwood determines to pursue or solicit a sale of such hotels. The right will terminate five years after the consummation of the closing transactions and will be subject to certain terms and conditions set forth in the right of first offer agreement.

---

**Table of Contents**

**MATERIAL FEDERAL INCOME TAX CONSEQUENCES OF THE REIT MERGER TO HOLDERS OF PAIRED SHARES OF STARWOOD AND STARWOOD TRUST AND HOLDERS OF STARWOOD TRUST CLASS A EXCHANGEABLE PREFERRED SHARES**

The following is a general discussion of the federal income tax consequences of the REIT merger reasonably anticipated to be material to U.S. Shareholders and Non-U.S. Shareholders who hold their paired shares of Starwood and Starwood Trust or their Starwood Trust Class A Exchangeable Preferred Shares as capital assets for federal income tax purposes. A U.S. Shareholder is a holder of paired shares of Starwood and Starwood Trust or a holder of Starwood Trust Class A Exchangeable Preferred Shares that is (i) a citizen or resident of the United States for federal income tax purposes, (ii) a corporation (or other entity taxable as a corporation for federal income tax purposes) created or organized in or under the laws of the United States, any state thereof or the District of Columbia, (iii) an estate the income of which is subject to federal income taxation regardless of its source, or (iv) a 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 (or a trust that has a valid election in effect under applicable federal income tax law to be treated as a United States person). A Non-U.S. Shareholder is a holder of paired shares of Starwood and Starwood Trust or a holder of Starwood Trust Class A Exchangeable Preferred Shares that is not a U.S. Shareholder. If a partnership or other entity taxable as a partnership for federal income tax purposes holds paired shares of Starwood and Starwood Trust or Starwood Trust Class A Exchangeable Preferred Shares, the federal income tax treatment of a partner will generally depend on the status of the partner and the activities of the partnership. Such partners are urged to consult their tax advisors.

This discussion considers neither the specific facts and circumstances that may be relevant to a particular shareholder nor any United States state and local or foreign income or other tax consequences of the REIT merger. Moreover, this discussion does not address special situations, such as the following:

tax consequences to shareholders who may be subject to special tax treatment, including tax-exempt entities, dealers in securities or currencies, banks, other financial institutions or financial services entities, insurance companies, regulated investment companies, traders in securities that elect to use a mark-to-market method of accounting for their securities holdings, certain expatriates or former long-term residents of the United States, persons subject to the alternative minimum tax or corporations that accumulate earnings to avoid federal income tax;

tax consequences to persons holding paired shares of Starwood and Starwood Trust or Starwood Trust Class A Exchangeable Preferred Shares as part of a hedging, integrated, constructive sale or conversion transaction or a straddle or other risk reduction transaction; and

tax consequences to partnerships or similar pass-through entities or to persons who hold paired shares of Starwood and Starwood Trust or Starwood Trust Class A Exchangeable Preferred Shares through a partnership or similar pass-through entity.

This discussion does not address the federal income tax consequences, or other tax consequences, of the ownership of Host common stock following the REIT merger.

This discussion is based upon current provisions of the Code, existing and proposed Treasury regulations thereunder and current administrative rulings and court decisions, all as in effect on the date hereof. All of the foregoing are subject to change, possibly on a retroactive basis, and any such change could affect the continuing validity of this discussion.

Edgar Filing: HOST MARRIOTT CORP/ - Form S-4/A

ALL HOLDERS OF PAIRED SHARES OF STARWOOD AND STARWOOD TRUST AND HOLDERS OF STARWOOD TRUST CLASS A EXCHANGEABLE PREFERRED SHARES ARE URGED TO CONSULT THEIR OWN TAX ADVISORS REGARDING THE SPECIFIC TAX CONSEQUENCES TO THEM OF THE REIT MERGER, INCLUDING THE APPLICABILITY AND EFFECT OF FEDERAL, STATE AND LOCAL OR FOREIGN INCOME AND OTHER TAX LAWS TO THEIR PARTICULAR CIRCUMSTANCES.

---

**Table of Contents**

**Consequences of the De-Pairing of Shares of Starwood and Starwood Trust**

The de-pairing of Starwood common shares and Starwood Trust Class B shares generally will not be a taxable event for holders of paired shares of Starwood and Starwood Trust. As a result, (i) a holder's aggregate U.S. tax basis in its de-paired Starwood common shares and Starwood Trust Class B shares immediately after the de-pairing will be the same as such holder's aggregate tax basis in its paired shares of Starwood and Starwood Trust immediately before the de-pairing and (ii) a holder's holding period for the de-paired Starwood common shares and Starwood Trust Class B shares will include such holder's holding period for the paired shares of Starwood and Starwood Trust.

**Consequences to U.S. Shareholders of the REIT Merger**

*General*

In the REIT merger, which is treated for federal income tax purposes as a fully taxable sale of the Starwood Trust Class A Exchangeable Preferred Shares and Class B shares to Host LP, U.S. Shareholders will exchange their Starwood Trust Class A Exchangeable Preferred Shares or Class B shares, as applicable, for cash and shares of Host common stock. As a result, each U.S. Shareholder will recognize capital gain or loss in the REIT merger equal to the difference between the fair market value of the REIT merger consideration received and the tax basis in its surrendered Starwood Trust Class A Exchangeable Preferred Shares or Class B shares. In general, such capital gain or loss will be long-term capital gain or loss if the Starwood Trust Class A Exchangeable Preferred Shares or Class B shares surrendered have been held by a U.S. Shareholder for more than one year as of the effective time of the REIT merger. U.S. Shareholders who are individuals will generally be subject to a maximum rate of 15% on long-term capital gain. A U.S. Shareholder who has held his or her Starwood Trust Class A Exchangeable Preferred Shares or Class B shares for six months or less at the effective time of the REIT merger (taking into account the holding period rules of Section 246(c)(3) and (4) of the Code, with certain adjustments) and who recognizes a capital loss with respect to those shares will be treated as recognizing a long-term, rather than a short-term, capital loss to the extent of any capital gain dividends and any other actual or deemed distributions received from Starwood Trust with respect to those shares which the U.S. Shareholder treats as long-term capital gain. The deductibility of capital losses, in general, is subject to limitations. In the case of U.S. Shareholders that hold multiple blocks of Starwood Trust Class A Exchangeable Preferred Shares or Class B shares (i.e., Starwood Trust Class A Exchangeable Preferred Shares or Class B shares were acquired separately at different times and/or different prices), gain or loss must be calculated and accounted for separately for each block of Starwood Trust Class A Exchangeable Preferred Shares or Class B shares.

In connection with U.S. Shareholders' calculation of taxable gain or loss recognized in the REIT merger, Starwood will provide guidance to the holders of Starwood Trust Class B shares that is intended to assist them in the determination of the amount of the tax basis in their paired shares of Starwood and Starwood Trust that is allocable to their Starwood Trust Class B shares. U.S. Shareholders should consult their own tax advisors regarding the allocation of tax basis to their Starwood Trust Class B shares and the tax consequences that may result from relying on any tax basis guidance provided by Starwood. In addition, the amount of taxable gain or loss recognized in the REIT merger by a U.S. Shareholder holding Starwood Trust Class A Exchangeable Preferred Shares or Class B shares is dependent on the allocation of total REIT merger consideration between Starwood Trust Class B shares and Starwood Trust Class A shares. Holders of paired shares of Starwood and Starwood Trust and holders of Starwood Trust Class A Exchangeable Preferred Shares should consider the discussion above under the section entitled "Risk Factors - The Allocation of REIT Merger Consideration to the Holders of Class B Shares of Starwood Trust does not reflect Historical Standalone Trading of the Shares."

Starwood Trust intends, prior to the REIT merger, to pay a cash dividend to the holders of Starwood Trust Class A Exchangeable Preferred Shares and Class B shares. This dividend will be includable in a U.S. Shareholder's taxable income in accordance with the rules generally applicable to dividends received from REITs.



## **Table of Contents**

### *Basis and Holding Period in Host Common Stock Received in the REIT Merger*

A U.S. Shareholder's tax basis in the shares of Host common stock received in the REIT merger for federal income tax purposes will be equal to the fair market value of such shares on the effective date of the REIT merger. The holding period with respect to such shares shall commence on the day after the effective date of the REIT merger.

### **Consequences to Non-U.S. Shareholders of the REIT Merger**

A Non-U.S. Shareholder generally will not be subject to federal income tax on gain from the disposition of its Starwood Trust Class A Exchangeable Preferred Shares or Class B shares in the REIT merger unless such shares are a United States real property interest in the hands of such shareholder under the Foreign Investment in Real Property Tax Act of 1980, as amended ( FIRPTA ). Starwood Trust Class A Exchangeable Preferred Shares and Class B shares will not constitute a United States real property interest subject to tax under FIRPTA if Starwood Trust is a domestically-controlled REIT. Starwood Trust will be treated as a domestically-controlled REIT if at all times during the five-year period ending on the effective date of the REIT merger, less than 50% in value of the capital stock of Starwood Trust has been held directly or indirectly by foreign shareholders. Based upon its stock ownership, Starwood Trust believes that it is a domestically-controlled REIT. Even if Starwood Trust were not a domestically-controlled REIT, since Starwood Trust Class B shares are regularly traded on an established securities market, Starwood Trust Class B shares held by a Non-U.S. Shareholder will not be treated as a United States real property interest subject to tax under FIRPTA unless such shareholder owns, actually or constructively, more than 5% of all the Starwood Trust Class B shares outstanding at any time during the shorter of the five-year period ending on the effective date of the REIT merger and the Non-U.S. Shareholder's holding period for such shares. However, as the Starwood Trust Class A Exchangeable Preferred Shares are not regularly traded on an established securities market, in the event that Starwood Trust were not a domestically-controlled REIT and Starwood Trust Class A Exchangeable Preferred Shares constituted a United States real property interest for purposes of FIRPTA, a Non-U.S. Shareholder of Starwood Trust Class A Exchangeable Preferred Shares would generally be subject to tax under FIRPTA on any gain from the disposition of such shares in the REIT merger. If Host LP determines that Starwood Trust is not a domestically-controlled REIT, Host LP may withhold 10% of any REIT merger consideration to be paid to Non-U.S. Shareholders.

Notwithstanding the foregoing, capital gain not subject to FIRPTA that is realized in the REIT merger will be taxable to a Non-U.S. Shareholder if, among other conditions, the Non-U.S. Shareholder is a nonresident alien individual who is present in the United States for 183 days or more during the taxable year that includes the effective time of the REIT merger. Gain from the disposition of the Starwood Trust Class A Exchangeable Preferred Shares or Class B shares in the REIT merger may also be taxable to a Non-U.S. Shareholder if such gain is effectively connected with the conduct of its United States trade or business. In the event that a Non-U.S. Shareholder is a foreign corporation, the branch profits tax may apply to such Non-U.S. Shareholder's effectively connected income under certain circumstances.

As noted above, Starwood Trust intends, prior to the REIT merger, to pay a cash dividend to the holders of Starwood Trust Class A Exchangeable Preferred Shares and Class B shares. This dividend will be subject to rules applicable to withholding of United States tax on dividends received from REITs.

### **Information Reporting and Backup Withholding**

Under federal income tax laws, holders of Starwood Trust Class A Exchangeable Preferred Shares or Class B shares may be subject to information reporting with respect to the REIT merger consideration to be paid to them. In addition, the REIT merger consideration to be paid may be subject to a 28% backup withholding tax. Backup withholding generally will not apply to payments made to certain exempt recipients,

## Edgar Filing: HOST MARRIOTT CORP/ - Form S-4/A

such as a corporation or financial institution, or to a shareholder that certifies such shareholder's taxpayer identification number and certain other required information or provides a certificate of foreign status. Backup withholding is not an additional tax. If backup withholding applies, the amount withheld will be allowed as a refund or a credit against such shareholder's federal income tax liability, provided the required information is furnished to the Internal Revenue Service (the IRS) on a timely basis.



**Table of Contents**

**Disclosure of Reportable Transactions**

Under current Treasury regulations, a taxpayer that participates in a reportable transaction is required to disclose certain information relating to the transaction to the IRS by filing IRS Form 8886 (or another applicable information return) with its federal income tax return. Pursuant to recently enacted legislation, a penalty in the amount of \$10,000 in the case of a natural person and \$50,000 in any other case is generally imposed on any taxpayer that fails to timely file IRS Form 8886 (or another applicable information return) with the IRS with respect to a reportable transaction. A reportable transaction includes any transaction resulting in the taxpayer claiming a loss under Section 165 of the Code (without taking into account any offsetting items) (a Section 165 Loss ) of at least (i) \$10 million in any one taxable year, or \$20 million in any combination of taxable years, in the case of a corporation or a partnership whose partners are all corporations, or (ii) \$2 million in any one taxable year, or \$4 million in any combination of taxable years, in the case of any other partnership, an individual or a trust. The IRS has provided exceptions from these rules for certain Section 165 Losses. In particular, these rules generally do not apply to a Section 165 Loss recognized on the disposition of an asset in which a taxpayer has a qualifying tax basis (generally a tax basis equal to the amount of cash paid by the taxpayer for such asset). However, the disclosure rules will apply to a taxpayer recognizing a Section 165 Loss with respect to interests in a pass-through entity (such as a REIT) even if its tax basis in such interests is equal to the amount of cash it paid. If as a result of the REIT merger a holder of Starwood Trust Class A Exchangeable Preferred Shares or Class B shares realizes a Section 165 Loss in respect of its shares that equals or exceeds the thresholds described above, the holder may be required to disclose information regarding the REIT merger to the IRS and failure to properly do so may subject the holder to the penalties described above. Holders of Starwood Trust Class A Exchangeable Preferred Shares or Class B shares are advised to consult their own tax advisors regarding any possible disclosure obligations under these rules in view of their particular circumstances.

**Table of Contents**

**MATERIAL FEDERAL INCOME TAX CONSIDERATIONS TO HOLDERS OF  
SHARES OF HOST COMMON STOCK**

**Introduction**

The following discussion describes the federal income tax considerations reasonably anticipated to be material to prospective holders in connection with the purchase, ownership and disposition of the common stock of Host. Because this is a summary that is intended to address only material federal income tax considerations relating to the ownership and disposition of Host's common stock, it may not contain all the information that may be important to you. As you review this discussion, you should keep in mind that:

the tax consequences for you may vary depending on your particular tax situation;

special rules that are not discussed below may apply to you if, for example, you are:

a tax-exempt organization,

a broker-dealer,

a non-U.S. person,

a trust, estate, regulated investment company, real estate investment trust, financial institution, insurance company or S corporation,

subject to the alternative minimum tax provisions of the Code,

holding Host's stock as part of a hedge, straddle, conversion or other risk-reduction or constructive sale transaction,

holding Host's stock through a partnership or similar pass-through entity,

a person with a functional currency other than the U.S. dollar,

a U.S. expatriate, or

otherwise subject to special tax treatment under the Code;

## Edgar Filing: HOST MARRIOTT CORP/ - Form S-4/A

this summary does not address state, local or non-U.S. tax considerations;

this summary deals only with investors that hold the Host stock as a capital asset, within the meaning of Section 1221 of the Code; and

this discussion is not intended to be, and should not be construed as, tax advice.

The information in this section is based on the Code, current, temporary and proposed Treasury Regulations, the legislative history of the Code, current administrative interpretations and practices of the Internal Revenue Service (the IRS), and court decisions. The reference to IRS interpretations and practices includes the IRS practices and policies, as endorsed in private letter rulings, which are not binding on the IRS except with respect to the taxpayer that receives the ruling. In each case, these sources are relied upon as they exist on the date of this discussion. Future legislation, Treasury Regulations, administrative interpretations and court decisions could change current law or adversely affect existing interpretations of current law on which the information in this section is based. Any such change could apply retroactively. Host has not received any rulings from the IRS concerning its qualification as a REIT. Accordingly, even if there is no change in the applicable law, no assurance can be provided that the statements made in the following discussion, which do not bind the IRS or the courts, will not be challenged by the IRS or will be sustained by a court if so challenged.

Certain of the material federal income tax considerations described herein depend on the consummation of the transactions and will not apply should the transactions not be consummated at all and may not apply should the transactions be consummated in a manner other than what is currently contemplated by the master agreement.

**You are urged both to review the following discussion and to consult with your own tax advisor to determine the impact of your personal tax situation on the anticipated tax consequences of the ownership and sale of Host's common stock. This includes the federal, state, local, foreign and other tax consequences**

**of the ownership and sale of Host's common stock and the potential changes in applicable tax laws, or any judicial or administrative interpretations thereof.**

## **Table of Contents**

### **Federal Income Taxation of Host**

#### *General*

Host made an election to be taxed as a REIT under the Code, effective for the taxable year beginning January 1, 1999. Host believes that it is organized and has operated in a manner that has permitted it to qualify as a REIT since 1999, and Host currently intends to continue to operate as a REIT for future years.

In addition, Hogan & Hartson LLP, special tax counsel to Host, has delivered an opinion to Host that for each of its taxable years ended December 31, 1999, through and including December 31, 2005, Host was organized and has operated in conformity with the requirements for qualification as a REIT, and that after consummation of the proposed transactions, Host's proposed method of operation will enable it to continue to qualify as a REIT.

Host's qualification and taxation as a REIT depend upon Host's ability to meet, on a continuing basis, through actual annual (or, in some cases, quarterly) operating results, the various requirements under the Code, as described in this discussion, with regard to, among other things, the sources of Host's gross income, the composition and values of its assets, its distribution levels, and the diversity of ownership of Host's stock. Given the complex nature of the REIT qualification requirements, the ongoing importance of factual determinations, and the possibility of future changes in Host's circumstances, no assurance can be given by Host that it will satisfy such requirements. For a discussion of the federal income tax consequences of the failure to qualify as a REIT, see "Failure to Qualify as a REIT" below.

The sections of the Code and the corresponding regulations that govern the federal income tax treatment of a REIT and its stockholders are highly technical and complex. The following discussion is qualified in its entirety by the applicable Code provisions, rules and regulations promulgated thereunder, and administrative and judicial interpretations thereof.

Regular corporations (corporations that do not qualify as REITs or for other special classification under the Code) generally are subject to federal corporate income taxation on their income, and stockholders of regular corporations are subject to tax on dividends that are received. In any taxable year in which Host qualifies for taxation as a REIT, it generally will not be subject to federal corporate income tax on its federal taxable income that is distributed currently to its stockholders as dividends. Stockholders generally will be subject to taxation on dividends that they receive (other than dividends designated as "capital gain dividends" or "qualified dividend income") at rates applicable to ordinary income. Qualification for taxation as a REIT enables the REIT and its stockholders to substantially eliminate the "double taxation" (that is, taxation at both the corporate and stockholder levels) that generally results from an investment in a regular corporation. Currently, however, stockholders of regular domestic corporations and certain types of foreign corporations who are taxed at individual rates generally are taxed on dividends they receive at long-term capital gain rates, which are lower for individuals than ordinary income rates. In addition, stockholders of regular corporations who are taxed at regular corporate rates receive the benefit of a dividends received deduction that substantially reduces the effective rate that they pay on such dividends. Nevertheless, income earned by a REIT and distributed currently to its stockholders generally will be subject to lower aggregate rates of federal income taxation than if such income were earned by a regular domestic corporation or a qualifying foreign corporation, subjected to corporate income tax, and then distributed to stockholders and subjected to tax either at long-term capital gain rates or the effective rate paid by a corporate recipient entitled to the benefit of the dividends received deduction.

While Host generally will not be subject to corporate income taxes on taxable income that it distributes currently to stockholders, Host will be subject to federal income tax as follows:

1. Host will be taxed at regular corporate rates on any undistributed REIT taxable income. A REIT's REIT taxable income is the otherwise taxable income of the REIT subject to certain adjustments, including a deduction for dividends paid.

**Table of Contents**

2. Under certain circumstances, Host (or its stockholders) may be subject to the alternative minimum tax due to its items of alternative minimum tax adjustments.

3. If Host has net income from the sale or other disposition of foreclosure property which is held primarily for sale to customers in the ordinary course of business or other nonqualifying income from foreclosure property, it will be subject to tax at the highest corporate rate on such income. In general, foreclosure property is property acquired by Host as a result of having bid in a foreclosure or through other legal means after there was a default on a lease of such property or on an indebtedness secured by such property.

4. Host's net income from prohibited transactions will be subject to a 100% tax. In general, prohibited transactions are certain sales or other dispositions of property, other than foreclosure property, held primarily for sale to customers in the ordinary course of business.

5. If Host fails to satisfy the 75% gross income test or the 95% gross income test described below under Income Tests Applicable to REITs, but nonetheless maintains its qualification as a REIT because certain other requirements are met, it will be subject to a tax equal to the product of (a) the gross income attributable to the greater of the amount by which Host fails either of the 75% or 95% gross income tests multiplied by (b) a fraction intended to reflect its profitability.

6. If Host fails to distribute during each calendar year at least the sum of (a) 85% of its REIT ordinary income for such year, (b) 95% of its REIT capital gain net income for such year, and (c) any undistributed taxable income from prior periods less excess distributions from prior periods, Host will be subject to a 4% nondeductible excise tax on the excess of such required distribution over the sum of amounts actually distributed and amounts retained but with respect to which federal income tax was paid.

7. If arrangements between Host and its taxable REIT subsidiaries are not comparable to similar arrangements among unrelated parties, Host will be subject to a 100% penalty tax on amounts received from, or on certain amounts deducted by, a taxable REIT subsidiary.

8. Host may elect to retain and pay income tax on its net long-term capital gain. In that case, a U.S. stockholder would (a) include its proportionate share of Host's undistributed long-term capital gain (to the extent Host makes a timely designation of such gain to the stockholder) in its income, (b) be deemed to have paid the tax that Host paid on such gain, (c) be allowed a credit for its proportionate share of the tax deemed to have been paid, and (d) increase its basis in Host's stock.

9. If Host fails to satisfy any of the asset tests discussed below under Asset Tests Applicable to REITs because it owns assets the total value of which exceeds a statutory de minimis standard but the failure is due to reasonable cause and Host nonetheless maintains its qualification as a REIT because other requirements are met, Host will be subject to a tax equal to the greater of \$50,000 or the amount determined by multiplying the net income generated by such nonqualifying assets by the highest rate of tax applicable to corporations during the periods when such assets would have caused Host to fail the relevant asset test.

10. If Host fails to satisfy a requirement under the Code the failure of which would result in the loss of its REIT status, other than a failure described in paragraph 5 or 9 above, but the failure is due to reasonable cause and Host nonetheless maintains its qualification as a REIT because the requirements of certain relief provisions are satisfied, Host will be subject to a penalty of \$50,000 for each such failure due to reasonable cause and not willful neglect.

11. If Host fails to comply with the requirement to send annual letters to its stockholders requesting information regarding the actual ownership of its stock and the failure was not due to reasonable cause or was due to willful neglect, Host will be subject to a \$25,000 penalty or, if the failure is intentional, a \$50,000 penalty.

12. If Host acquires any assets from a regular corporation in a carry-over basis transaction, it will be liable for corporate income tax, at the highest applicable corporate rate, on the built-in gain with respect to those assets at the time Host acquired them if it disposes of those assets within 10 years after acquiring them

**Table of Contents**

(provided no election is made for the transaction to be currently taxable). To the extent that assets are transferred to Host in a carry-over basis transaction by a partnership in which a corporation owns an interest, Host will be subject to this tax in proportion to the corporation's interest in the partnership. Built-in gain is the amount by which an asset's fair market value exceeds its adjusted tax basis at the time Host acquired the asset.

If Host is subject to taxation on its REIT taxable income or is subject to tax due to the sale of a built-in gain asset that was acquired in a carry-over basis transaction from a regular corporation, a portion of the dividends paid during the following year to its stockholders who are taxed as individuals may be subject to tax at reduced long-term capital gain rates rather than at ordinary income rates. See *Taxation of Taxable U.S. Stockholders - Qualified Dividend Income*.

Host owns an indirect interest in appreciated assets that its predecessors held before Host converted to a REIT effective January 1, 1999. Such appreciated assets have a carryover basis and, thus, have built-in gain with respect to Host. The applicable 10-year holding period for these assets will expire at the close of business on December 31, 2008. In connection with the transactions, Host will acquire all of the stock of SHC, which will own, directly and indirectly, certain hotel properties. Effective as of the time of that acquisition, Host will cause SHC, which has been taxed as a C corporation prior to the acquisition, to elect to qualify as a REIT. All of the assets held by SHC on the effective date of its REIT election will be built-in gain assets as to SHC, with a 10-year holding period that begins on the closing date of the transactions. In addition, Host will acquire in the REIT merger and the related transactions two built-in gain assets that currently are owned by subsidiary REITs of Starwood Trust (which assets Host intends to transfer to and hold indirectly through SHC). The 10-year holding period for these built-in gain assets is expected to expire in 2008 (although, if any of the Starwood Trust subsidiary REITs were not to qualify as a REIT at the time of the transactions, the 10-year holding period applicable to the assets acquired from that subsidiary REIT then would begin at the time SHC acquires indirect ownership of these assets following the consummation of the transactions). If any of the appreciated property currently owned by Host or to be owned by SHC following the consummation of the transactions is sold prior to the expiration of the applicable 10-year holding period, Host (or, in the case of the built-in gain assets acquired in connection with the transactions, SHC) generally will be subject to regular U.S. corporation income tax on that gain to the extent of the built-in gain in that property at the time the relevant asset was acquired. The total amount of gain on which Host or SHC can be taxed is limited to the excess of the aggregate fair market value of its assets on the date of acquisition over the adjusted tax bases of those assets at that time. This tax could be very material. As a result, Host LP and Host might decide to seek to avoid a taxable disposition of any significant built-in gain asset prior to the end of the relevant 10-year holding period. This could be true with respect to a particular disposition even though the disposition might otherwise be in the best interests of Host and its stockholders. On the other hand, neither Host nor Host LP is obligated to avoid such dispositions.

Host expects that it could recognize substantial deferred tax liabilities in the future. Deferred tax liabilities include, but are not limited to, tax liabilities attributable to built-in gain assets and tax liabilities attributable to taxable income for which neither Host nor Host LP will receive corresponding cash. In addition, notwithstanding Host's status as a REIT, (i) Host and/or its subsidiaries that are not subject to federal income tax (including the subsidiary REITs owned through Host LP, see *Ownership of Subsidiary REITs* below) may have to pay certain state and local income taxes, because not all states and localities treat REITs and such subsidiaries in the same manner that they are treated for federal income tax purposes, and (ii) Host and its subsidiaries that are not subject to federal income tax will have to pay certain foreign taxes to the extent that Host owns assets or conducts operations in foreign jurisdictions. Host LP will acquire indirectly a number of foreign hotels in the transactions. Moreover, each of Host's domestic taxable REIT subsidiaries (as further described below) is subject to federal, state and local corporate income taxes on its net income, while each of Host's non-U.S. taxable REIT subsidiaries will be subject to certain foreign corporate-level income taxes.

Under the terms of Host LP's partnership agreement, Host LP is responsible for paying, or reimbursing Host for the payment of certain tax liabilities. Specifically, Host LP will pay, or reimburse Host for the payment of, all



## Table of Contents

taxes (and any interest and penalties associated therewith) incurred by Host, except for taxes imposed on Host by reason of its failure to qualify as a REIT or to distribute to its stockholders an amount equal to its REIT taxable income, including net capital gain. The reimbursed taxes would include any taxes on built-in gains required to be recognized by Host, as described above.

### *Ownership of Subsidiary REITs*

If the transactions are completed as expected, Host will own, through Host LP, 100% of the outstanding common stock (but none of the outstanding preferred stock) of SHC and six business trusts that will elect to be treated as REITs. Following the consummation of the transactions and certain restructuring actions taken by Host, SHC will own nine domestic and foreign hotels and other assets. The other six subsidiary REITs will own one or more of the foreign hotels to be acquired from Starwood in the transactions.

As REITs, each subsidiary REIT will be subject to the various REIT qualification requirements and other limitations described herein that are applicable to Host. Host believes that each such REIT will be organized and will operate in a manner to permit it to qualify for taxation as a REIT for federal income tax purposes from and after the effective date of its REIT election. However, if any of these subsidiary REITs were to fail to qualify as a REIT, then (i) the subsidiary REIT would become subject to regular U.S. corporation income tax, as described herein, see

Failure to Qualify as a REIT below, and (ii) Host's stock interests in such subsidiary REIT would cease to be qualifying real estate assets for purposes of the 75% gross asset test and would become subject to the 5% asset test, the 10% voting stock asset test, and the 10% value asset test generally applicable to Host's ownership in corporations (other than REITs, qualified REIT subsidiaries and taxable REIT subsidiaries). See

Asset Tests Applicable to REITs below. If any of the subsidiary REITs were to fail to qualify as a REIT, it is possible that Host would not meet the 10% voting stock test and the 10% value test with respect to its indirect interest in such REIT, in which event Host itself would fail to qualify as a REIT unless it could avail itself of certain relief provisions. Host may make a protective taxable REIT subsidiary election with respect to each subsidiary REIT and implement other protective arrangements intended to avoid such an outcome if any of the subsidiary REITs were not to qualify as a REIT, but there can be no assurance that such protective elections and other arrangements will be effective to avoid the resulting adverse consequences to Host. Moreover, even if Host were to make an effective protective taxable REIT subsidiary election with respect to each subsidiary REIT, because of the significant value attributable to the subsidiary REITs in the aggregate, and even to SHC alone, there could be no assurance that the failure of any one or more subsidiary REITs to qualify as a REIT would not in any event cause Host to fail to satisfy the requirement that not more than 20% of the value of Host's total assets may be represented by the securities of one or more taxable REIT subsidiaries. In this event, Host itself would fail to qualify as a REIT unless it (or the applicable subsidiary REIT) could avail itself of certain relief provisions.

### *Requirements for Qualification*

The Code defines a REIT as a corporation, trust or association:

- (1) that is managed by one or more directors or trustees;
- (2) the beneficial ownership of which is evidenced by transferable shares or by transferable certificates of beneficial interest;
- (3) that would be taxable as a domestic corporation, but for Sections 856 through 859 of the Code;

(4) that is neither a financial institution nor an insurance company subject to certain provisions of the Code;

(5) the beneficial ownership of which is held by 100 or more persons;

(6) during the last half of each taxable year, not more than 50% in value of the outstanding stock of which is owned, actually or constructively, by five or fewer individuals (as defined in the Code to include certain entities);

**Table of Contents**

(7) that makes an election to be taxable as a REIT for the current taxable year, or has made this election for a previous taxable year, which election has not been revoked or terminated, and satisfies all relevant filing and other administrative requirements established by the IRS that must be met to elect and maintain REIT status;

(8) that uses a calendar year for federal income tax purposes and complies with the recordkeeping requirements of the Code and regulations promulgated thereunder; and

(9) that meets other applicable tests, described below, regarding the nature of its income and assets and the amount of its distributions.

Conditions (1) through (4), inclusive, must be met during the entire taxable year and condition (5) must be met during at least 335 days of a taxable year of twelve months, or during a proportionate part of a taxable year of less than twelve months.

For purposes of determining stock ownership under condition (6) above, a supplemental unemployment compensation benefits plan, a private foundation or a portion of a trust permanently set aside or used exclusively for charitable purposes generally is considered an individual. However, a trust that is a qualified trust under Code Section 401(a) generally is not considered an individual, and beneficiaries of a qualified trust are treated as holding shares of a REIT in proportion to their actuarial interests in the trust for purposes of condition (6) above.

Host believes that it meets and currently intends to continue to meet conditions (1) through (4), (7), (8) and (9). In addition, Host believes that it has had and currently intends to continue to have outstanding stock with sufficient diversity of ownership to allow it to satisfy conditions (5) and (6). With respect to condition (6), Host has complied and currently intends to continue to comply with the requirement that it send annual letters to its stockholders requesting information regarding the actual ownership of its shares of stock. In addition, Host's charter contains an ownership limit that is intended to assist Host with continuing to satisfy the stock ownership requirements described in (5) and (6) above. The ownership limit, together with compliance with the annual stockholder letter requirement described above, however, may not ensure that Host will, in all cases, be able to satisfy the stock ownership requirements described above. If Host fails to satisfy such stock ownership requirements and cannot avail itself of any statutory relief provisions, Host will not qualify as a REIT. See "Failure to Qualify as a REIT" below.

*Distribution of Earnings and Profits Attributable to Non-REIT Taxable Years*

To qualify as a REIT, a REIT cannot have at the end of any taxable year any undistributed earnings and profits that are attributable to a non-REIT taxable year (undistributed E&P). Host believes that it currently has no undistributed E&P. Pursuant to the transactions, however, Host will acquire all of the stock of SHC, which, as discussed above, is a regular C corporation that will elect to be treated as a REIT. Host currently expects, based upon representations of Starwood set forth in the master agreement and other information, that, as of the time the SHC election to be treated as a REIT becomes effective, SHC will not have any undistributed E&P, except that under the terms of the master agreement, one or more foreign entities to be owned by Host through SHC or one or more of Host's other subsidiary REITs may have up to an aggregate of \$50 million of undistributed E&P. In addition, Host currently expects that, following the transactions and certain restructuring transactions undertaken by Host, SHC will own two subsidiaries that formerly were REITs owned through the closing of the transactions by Starwood Trust, and which will have indirectly been acquired by Host LP as part of the transactions. If either of these Starwood Trust subsidiary REITs were to fail to qualify as a REIT at the time of the transactions, then SHC also could have undistributed E&P as a result of its ownership of these entities.

## Edgar Filing: HOST MARRIOTT CORP/ - Form S-4/A

For purposes of determining whether a REIT has undistributed E&P, distributions made for the purpose of eliminating E&P shall be treated as made from E&P that would, but for the distribution, have resulted in a failure to meet the requirement that the REIT have no undistributed E&P attributable to a non-REIT taxable year.

If the IRS were to determine that SHC or one of the other subsidiary REITs had undistributed E&P following the transactions and the relevant REIT did not distribute the undistributed E&P by the end of the

## Table of Contents

taxable year for which its REIT election was effective (*i.e.*, 2006), the REIT could avoid disqualification as a REIT by using deficiency dividend procedures, described below in Annual Distribution Requirements Applicable to REITs, to distribute the undistributed E&P. The deficiency dividend procedures would require the relevant REIT to make a distribution to stockholders (primarily Host), in addition to the regularly required REIT distributions, within 90 days of the IRS determination. In addition, the REIT would have to pay to the IRS interest on the undistributed E&P that was not distributed prior to the end of 2006. In general, pursuant to the tax sharing and indemnification agreement, Starwood has agreed to indemnify Host for certain interest payments that would be required to be made and for certain deficiency dividends that Host or any of its subsidiary REITs would have to pay to eliminate undistributed E&P in excess of \$50 million associated with the foreign entities acquired from Starwood in the transactions. Host intends to cause SHC and, if necessary, one or more of its other subsidiary REITs to make distributions by the end of the 2006 taxable year that Host believes will be sufficient to distribute all of the undistributed E&P, if any. However, there are uncertainties relating to the estimate of the undistributed E&P that may be acquired as part of the transactions, and, accordingly, there can be no assurance this requirement will be met.

Similar principles would apply to any future acquisition transactions in which either Host or any of its subsidiary REITs succeeds to the earnings and profits of a regular C corporation.

### *Qualified REIT Subsidiaries*

If a REIT owns a corporate subsidiary that is a qualified REIT subsidiary, the separate existence of that subsidiary will be disregarded for federal income tax purposes and all assets, liabilities and items of income, deduction and credit of the subsidiary will be treated as assets, liabilities and tax items of the REIT itself. Generally, a qualified REIT subsidiary is a corporation all of the capital stock of which is owned by one REIT and that is not a taxable REIT subsidiary. Host holds several qualified REIT subsidiaries that hold indirect interests in the partnerships that own hotels. These entities are not subject to federal corporate income taxation, although they may be subject to state and local taxation in certain jurisdictions.

### *Taxable REIT Subsidiaries*

A taxable REIT subsidiary of Host is an entity that is taxable as a corporation in which Host owns an equity interest, including stock, directly or indirectly; and that elects together with Host, to be treated as a taxable REIT subsidiary under the Code. In addition, if a taxable REIT subsidiary of Host owns, directly or indirectly, securities representing more than 35% of the vote or value of a subsidiary corporation, that subsidiary will also be treated as a taxable REIT subsidiary of Host. A taxable REIT subsidiary is a corporation subject to federal income tax, and state, local or foreign income tax where applicable, as a regular C corporation. If dividends are paid by one or more of Host's taxable REIT subsidiaries to Host, then a portion of the dividends from Host to its stockholders who are taxed at individual rates will generally be eligible for taxation at lower capital gain rates, rather than at ordinary income rates. See Taxation of U.S. Stockholders Qualified Dividend Income. The income and assets of Host's taxable REIT subsidiaries are not attributable to it for purposes of satisfying the income and asset ownership requirements applicable to REIT qualification. If the transactions are consummated as expected, Host's REIT subsidiaries will themselves own interests, directly or indirectly, in taxable REIT subsidiaries.

A taxable REIT subsidiary must not directly or indirectly operate or manage a lodging or health care facility or, generally, provide to another person, under a franchise, license or otherwise, rights to any brand name under which any lodging facility or health care facility is operated. Although a taxable REIT subsidiary may not operate or manage a lodging facility, it may lease or own such a facility so long as the facility is a qualified lodging facility and is operated on behalf of the taxable REIT subsidiary by an eligible independent contractor. A qualified lodging facility is, generally, a hotel or motel at which no authorized gambling activities are conducted, and includes the customary amenities and facilities operated as part of, or associated with, the hotel or motel. Customary amenities must be customary for other properties of a comparable size and



**Table of Contents**

class owned by other owners unrelated to Host. An eligible independent contractor is an independent contractor that, at the time a management agreement is entered into with a taxable REIT subsidiary to operate a qualified lodging facility, is actively engaged in the trade or business of operating qualified lodging facilities for a person or persons unrelated to either the taxable REIT subsidiary or any REITs with which the taxable REIT subsidiary is affiliated. A hotel management company that otherwise would qualify as an eligible independent contractor with regard to a taxable REIT subsidiary of Host will not so qualify if the hotel management company and/or one or more actual or constructive owners of 10% or more of the hotel management company actually or constructively own more than 35% of Host, or one or more actual or constructive owners of more than 35% of the hotel management company own 35% or more of Host (determined by taking into account only the stock held by persons owning, directly or indirectly, more than 5% of the outstanding stock of Host and, if the stock of the eligible independent contractor is publicly-traded, 5% of the publicly-traded stock of the eligible independent contractor). Host believes, and currently intends to take all steps reasonably practicable to ensure, that none of its taxable REIT subsidiaries or any of their subsidiaries will engage in operating or managing its hotels and that the hotel management companies engaged to operate and manage hotels leased to or owned by its taxable REIT subsidiaries qualify as eligible independent contractors with regard to those taxable REIT subsidiaries.

Certain restrictions are imposed on taxable REIT subsidiaries. First, a taxable REIT subsidiary may not deduct interest payments made in any year to an affiliated REIT to the extent that such payments exceed, generally, 50% of the taxable REIT subsidiary's adjusted taxable income for that year (although the taxable REIT subsidiary may carry forward to, and deduct in, a succeeding year the disallowed interest expense amount if the 50% test is satisfied). In addition, Host would be obligated to pay a 100% penalty tax on some payments from the taxable REIT subsidiary that it receives, including interest or rent, or on certain expenses deducted by the taxable REIT subsidiary, if the IRS were able to assert successfully that the economic arrangements between the REIT and the taxable REIT subsidiary did not meet specified standards set forth in the Code. Host's taxable REIT subsidiaries make substantial interest and other payments to Host, including payments of rent under the hotel leases. There can be no assurance that the limitation on interest deductions applicable to taxable REIT subsidiaries will not apply to the interest payments made to Host by its taxable REIT subsidiaries, resulting in an increase in the corporate income tax liability of each such subsidiary. In addition, there can be no assurance that the IRS might not seek to impose the 100% excise tax on a portion of the payments received by Host from, or expenses deducted by, its taxable REIT subsidiaries. To the extent that one of Host's taxable REIT subsidiaries pays dividends to Host in a particular calendar year, a portion of the dividends paid by Host to stockholders who are taxed at individual rates will generally be subject to taxation at reduced capital gain rates, rather than at ordinary income rates. See *Taxation of Taxable U.S. Stockholders - Qualified Dividend Income*.

Because of the restrictions applicable to the income, assets and activities of a REIT, Host may need to conduct certain business activities in one or more of its taxable REIT subsidiaries. These business activities include alternative uses of real estate, such as the development and/or sale of timeshare or condominium units. Host's taxable REIT subsidiaries are taxable as regular C corporations and are subject to federal, state, and, if applicable, local and foreign taxation on their income at applicable corporate income tax rates. As discussed below under *Asset Tests Applicable to REITs*, the aggregate value of all of Host's taxable REIT subsidiaries may not exceed 20% of the value of all of its assets.

*Ownership of Partnership Interests by a REIT*

A REIT that is a partner in a partnership 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 retains the same character in the hands of the REIT for purposes of the gross income tests and the asset tests applicable to REITs, as described below. Thus, Host's proportionate share of the assets and items of gross income of Host LP, including Host LP's share of such items of any subsidiaries that are partnerships or limited liability companies that have not elected to be treated as corporations for federal income tax purposes, are treated as assets and items of gross income of Host.

## Table of Contents

for purposes of applying the requirements described herein. A summary of the rules governing the federal income taxation of partnerships and their partners is provided below in Tax Aspects of Host's Ownership of Interests in Host LP. As the sole general partner of Host LP, Host has direct control over Host LP and indirect control over the subsidiaries in which Host LP or a subsidiary has a controlling interest. Host currently intends to operate these entities in a manner consistent with the requirements for qualification of Host as a REIT.

### *Income Tests Applicable to REITs*

In order to maintain qualification as a REIT, Host must satisfy the following two gross income tests on an annual basis:

At least 75% of Host's gross income, excluding gross income from prohibited transactions, must be derived directly or indirectly from investments relating to real property or mortgages on real property, including rents from real property, gain on the disposition of real estate, dividends paid by another REIT and interest on obligations secured by mortgages on real property or on interests in real property, or from some types of temporary investments.

At least 95% of Host's gross income, excluding gross income from prohibited transactions, must be derived from any combination of income qualifying under the 75% test, dividends, interest, and gain from the sale or disposition of stock or securities.

*Rents from Real Property.* Currently, rents paid pursuant to Host's leases, together with gain on the disposition of assets and dividends and interest received from Host's taxable REIT subsidiaries and REIT subsidiaries, constitute, and, following the transactions, such sources are expected to constitute, substantially all of the gross income of Host. Several conditions must be satisfied in order for rents received by Host, including the rents received pursuant to the leases, to qualify as rents from real property. First, the amount of rent must not be based in whole or in part on the income or profits of any person. An amount received or accrued generally will not be excluded from the term rents from real property solely by reason of being based on a fixed percentage or percentages of receipts or sales.

Second, rents received from a tenant will not qualify as rents from real property if Host, or an actual or constructive owner of 10% or more of Host, actually or constructively owns 10% or more of the tenant. Beginning with Host's 2001 taxable year, the Code has permitted Host to lease its hotel properties to a taxable REIT subsidiary without the rents received from that subsidiary being disqualified as rents from real property by reason of Host's direct or indirect ownership interest in the subsidiary. Substantially all of Host's properties currently are, and, following the transactions, will be, leased to taxable REIT subsidiaries.

Third, if rent attributable to personal property leased in connection with a lease of real property is greater than 15% of the total rent received under the lease, then the portion of rent attributable to such personal property will not qualify as rents from real property.

Fourth, if Host operates or manages a property or furnishes or renders certain impermissible services to the tenants at the property, and the income derived from the services exceeds one percent of the total amount received by Host with respect to the property, then no amount received by Host with respect to the property will qualify as rents from real property. Impermissible services are services other than services usually or customarily rendered in connection with the rental of real property and not otherwise considered rendered to the occupant. For these purposes, the income that Host is considered to receive from the provision of impermissible services will not be less than 150% of the cost of providing the service. If the amount so received is one percent or less of the total amount received by Host with respect to the property, then only the income from the impermissible services will not qualify as rents from real property. There are two exceptions to this rule. First, impermissible services can be provided to tenants through an independent contractor from whom Host derives no income. To the extent that impermissible services are



provided by an independent contractor, the cost of the services generally must be borne by the independent contractor. Second, impermissible services can be provided to tenants at a property by a taxable REIT subsidiary.

**Table of Contents**

In order for the rent paid pursuant to Host's leases to constitute rents from real property, the leases must be respected as true leases for federal income tax purposes. Accordingly the leases cannot be treated as service contracts, joint ventures or some other type of arrangement. The determination of whether the leases are true leases for federal income tax purposes depends upon an analysis of all the surrounding facts and circumstances. In making such a determination, courts have considered a variety of factors, including the following:

the intent of the parties;

the form of the agreement;

the degree of control over the property that is retained by the property owner (*e.g.*, whether the lessee has substantial control over the operation of the property or whether the lessee was required simply to use its best efforts to perform its obligations under the agreement); and

the extent to which the property owner retains the risk of loss with respect to the property (*e.g.*, whether the lessee bears the risk of increases in operating expenses or the risk of damage to the property) or the potential for economic gain (*e.g.*, appreciation) with respect to the property.

In addition, Section 7701(e) of the Code provides that a contract that purports to be a service contract or a partnership agreement is treated instead as a lease of property if the contract is properly treated as such, taking into account all relevant factors. Since the determination of whether a service contract should be treated as a lease is inherently factual, the presence or absence of any single factor may not be dispositive in every case.

Host's leases have been structured with the intent to qualify as true leases for federal income tax purposes. For example, with respect to each lease:

Host LP or the applicable subsidiary or other lessor entity and the lessee intend for their relationship to be that of a lessor and lessee, and such relationship is documented by a lease agreement;

the lessee has the right to exclusive possession and use and quiet enjoyment of the hotels covered by the lease during the term of the lease;

the lessee bears the cost of, and will be responsible for, day-to-day maintenance and repair of the hotels other than the cost of certain capital expenditures, and will dictate through the hotel managers, who work for the lessees during the terms of the leases, how the hotels are operated and maintained;

the lessee bears all of the costs and expenses of operating the hotels, including the cost of any inventory used in their operation, during the term of the lease, other than the cost of certain furniture, fixtures and equipment, and certain capital expenditures;

the lessee benefits from any savings and bears the burdens of any increases in the costs of operating the hotels during the term of the lease;

## Edgar Filing: HOST MARRIOTT CORP/ - Form S-4/A

in the event of damage or destruction to a hotel, the lessee is at economic risk because it will bear the economic burden of the loss in income from operation of the hotels subject to the right, in certain circumstances, to terminate the lease if the lessor does not restore the hotel to its prior condition;

the lessee has indemnified Host LP, the applicable subsidiary or other lessor entity against all liabilities imposed on Host LP, the applicable subsidiary or the other lessor during the term of the lease by reason of (A) injury to persons or damage to property occurring at the hotels or (B) the lessee's use, management, maintenance or repair of the hotels;

the lessee is obligated to pay, at a minimum, substantial base rent for the period of use of the hotels under the lease;

the lessee stands to incur substantial losses or reap substantial gains depending on how successfully it, through the hotel managers, who work for the lessees during the terms of the leases, operates the hotels;

## Table of Contents

Host and Host LP believe that each lessee reasonably expected, at the times the leases were entered into and subsequently renewed or extended, to derive a meaningful profit, after expenses and taking into account the risks associated with the lease, from the operation of the hotels during the term of its leases; and

upon termination of each lease, the applicable hotel is expected to have a remaining useful life equal to at least 20% of its expected useful life on the date of the consummation of the REIT conversion, and a fair market value equal to at least 20% of its fair market value on the date of the consummation of the REIT conversion.

If, however, the leases were recharacterized as service contracts or partnership agreements, rather than true leases, or disregarded altogether for tax purposes, all or part of the payments that Host LP, the applicable subsidiary or other lessor entity receives from the lessees would not be considered rent or would not otherwise satisfy the various requirements for qualification as rents from real property. In that case, Host very likely would not be able to satisfy either the 75% or 95% gross income tests and, as a result, would lose its REIT status.

As discussed above, a lessee of Host that is not a taxable REIT subsidiary must not be regarded as a related party tenant of Host. A lessee of Host will be regarded as a related party tenant only if Host and/or one or more actual or constructive owners of 10% or more of Host actually or constructively own 10% or more of such lessee. In order to help preclude Host's lessees from being regarded as related party tenants, the following organizational documents contain these ownership limits:

Host's charter expressly prohibits any person or persons acting as a group or entity from owning, actually and/or constructively, more than 9.8% of the lesser of the number or value of the shares of stock of Host (subject to a limited exception for a holder of shares of capital stock of Host in excess of the ownership limit solely by reason of the merger of Host's predecessor corporation into Host, which exception applied to the extent that the holder thereof did not own, directly or by attribution under the Code, more than 9.9% in value of the outstanding shares of capital stock of Host as a result of the merger) or any other class or series of shares of stock of Host; and

Host LP's partnership agreement expressly prohibits any person, or persons acting as a group, or entity, other than Host and an affiliate of The Blackstone Group and a series of related funds controlled by Blackstone Real Estate Partners, from owning more than 4.9% by value of any class of interests of Host LP.

Each of the prohibitions described above contains self-executing enforcement mechanisms. Assuming that these prohibitions are enforced at all times (subject to any waivers permitted under the operative documents), the lessees of Host that are not taxable REIT subsidiaries should not be regarded as related party tenants. There can be no assurance, however, that these ownership restrictions will be enforced in accordance with their terms in all circumstances or otherwise will ensure that the lessees will not be regarded as related party tenants.

As indicated above, rents from real property must not be based in whole or in part on the income or profits of any person. Except with regard to the Harbor Beach Lease and any other leases that Host acknowledges will not qualify as producing rent from real property under the Code, each of Host's leases provides for periodic payments of a specified base rent plus, to the extent that it exceeds the base rent, additional rent which is calculated based upon the gross sales of the hotels subject to the lease, plus certain other amounts. Payments made pursuant to Host's leases should qualify as rents from real property since they are generally based on either fixed dollar amounts or on specified percentages of gross sales fixed at the time the leases were entered into. The foregoing assumes that the leases have not been and will not be renegotiated during their term in a manner that has the effect of basing either the percentage rent or base rent on income or profits. The foregoing also assumes that the leases are not in reality used as a means of basing rent on income or profits. More generally, the rent payable under the leases will not qualify as rents from real property if, considering the leases and all the surrounding circumstances, the arrangement does not conform with normal business practice. Host has not and currently intends that it will not renegotiate the percentages used to determine the percentage

---

**Table of Contents**

rent during the terms of the leases in a manner that has the effect of basing rent on income or profits. In addition, Host believes that the rental provisions and other terms of the leases conform with normal business practice and generally were not intended to be used as a means of basing rent on income or profits. Furthermore, Host currently intends that, with respect to other properties that it acquires in the future, it will not charge rent for any property that is based in whole or in part on the income or profits of any person, except by reason of being based on a fixed percentage of gross revenues, as described above.

Host leases certain items of personal property to its lessees in connection with its leases. Under the Code, if a lease provides for the rental of both real and personal property and the portion of the rent attributable to personal property is 15% or less of the total rent due under the lease, then all rent paid pursuant to such lease qualifies as rent from real property. If, however, a lease provides for the rental of both real and personal property, and the portion of the rent attributable to personal property exceeds 15% of the total rent due under the lease, then no portion of the rent that is attributable to personal property will qualify as rents from real property. The amount of rent attributable to personal property is the amount which bears the same ratio to total rent for the taxable year as the average of the fair market value of the personal property at the beginning and end of the year bears to the average of the aggregate fair market value of both the real and personal property at the beginning and end of such year. Host believes that, with respect to each of its leases that includes a lease of items of personal property, either the amount of rent attributable to personal property with respect to such lease will not exceed 15% of the total rent due under the lease (determined under the law in effect for the applicable period), or, with respect to leases where the rent attributable to personal property constitutes nonqualifying income, such amounts, when taken together with all other nonqualifying income earned by Host, will not jeopardize Host's status as a REIT.

Each lease permits Host LP to take certain measures, including requiring the lessee to purchase certain furniture, fixtures and equipment or to lease such property from a third party, including a taxable REIT subsidiary, if necessary to ensure that all of the rent attributable to personal property with respect to such lease will qualify as rents from real property. Substantial personal property associated with certain of the hotels to be acquired from Starwood pursuant to the master agreement will be owned by one or more taxable REIT subsidiaries of Host. Host expects that the only material tax impact of the ownership of this personal property by the taxable REIT subsidiaries is that it will reduce the rent payments from the taxable REIT subsidiaries to Host LP.

*Income from Foreclosure Property.* If Host acquires real property and personal property incident to such property through a foreclosure or similar process following a default on a lease of such property or a default on indebtedness owed to Host that is secured by the property, and if Host makes a timely election to treat such property as foreclosure property under applicable provisions of the Code, net income Host realizes from such property generally will be subject to tax at the maximum federal corporate income tax rate, regardless of whether Host distributes such income to its stockholders currently. However, such income will nonetheless qualify for purposes of the 75% and 95% gross income tests even if it would not otherwise be qualifying income for such purposes in the absence of the foreclosure property election. If an unrelated third party lessee defaults under a lease, Host LP is permitted to lease the hotel to a taxable REIT subsidiary, in which case the hotel would not become foreclosure property, as described herein.

*Interest.* Interest generally will be nonqualifying income for purposes of the 75% and 95% gross income tests if it depends in whole or in part on the income or profits of any person. However, interest based upon a fixed percentage or percentages of receipts or sales may still qualify under the 75% and 95% gross income tests. Host has received and expects to receive in the future interest payments from its taxable REIT subsidiaries and may receive such payments from its REIT subsidiaries. These amounts of interest are qualifying income for purposes of the 95% gross income test but not the 75% gross income test. Host does not anticipate that the amounts of interest derived from its taxable REIT subsidiaries and its REIT subsidiaries will affect its ability to continue to satisfy the 75% gross income test.

*Dividends.* Host also receives dividends from its taxable REIT subsidiaries, and it could realize capital gain with respect to its investments in its taxable REIT subsidiaries (either due to distributions received from those



---

**Table of Contents**

subsidiaries or upon a disposition of part or all of its interest in a taxable REIT subsidiary). Host's share of any dividends received from one or more of its taxable REIT subsidiaries or capital gain recognized with respect thereto should qualify for purposes of the 95% gross income test but not for purposes of the 75% gross income test. Host does not anticipate that the amounts of dividends from its taxable REIT subsidiaries and/or capital gain with respect to its taxable REIT subsidiaries will affect its ability to continue to satisfy the 75% gross income test. Dividends from, and gain from the sale of its interests in, any of Host's REIT subsidiaries will qualify for purposes of both the 75% and the 95% gross income tests.

*Hedging Transactions.* From time to time, Host may enter into transactions to hedge against interest rate risks or value fluctuations associated with one or more of its assets or liabilities. Host's hedging activities may include entering into interest rate swaps, caps, and floors, options to purchase these items, futures and forward contracts and other financial instruments. To the extent that Host enters into a transaction in the normal course of its business primarily to manage the risk of interest rate changes, price changes or currency fluctuations with respect to indebtedness incurred or to be incurred by Host to acquire or carry real estate assets, any income or gain from the hedging transaction will be excluded from gross income solely for purposes of the 95% gross income test, provided that Host clearly and timely identifies such hedging transaction in the manner required under the Code and the Treasury Regulations promulgated thereunder. Host believes that it has structured its past hedging transactions, and intends to structure any future hedging transactions, in a manner that does not jeopardize its status as a REIT, although this determination depends on an analysis of the facts and circumstances concerning each hedging transaction.

*Temporary Investment Income.* For purposes of the gross income tests, temporary investment income generally constitutes qualifying income if such income is earned as a result of investing new capital raised through the issuance of Host's stock or certain long-term debt obligations in stock and debt obligations during the one-year period beginning on the date Host receives the new capital.

*Failure to Satisfy the Income Tests.* Host inevitably will have some gross income from various sources, including the sources described in the preceding paragraphs, that fails to constitute qualifying income for purposes of one or both of the gross income tests. Taking into account its actual and anticipated sources of nonqualifying income, however, Host believes that its aggregate gross income from all sources has satisfied, and Host currently intends that its aggregate gross income will continue to satisfy, the 75% and 95% gross income tests applicable to REITs for each taxable year commencing on or after January 1, 1999.

If Host were to fail 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 such year if it were entitled to relief under certain provisions of the Code. These relief provisions generally would be available if Host's failure to meet such tests were due to reasonable cause and not due to willful neglect, and, following identification of the failure, Host filed with the IRS a schedule describing each item of its gross income qualifying under one or more of the gross income tests. It is not possible, however, to state whether in all circumstances Host would be entitled to the benefit of these relief provisions. If these relief provisions were inapplicable to a particular set of circumstances involving Host, it would not qualify as a REIT. As discussed above under General, even if these relief provisions were to apply, a tax based on the amount of Host's nonqualifying income would be imposed.

*Prohibited Transactions Tax.* Any gain realized by Host on the sale of any property held as inventory or other property held primarily for sale to customers in the ordinary course of business, including Host's share of any such gain realized by Host LP or any other subsidiary partnership, will be treated as income from a prohibited transaction that is subject to a 100% penalty tax. Under existing law, whether property is held as inventory or primarily for sale to customers in the ordinary course of a trade or business is a question of fact that depends upon all the facts and circumstances with respect to the particular transaction. However, Host will not be treated as a dealer in real property for the purpose of the 100% penalty tax if (i) Host has held the property for at least four years for the production of rental income, (ii) capitalized expenditures on the property in the four years preceding sale are less than 30% of the net selling price of the property, and (iii) Host either (a) has seven or fewer sales of property (excluding certain property obtained through foreclosure) for the year of sale or (b) the





## Table of Contents

aggregate tax basis of property sold during the year of sale is 10% or less of the aggregate tax basis of all of Host's assets as of the beginning of the taxable year and substantially all of the marketing and development expenditures with respect to the property sold are made through an independent contractor from whom Host derives no income. The sale of more than one property to one buyer as part of one transaction constitutes one sale.

Host currently intends that both it and its subsidiaries will hold hotels for investment with a view to long-term appreciation, to engage in the business of acquiring and owning hotels and to make sales of hotels as are consistent with Host's investment objectives. However, some of Host's sales may not satisfy the "safe harbor" requirements described above and there can be no assurance that the IRS might not contend that one or more of these sales is subject to the 100% penalty tax.

### *Asset Tests Applicable to REITs*

At the close of each quarter of Host's taxable year, it must satisfy six tests relating to the nature of its assets, as follows:

(1) At least 75% of the value of Host's total assets must be represented by real estate assets, cash, cash items, and government securities. Real estate assets include mortgages secured by real estate assets, shares of other REITs, and stock or debt instruments held for less than one year purchased with the proceeds of an offering of shares or long-term debt.

(2) Not more than 25% of Host's total assets may be represented by securities, other than those in the 75% asset class.

(3) Except for securities described in (1) above and securities of taxable REIT subsidiaries, the value of any one issuer's securities owned by Host may not exceed 5% of the value of its total assets.

(4) Except for securities described in (1) above and securities of taxable REIT subsidiaries, Host may not own more than 10% of any one issuer's outstanding voting securities.

(5) Except for securities described in (1) above, securities of taxable REIT subsidiaries, and certain types of indebtedness that are not treated as securities for purposes of this test, as discussed below, Host may not own more than 10% of the total value of the outstanding securities of any one issuer.

(6) Not more than 20% of the value of Host's total assets may be represented by the securities of one or more taxable REIT subsidiaries.

Host's assets for purposes of these tests include its allocable share of all assets held by the entities in which it owns an interest that are partnerships or disregarded entities for federal income tax purposes, and the subsidiaries of these entities that are partnerships or disregarded entities for federal income tax purposes, and generally do not include the equity interests in these entities. For purposes of the asset tests other

than the 10% value test, an allocable share of the assets of an entity that is treated as a partnership for federal income tax purposes is determined in accordance with the capital interests in that entity. For purposes of the 10% value test, an allocable share of the assets of an entity that is treated as a partnership for federal income tax purposes is determined in accordance with Host's proportionate ownership of the equity interests and the other securities issued by that entity, other than certain securities specified in the Code.

Securities, for purposes of the asset tests, may include debt Host holds from other issuers. However, the Code specifically provides that the following types of debt will not be taken into account as securities for purposes of the 10% value test: (1) securities that meet the straight debt safe harbor, as discussed in the next paragraph; (2) loans to individuals or estates; (3) obligations to pay rents from real property; (4) rental agreements described in Section 467 of the Code (other than such agreements with related party tenants); (5) securities issued by other REITs; (6) debt issued by partnerships that derive at least 75% of their gross income from sources that constitute qualifying income for purposes of the 75% gross income test; (7) any debt not

**Table of Contents**

otherwise described in this paragraph that is issued by a partnership, but only to the extent of Host's interest as a partner in the partnership; (8) certain securities issued by a state, the District of Columbia, a foreign government, or a political subdivision of any of the foregoing, or the Commonwealth of Puerto Rico; and (9) any other arrangement determined by the IRS.

Debt will meet the straight debt safe harbor if (1) neither Host nor any of its controlled taxable REIT subsidiaries (*i.e.*, taxable REIT subsidiaries in which Host directly or indirectly owns more than 50% of the vote or value of the outstanding stock) owns any securities not described in the preceding paragraph that have an aggregate value greater than one percent of the issuer's outstanding securities, as calculated under the Code, (2) the debt is a written unconditional promise to pay on demand or on a specified date a sum certain in money, (3) the debt is not convertible, directly or indirectly, into stock, and (4) the interest rate and the interest payment dates of the debt are not contingent on the profits, the borrower's discretion or similar factors. However, contingencies regarding time of payment and interest are permissible for purposes of qualifying as a straight debt security if either (1) such contingency does not have the effect of changing the effective yield to maturity, as determined under the Code, other than a change in the annual yield to maturity that does not exceed the greater of (i) 5% of the annual yield to maturity or (ii) 0.25%, or (2) neither the aggregate issue price nor the aggregate face amount of the issuer's debt instruments held by the REIT exceeds \$1,000,000 and not more than 12 months of unaccrued interest can be required to be prepaid thereunder. In addition, debt will not be disqualified from being treated as straight debt solely because the time or amount of payment is subject to a contingency upon a default or the exercise of a prepayment right by the issuer of the debt, provided that such contingency is consistent with customary commercial practice.

Neither Host, Host LP, nor any of the non-corporate subsidiaries of Host LP has owned or currently intends to own, as of each relevant testing date, more than 10% of (i) the voting securities of any entity that is treated as a corporation for federal income tax purposes, except for securities described in paragraph (1) above (including stock of its subsidiary REITs) and, with regard to periods beginning after December 31, 2000, corporations or other entities that qualify and elect to be treated as taxable REIT subsidiaries or (ii) the value of the securities of any issuer with respect to periods beginning after December 31, 2000, except for securities described in paragraph (1) above or those of its taxable REIT subsidiaries. In addition, Host believes that the value of the securities of any one issuer owned by Host, Host LP, or any of the non-corporate subsidiaries of Host LP has not exceeded 5% of the total value of Host's assets for prior years, unless the issuer was a taxable REIT subsidiary, and Host currently intends not to exceed that percentage threshold in subsequent years unless the issuer is a taxable REIT subsidiary or the securities are described in paragraph (1) above (including the securities of its subsidiary REITs). Host believes that the aggregate value of its securities of its taxable REIT subsidiaries has not exceeded, and currently intends that such aggregate value will not exceed, 20% of the value of its total assets, and that the aggregate value of its securities of its taxable REIT subsidiaries, together with all other assets that do not qualify for purposes of the 75% asset test, does not exceed 25% of the total value of its assets. There can be no assurance, however, that the IRS might not contend that the value of any of the securities owned by Host has exceeded on a relevant testing date one or more of the value limitations.

After initially meeting the asset tests at the close of any quarter, Host 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 the relative values of its assets. 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 the disposition of sufficient nonqualifying assets within 30 days after the close of that quarter. An example of such an acquisition would be an increase in Host's interest in Host LP as a result of the exercise of a limited partner's redemption right relating to units in Host LP ( LP Units ) or an additional capital contribution of proceeds from an offering of capital stock by Host.

Furthermore, the failure to satisfy the asset tests can be remedied even after the 30-day cure period. If the total value of the assets that caused a failure of the 5% test, the 10% voting securities test or the 10% value test does not exceed either 1% of Host's assets at the end of the relevant quarter or \$10,000,000, Host can cure such a failure by disposing of sufficient assets to cure such a violation within six months following the last day of the

## Table of Contents

quarter in which Host first identifies the failure of the asset test. For a violation of any of the asset tests attributable to the ownership of assets the total value of which exceeds the amount described in the preceding sentence, Host can avoid disqualification as a REIT if the violation is due to reasonable cause and Host disposes of an amount of assets sufficient to cure such violation within the six-month period described in the preceding sentence, pays a tax equal to the greater of \$50,000 or the highest corporate income tax rate multiplied by the net income generated by the nonqualifying assets during the period of time that the assets were held as nonqualifying assets, and files a schedule with the IRS that describes the assets. The applicable Treasury Regulations have yet to be issued. Thus, it is not possible to state with precision under what circumstances Host would be entitled to the benefit of these provisions.

Host has monitored and currently intends to continue to monitor its compliance with the asset tests and to take such actions within 30 days after the close of any quarter, to the extent reasonably practicable, as may be required to cure any noncompliance. If Host fails to cure noncompliance with the asset tests within such time period, Host would cease to qualify as a REIT unless it could avail itself of available relief provisions.

### *Annual Distribution Requirements Applicable to REITs*

To qualify as a REIT, Host is required to distribute dividends, other than capital gain dividends, to its stockholders in an amount at least equal to

(i) the sum of (a) 90% of its REIT taxable income, computed without regard to the dividends paid deduction and Host's net capital gain, and (b) 90% of the net income, after tax, if any, from foreclosure property, minus

(ii) the sum of certain items of noncash income.

Dividend distributions generally must be paid in the taxable year to which they relate. Dividends may be paid in the following taxable year in two circumstances. First, dividends may be paid in the following taxable year if declared before Host timely files its tax return for such year and if paid on or before the first regular dividend payment date after such declaration. Second, if Host declares a dividend in October, November or December of any year with a record date in one of those months and pays the dividend on or before January 31 of the following year, Host will be treated as having paid the dividend on December 31 of the year in which the dividend was declared. Host currently intends to make timely distributions sufficient to satisfy these annual distribution requirements. In this regard, Host LP's partnership agreement authorizes Host, as general partner, to take such steps as may be necessary to cause Host LP to distribute to its partners an amount sufficient to permit Host to meet these distribution requirements.

To the extent that Host does not distribute all of its net capital gain or distributes at least 90%, but less than 100%, of its REIT taxable income within the periods described in the prior paragraph, it is subject to income tax thereon at regular capital gain and ordinary corporate income tax rates.

There is a possibility that Host's REIT taxable income could exceed its cash flow, due in part to certain non-cash or phantom income that would be taken into account in computing Host's REIT taxable income. It is possible, because of these differences in timing between Host's recognition of taxable income and its receipt of cash available for distribution, that Host, from time to time, may not have sufficient cash or other liquid assets to meet its distribution requirements. In this event, in order to meet the distribution requirements, Host may find it necessary to arrange for short-term, or possibly long-term, borrowings to fund required distributions and/or to pay dividends in the form of taxable stock dividends.

Host calculates its REIT taxable income based upon the conclusion that, except for its hotels owned through subsidiary REITs, the non-corporate subsidiaries of Host LP or Host LP itself, as applicable, is the owner of the hotels for federal income tax purposes. As a result, Host expects that the depreciation deductions with respect to the hotels owned through Host LP or its non-corporate subsidiaries will reduce Host's REIT taxable income (and

## **Table of Contents**

that the depreciation deductions with respect to the hotels owned through its subsidiary REITs will reduce the REIT taxable income of those entities). This conclusion is consistent with the conclusion above that the leases of Host's hotels have been and will continue to be treated as true leases for federal income tax purposes. If, however, the IRS were to challenge successfully this position, in addition to failing in all likelihood the 75% and 95% gross income tests described above, Host also might be deemed retroactively to have failed to meet the REIT distribution requirements and would have to rely on the payment of a deficiency dividend in order to retain its REIT status.

Under certain circumstances, Host may be able to rectify a failure to meet the distribution requirement for a year by paying deficiency dividends to stockholders in a later year, which may be included in Host's deduction for dividends paid for the earlier year. Thus, Host may be able to avoid being taxed on amounts distributed as deficiency dividends; however, Host would be required to pay to the IRS interest based upon the amount of any deduction taken for deficiency dividends.

Host would be subject to a nondeductible 4% excise tax on any excess of the required distribution over the sum of amounts actually distributed and amounts retained on which federal income tax was paid, if Host did not distribute during each calendar year at least the excess of the sum of:

- (1) 85% of its REIT ordinary income for the year;
- (2) 95% of its REIT capital gain net income for the year; and
- (3) any undistributed taxable income from prior taxable years, over excess distributions from prior years.

A REIT may elect to retain rather than distribute all or a portion of its net capital gain and pay the tax on such gain. In that case, a REIT may elect to have its stockholders include their proportionate share of the undistributed net capital gain in income as long-term capital gain and receive a credit for their share of the tax paid by the REIT. For purposes of the 4% excise tax described above, any retained amounts would be treated as having been distributed and recontributed.

### *Recordkeeping Requirements*

Host is required to comply with applicable recordkeeping requirements. Failure to comply could result in monetary fines.

### *Failure to Qualify as a REIT*

If Host does not comply with one or more of the conditions required for qualification as a REIT (other than the asset tests and the income tests that have the specific mitigation clauses discussed above in *Federal Income Taxation of Host - Asset Tests Applicable to REITs* and *Income Tests Applicable to REITs*), Host can avoid disqualification of its REIT status by paying a penalty of \$50,000 for each such failure, provided that its noncompliance was due to reasonable cause and not willful neglect. If Host were to fail to qualify for taxation as a REIT in any taxable

year, and if the statutory relief provisions were not to apply, Host would be subject to corporate income tax, including any applicable alternative minimum tax, on its taxable income at regular corporate rates. Distributions to stockholders in any year in which Host were to fail to qualify as a REIT would not be deductible by Host nor would such distributions be required to be made. As a result, Host's failure to qualify as a REIT would significantly reduce the cash available for distribution by Host to its stockholders and could materially reduce the value of its capital stock. In addition, if Host were to fail to qualify as a REIT, all distributions to stockholders would be taxable as dividends, to the extent of Host's current and accumulated E&P, whether or not attributable to capital gain of Host. Subject to certain limitations of the Code, corporate distributees may be eligible for the dividends received deduction with respect to these distributions and individual distributees may be eligible for the reduced long-term capital gain rate of 15% or less on such dividends. Unless entitled to relief under specific statutory provisions, Host also would 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 Host would be entitled to such statutory relief.

---

**Table of Contents**

**Tax Aspects of Host's Ownership of Interests of Host LP**

*General*

Substantially all of Host's investments are held indirectly through Host LP, which holds the hotels either directly or through certain subsidiaries (including, following the transactions, through subsidiaries that will elect to be treated as REITs for federal income tax purposes). This discussion focuses on the tax aspects of Host's ownership of its hotel properties through partnerships. In general, partnerships are pass-through entities that 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. Host includes in its gross income its proportionate share of the foregoing 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 gross asset tests, Host includes its proportionate share of gross assets held through Host LP and those of its subsidiaries that are either disregarded as separate entities or treated as partnerships for federal income tax purposes. See *Federal Income Taxation of Host's Ownership of Partnership Interests by a REIT* above.

*Entity Classification*

If Host LP or any non-corporate subsidiary were treated as an association, the entity would be taxable as a corporation and therefore would be subject to federal and state income tax on its taxable income. In such a situation, the character of Host's assets and items of gross income would change and could preclude Host from qualifying as a REIT (see *Federal Income Taxation of Host's Asset Tests Applicable to REITs* and *Income Tests Applicable to REITs* above).

The entire discussion of the tax treatment of Host and the federal income tax consequences of the ownership of the stock of Host is based on the assumption that Host LP and all of its subsidiaries (other than Host's taxable REIT subsidiaries and its subsidiary REITs) are classified as partnerships or disregarded as separate entities for federal income tax purposes. Pursuant to Treasury Regulations under Section 7701 of the Code, a partnership will be treated as a partnership for federal income tax purposes unless it elects to be treated as a corporation or would be treated as a corporation because it is a publicly traded partnership.

Neither Host LP nor any of its non-corporate subsidiaries that is not a taxable REIT subsidiary has elected or will elect to be treated as a corporation. Therefore, subject to the disclosure below, Host LP and each such subsidiary will be treated as a partnership for federal income tax purposes (or, if such an entity has only one partner or member, disregarded entirely for federal income tax purposes).

Pursuant to Section 7704 of the Code, a partnership that does not elect to be treated as a corporation nevertheless will be treated as a corporation for federal income tax purposes if it is a publicly traded partnership and it does not derive at least 90% of its gross income from certain specified sources of qualifying income within the meaning of that section. A publicly traded partnership is any partnership (i) the interests in which are traded on an established securities market or (ii) the interests in which are readily tradable on a secondary market or the substantial equivalent thereof. LP Units will not be traded on an established securities market. There is a significant risk, however, that the LP Units could be considered readily tradable on the substantial equivalent of a secondary market. In that event, Host LP could be treated as a publicly traded partnership, but even then it would only be taxable as a corporation if less than 90% of its gross income were to constitute qualifying income. Treasury Regulations under Section 7704 of the Code set forth certain safe harbors under which interests will not be treated as readily tradable on a secondary market (or the substantial equivalent thereof) within the meaning of Section 7704 of the Code (the *Safe Harbors*).



## Edgar Filing: HOST MARRIOTT CORP/ - Form S-4/A

Qualifying income, for purposes of the qualifying income exception, is generally real property rents and other types of passive income. Host believes that Host LP has had and will continue to have sufficient qualifying gross income so that it would be taxed as a partnership even if it were a publicly traded partnership. The gross

## **Table of Contents**

income requirements applicable to Host in order for it to qualify as a REIT under the Code and the definition of qualifying income under the publicly traded partnership rules are very similar. Although differences exist between these two income tests, Host does not believe that these differences would cause Host LP not to satisfy the 90% gross income test applicable to publicly traded partnerships.

If Host LP were taxable as a corporation, most, if not all, of the tax consequences described herein would be inapplicable. In particular, Host would not qualify as a REIT because the value of Host's ownership interest in Host LP would exceed 5% of Host's assets and Host would be considered to hold more than 10% of the voting securities (and 10% of the value of the outstanding securities) of another corporation (see

Federal Income Taxation of Host Asset Tests Applicable to REITs above). In this event, the value of Host's stock could be adversely affected (see Federal Income Taxation of Host Failure to Qualify as a REIT above).

Except with regard to the exercise of the right to redeem LP Units and certain permitted transfers (generally among related individuals or entities) under the partnership agreement of Host LP, no limited partner may transfer LP Units without the prior written consent of Host, as general partner of Host LP, which consent may be withheld in the general partner's sole discretion. The partnership agreement of Host LP provides that Host shall take such actions, if any, that are reasonably necessary or appropriate to prevent Host LP from being classified as a publicly traded partnership and, except as provided otherwise in the partnership agreement, to permit Host LP to insure that at least one of the Safe Harbors is met. Host may exercise its authority, as general partner, under the partnership agreement to impose limitations on the exercise of the right to redeem LP Units only to the extent that outside tax counsel provides to Host an opinion to the effect that, in the absence of such limitation or restriction, there is a significant risk that Host LP will be treated as a publicly traded partnership and, by reason thereof, taxable as a corporation. These limitations, if imposed, could adversely affect the interests of holders of LP Units.

### *Allocations of Host LP Income, Gain, Loss and Deduction*

A partnership agreement will generally determine the allocation of income and loss among partners. However, such allocations will be disregarded for federal income tax purposes if they do not comply with the provisions of Section 704(b) of the Code and the regulations promulgated thereunder. Generally, Section 704(b) of the Code and the regulations promulgated thereunder require that partnership allocations respect the economic arrangement of the partners.

If an allocation is not recognized for federal income tax purposes, the item subject to the allocation will be reallocated in accordance with the partners' interests in the partnership, which will be determined by taking into account all of the facts and circumstances relating to the economic arrangement of the partners with respect to such item. The allocations of taxable income and loss provided for in Host LP's partnership agreement and the partnership agreements and operating agreements of the non-corporate subsidiaries are intended to comply with the requirements of Section 704(b) of the Code and the regulations promulgated thereunder.

### *Tax Allocations with Respect to the Hotels*

Pursuant to Section 704(c) of the Code, income, gain, loss and deduction attributable to appreciated or depreciated property, such as the hotels, 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, respectively, the difference between the adjusted tax basis and the fair market value of such property at the time of contribution. This difference is known as built-in gain or built-in loss. Host LP's partnership agreement requires that such allocations be made in a manner consistent with Section 704(c) of the Code. In general, the partners of Host LP, including Host, who contributed appreciated assets having built-in gain are allocated depreciation deductions for federal income tax purposes that are lower than such deductions would be if determined on a pro rata basis. Thus, the carryover basis of the contributed assets in the hands of Host LP may cause Host to be allocated lower

depreciation and other deductions, and therefore to be effectively allocated more

**Table of Contents**

income, which might adversely affect Host's ability to comply with the REIT distribution requirements and/or cause a higher proportion of Host's distributions to its stockholders to be taxed as dividends. See Federal Income Taxation of Host Annual Distribution Requirements Applicable to REITs above.

In addition, in the event of the disposition of any of the contributed assets which have built-in gain, all income attributable to the built-in gain generally will be allocated to the contributing partners, even though the proceeds of such sale would be allocated proportionately among all the partners and likely would be retained by Host LP, rather than distributed. Thus, if Host LP were to sell a hotel with built-in gain that was contributed to Host LP by Host's predecessors or Host, Host generally would be allocated all of the income attributable to the built-in gain, which could exceed the economic, or book, income allocated to it as a result of such sale. Such an allocation might cause Host to recognize taxable income in excess of cash proceeds, which might adversely affect Host's ability to comply with the REIT distribution requirements. In addition, Host will be subject to a corporate level tax on such gain to the extent the gain is recognized prior to January 1, 2009. See Federal Income Taxation of Host Annual Distribution Requirements Applicable to REITs and Federal Income Taxation of Host General above. It should be noted that, as the general partner of Host LP, Host will determine whether or not to sell a hotel contributed to Host LP by Host.

Host LP generally uses the traditional method (with a provision for a curative allocation of gain on sale to the extent prior allocations of depreciation with respect to a specific hotel were limited by the ceiling rule applicable under the traditional method) to account for built-in gain with respect to the hotels contributed to Host LP in connection with the REIT conversion. This method is generally a more favorable method for accounting for built-in gain from the perspective of those partners, including Host, who received LP Units in exchange for property with a low adjusted tax basis relative to fair market value at the time of the REIT conversion and is a less favorable method from the perspective of those partners who contributed cash or high basis assets to Host LP, including Host to the extent it contributes cash to Host LP.

Any property purchased by Host LP will initially have an adjusted tax basis equal to its fair market value, and Section 704(c) of the Code will not apply.

**Other Tax Consequences for Host and Its Stockholders**

Host and its stockholders are subject to state or local taxation in various state or local jurisdictions, including those in which Host LP or Host's stockholders transact business or reside. The state and local tax treatment of Host and its stockholders may not conform to the federal income tax consequences discussed above. Consequently, prospective stockholders of Host should consult their own tax advisors regarding the effect of state and local tax laws on an investment in Host. To the extent that Host owns assets or conducts operations in foreign jurisdictions, it or its subsidiaries will also be subject to certain foreign taxes. Host will acquire a number of foreign hotels from Starwood in the transactions. Although Host and its affiliates will seek to reduce the foreign income taxes payable on the operations of these non-U.S. hotels, there inevitably will be some foreign income tax payable and the amounts of those taxes could be significant.

A portion of the cash to be used by Host to fund distributions comes from interest on notes held by Host LP and, in some cases, dividends from the taxable REIT subsidiaries. The taxable REIT subsidiaries, and certain of their subsidiaries, are subject to federal, state and local income tax at the full applicable corporate rates (and foreign taxes to the extent that they own assets or have operations in foreign jurisdictions). To the extent that any of Host's taxable REIT subsidiaries or any of their subsidiaries is required to pay federal, state or local taxes, or foreign taxes, Host will receive less dividend income from the relevant entity and will have less cash available for distribution to stockholders. Following the transactions, Host also expects to receive distributions from its REIT subsidiaries. To the extent those entities are required to pay state, local or foreign taxes, amounts available for distribution to Host will be reduced.

## Edgar Filing: HOST MARRIOTT CORP/ - Form S-4/A

As described above in Federal Income Taxation of Host Taxable REIT Subsidiaries, each of Host's taxable REIT subsidiaries is fully taxable as a corporation and is subject to certain rules intended to restrict its ability to reduce its tax liability.

## **Table of Contents**

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

The term U.S. stockholder, when used in this discussion, means a holder of Host's stock who is, for United States federal income tax purposes:

a citizen or resident alien individual, as defined in Section 7701(b) of the Code, of the United States,

a corporation, partnership, limited liability company or other entity treated as a corporation or partnership for federal income tax purposes, created or organized in or under the laws of the United States or any state or in the District of Columbia, unless, in the case of a partnership, Treasury Regulations provide otherwise,

an estate the income of which is subject to federal income taxation regardless of its source, or

a trust whose administration is subject to the primary supervision of a United States court and which has one or more United States persons who have the authority to control all substantial decisions of the trust.

Notwithstanding the preceding sentence, to the extent provided in Treasury Regulations, some trusts in existence on August 20, 1996, and treated as United States persons prior to this date that elect to continue to be treated as United States persons, shall also be considered U.S. stockholders. In the case of an entity treated as a partnership for federal income tax purposes, the treatment of its partners generally will depend upon the status of the partner and the activities of the partnership. Persons that have an indirect interest in Host's stock through entities treated as partnerships for federal income tax purposes should consult their tax advisors.

A non-U.S. stockholder is a holder, including any partner in a partnership that holds Host's stock, that is not a U.S. stockholder, as defined herein.

### *Distributions Generally*

Distributions (or deemed distributions) made by Host out of its current or accumulated E&P, other than capital gain dividends or retained capital gain as discussed below, constitute dividends taxable to its taxable U.S. stockholders as ordinary income. So long as Host qualifies as a REIT, such distributions are not eligible for the dividends received deduction that is generally afforded to U.S. stockholders that are corporations. To the extent that Host makes distributions not designated as capital gain dividends in excess of its current and accumulated E&P, such distributions are treated first as a tax-free return of capital to each U.S. stockholder, reducing the adjusted tax basis that such U.S. stockholder has in its stock for federal income tax purposes by the amount of such distribution, but not below zero, with distributions in excess of such U.S. stockholder's adjusted tax basis taxable as capital gain, provided that the stock has been held as a capital asset. For purposes of determining whether distributions to holders of Host's preferred stock or common stock are made out of Host's current or accumulated earnings and profits for federal income tax purposes, earnings and profits are allocated first to Host's preferred stock on a pro rata basis and then to Host common stock. Host will notify stockholders after the close of its taxable year as to the portions of distributions attributable to that year that constitute ordinary income, return of capital and capital gain. Host's distributions of ordinary income, except to the extent properly designated by Host as qualified dividend income, will not qualify for the maximum 15% long-term capital gain rate that generally applies to distributions by regular C corporations to stockholders who are taxed as individuals.

## Edgar Filing: HOST MARRIOTT CORP/ - Form S-4/A

Distributions will generally be taxable, if at all, in the year of distribution. However, if Host declares a dividend in October, November or December of any year and pays such dividend to a stockholder of record on a specified date in any such month, such dividend will be treated as both paid by Host and received by the stockholder on December 31 of such year, provided that the dividend is actually paid by Host on or before January 31 of the following year.

For purposes of computing liability for alternative minimum tax, certain of Host's alternative minimum tax adjustments will be treated as alternative minimum tax adjustments of its stockholders in the ratio that Host's

## **Table of Contents**

distributions bear to its taxable income (determined without regard to the deduction for dividends paid). Amounts treated as alternative minimum tax adjustments of Host's stockholders are deemed to be derived by the stockholders proportionately from each such alternative minimum tax adjustment of Host and are taken into account by the stockholders in computing their alternative minimum taxable income for the taxable year to which the dividends are attributable.

### *Capital Gain Distributions; Retained Net Capital Gains*

Distributions that Host properly designates as capital gain dividends are taxable to U.S. stockholders as gain from the sale or exchange of a capital asset held for more than one year (without regard to the period for which such taxable U.S. stockholder has held his stock) to the extent that they do not exceed Host's actual net capital gain for the taxable year. A U.S. stockholder's share of a capital gain dividend is an amount which bears the same ratio to the total amount of dividends paid to such U.S. stockholder for the year as the aggregate amount designated as a capital gain dividend bears to the aggregate amount of all dividends paid on all classes of shares of stock for the year.

If Host designates any portion of a dividend as a capital gain dividend, a U.S. stockholder will receive an IRS Form 1099 - DIV indicating the amount that will be taxable to the stockholder as capital gain. Corporate stockholders, however, may be required to treat up to 20% of capital gain dividends as ordinary income.

Instead of paying capital gain dividends, Host may designate all or part of its net capital gain as undistributed capital gain. Host will be subject to tax at regular corporate income tax rates on any undistributed capital gain.

A U.S. stockholder:

(1) will include in its income as long-term capital gains its proportionate share of such undistributed capital gains; and

(2) will be deemed to have paid its proportionate share of the tax paid by Host on such undistributed capital gains and receive a credit or a refund to the extent that the tax paid by Host exceeds the U.S. stockholder's tax liability on the undistributed capital gain.

A U.S. stockholder will increase the basis in its stock by the difference between the amount of capital gain included in its income and the amount of tax it is deemed to have paid. The earnings and profits of Host will be adjusted appropriately.

Host will classify portions of any designated capital gain dividend or undistributed capital gain as either:

(1) a 15% rate gain distribution, which would be taxable to non-corporate U.S. stockholders at a maximum rate of 15%; or



## Edgar Filing: HOST MARRIOTT CORP/ - Form S-4/A

(2) an unrecaptured Section 1250 gain distribution, which would be taxable to non-corporate U.S. stockholders at a maximum rate of 25%.

Host must determine the maximum amounts that it may designate as 15% and 25% rate capital gain dividends by performing the computation required by the Code as if the REIT were an individual whose ordinary income were subject to a marginal tax rate of at least 28%. Designations made by Host will be effective only to the extent that they comply with Revenue Ruling 89-81, which requires that distributions made to different classes of shares be composed proportionately of dividends of a particular type. If Host designates any portion of its net capital gain as undistributed capital gain, a U.S. stockholder will receive an IRS Form 2439 indicating the total amount of undistributed capital gain, the amount of unrecaptured Section 1250 gain, if any, and the tax paid by Host on the undistributed capital gain.

Recipients of capital gain dividends from Host that are taxed at corporate income tax rates will be taxed at the normal corporate income tax rates on those dividends.

## **Table of Contents**

### *Qualified Dividend Income*

Host may elect to designate a portion of its distributions paid to stockholders as qualified dividend income. That portion of a distribution which is properly designated as qualified dividend income is taxable to a non-corporate U.S. stockholder at long-term capital gain rates, so long as the stockholder satisfies the applicable holding requirements. As a general rule, the stockholder must have held the stock with respect to which the distribution is paid for more than 61 days during the 121-day period beginning 60 days before the ex-dividend date for the distribution. The maximum amount of Host's distributions eligible to be designated as qualified dividend income for a taxable year is equal to the sum of:

- (1) the qualified dividend income received by Host during such taxable year from regular C corporations (including Host's taxable REIT subsidiaries);
- (2) the excess of any undistributed REIT taxable income recognized during the immediately preceding year over the federal income tax paid by Host with respect to such undistributed REIT taxable income; and
- (3) the excess of any income recognized during the immediately preceding year attributable to the sale of a built-in-gain asset that was acquired in a carry-over basis transaction from a regular C corporation over the federal income tax paid by Host with respect to such built-in gain.

Generally, dividends that Host receives will be treated as qualified dividend income for purposes of (1) above if the dividends are received from a domestic corporation (other than a REIT or a regulated investment company) or a qualifying foreign corporation and specified holding period requirements and other requirements are met. A foreign corporation (other than a passive foreign investment company) will constitute a qualifying foreign corporation if it is incorporated in a possession of the United States, the corporation is eligible for benefits of an income tax treaty with the United States that the Secretary of Treasury determines is satisfactory, or the stock of the foreign corporation on which the dividend is paid is readily tradable on an established securities market in the United States.

### *Host's Losses; Investment Interest Limitation*

U.S. stockholders may not include in their income tax returns any net operating losses or capital losses of Host. Instead, such losses may be carried over by Host for potential offset against future income, subject to certain limitations. Distributions made by Host and gain arising from the sale or exchange by a U.S. stockholder of Host stock will not be treated as passive activity income, and, as a result, U.S. stockholders generally will not be able to apply any passive losses against such income or gain.

Taxable dividend distributions from Host generally will be treated as investment income for purposes of the investment interest limitation. This limitation provides that a non-corporate U.S. stockholder may deduct as an itemized deduction in any taxable year only the amount of interest incurred in connection with property held for investment that does not exceed the excess of the stockholder's investment income over his or her investment expenses for that year. A non-corporate U.S. stockholder may elect to treat capital gain dividends, capital gains from the disposition of shares of stock, including distributions treated as such, and income designated as qualified dividend income as investment income, in which case the applicable capital gains will be taxed at ordinary income rates. Host intends to comply with IRS guidance or regulations on the notification of stockholders regarding the portions of distributions for each year that constitute ordinary income, return of capital and capital gain.

*Dispositions of Host's Stock*

Upon any sale or other disposition of Host's stock, a U.S. stockholder will recognize gain or loss for federal income tax purposes in an amount equal to the difference between (1) the amount of cash and the fair market value of any property received on such sale or other disposition and (2) the holder's adjusted tax basis in such stock for federal income tax purposes.

## Table of Contents

The applicable tax rate will depend on the stockholder's holding period in the asset (generally, if an asset has been held for more than one year, it will produce long-term capital gain) and the stockholder's tax bracket. The IRS has the authority to prescribe, but has not yet prescribed, regulations that would apply a capital gain tax rate of 25% (which is higher than the maximum 15% long-term capital gain tax rate for noncorporate stockholders) to a portion of capital gain realized by a noncorporate stockholder on the sale of REIT shares that would correspond to the REIT's unrecaptured Section 1250 gain. Stockholders are urged to consult with their own tax advisors with respect to their capital gain tax liability. A corporate U.S. stockholder will be subject to tax at a maximum rate of 35% on capital gain from the sale of Host stock held for more than 12 months. In general, any loss recognized by a U.S. stockholder upon the sale or other disposition of stock that has been held for six months or less, after applying the holding period rules, will be treated as a long-term capital loss, to the extent of distributions received by the U.S. stockholder from Host that were required to be treated as long-term capital gains.

### **Taxation of Tax-Exempt Stockholders**

Provided that a tax-exempt stockholder has not held its stock as debt financed property within the meaning of the Code and such shares of stock are not otherwise used in a trade or business, the dividend income from Host will not be unrelated business taxable income (UBTI) to a tax-exempt stockholder. Similarly, income from the sale of stock will not constitute UBTI unless such tax-exempt stockholder has held such stock as debt financed property within the meaning of the Code or has used the stock in a trade or business.

However, for a tax-exempt stockholder that is a social club, voluntary employee benefit association, supplemental unemployment benefit trust or qualified group legal services plan exempt from federal income taxation under Code Sections 501 (c)(7), (c)(9), (c)(17) and (c)(20), respectively, income from an investment in Host will constitute UBTI unless the organization is properly able to deduct amounts set aside or placed in reserve for certain purposes so as to offset the income generated by its investment in Host. Such a prospective stockholder should consult its own tax advisors concerning these set aside and reserve requirements.

Notwithstanding the above, however, a portion of the dividends paid by a pension held REIT shall be treated as UBTI as to any trust that is described in Section 401(a) of the Code, is tax-exempt under Section 501(a) of the Code and holds more than 10%, by value, of the interests in the REIT. Tax-exempt pension funds that are described in Section 401(a) of the Code are referred to below as qualified trusts. A REIT is a pension held REIT if it meets the following two tests:

The REIT would not have qualified as a REIT but for the fact that Section 856(h)(3) of the Code provides that stock owned by qualified trusts shall be treated, for purposes of the not closely held requirement, as owned by the beneficiaries of the trust rather than by the trust itself.

Either at least one such qualified trust holds more than 25%, by value, of the interests in the REIT, or one or more such qualified trusts, each of which owns more than 10%, by value, of the interests in the REIT, hold in the aggregate more than 50%, by value, of the interests in the REIT.

The percentage of any REIT dividend treated as UBTI is equal to the ratio of the UBTI earned by the REIT, treating the REIT as if it were a qualified trust and therefore subject to tax on UBTI, to the total gross income of the REIT. A *de minimis* exception applies where the percentage is less than 5% for any year. As discussed above, the provisions requiring qualified trusts to treat a portion of REIT distributions as UBTI will not apply if the REIT is able to satisfy the not closely held requirement without relying upon the look-through exception with respect to qualified trusts. Based on the current estimated ownership of Host's stock and the limitations on transfer and ownership of stock contained in the Host's charter, Host should not be classified as a pension held REIT.

**Taxation of Non-U.S. Stockholders**

The rules governing federal income taxation of the ownership and disposition of stock by non-U.S. stockholders are complex and no attempt is made herein to provide more than a brief summary of such rules.

---

## Table of Contents

Accordingly, the discussion does not address all aspects of United States federal income tax and does not address any state, local or foreign tax consequences that may be relevant to a non-U.S. stockholder in light of its particular circumstances. In addition, this discussion is based on current law, which is subject to change, and assumes that Host 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 with respect to an investment in stock, including any reporting requirements.

### *Distributions Generally*

Distributions (or deemed distributions) by Host to a non-U.S. stockholder that are neither attributable to gain from sales or exchanges by Host of U.S. real property interests nor designated by Host as capital gain dividends or retained capital gains will be treated as dividends of ordinary income to the extent that they are made out of current or accumulated E&P of Host. Such distributions ordinarily will be subject to withholding of U.S. federal income tax on a gross basis (that is, without allowance of deductions) at a 30% rate or such lower rate as may be specified by an applicable income tax treaty, unless the dividends are treated as effectively connected with the conduct by the non-U.S. stockholder of a U.S. trade or business. Under some treaties, however, lower withholding rates generally applicable to dividends do not apply to dividends from a REIT, such as Host. Dividends that are effectively connected with such a trade or business will be subject to tax on a net basis (that is, after allowance of deductions) at graduated rates, in the same manner as U.S. stockholders are taxed with respect to such dividends, and are generally not subject to withholding. Any such dividends received by a non-U.S. corporate stockholder engaged in a U.S. trade or business may also be subject to an additional branch profits tax at a 30% rate or such lower rate as may be specified by an applicable income tax treaty. Certain certification and disclosure requirements must be satisfied to be exempt from withholding under the effectively connected income exemption.

Host expects to withhold U.S. income tax at the rate of 30% on any dividend distributions (including distributions that later may be determined to have been in excess of current and accumulated earnings and profits) made to a non-U.S. stockholder unless:

- (1) a lower treaty rate applies and the non-U.S. stockholder files an IRS Form W-8BEN evidencing eligibility for that reduced treaty rate with Host; or
- (2) the non-U.S. stockholder files an IRS Form W-8ECI with Host claiming that the distribution is income effectively connected with the non-U.S. stockholder's trade or business.

Distributions in excess of the current or accumulated E&P of Host will not be taxable to a non-U.S. stockholder to the extent that they do not exceed the adjusted tax basis of the stockholder's stock, but rather will reduce the adjusted tax basis of such stock. Such distributions, however, will be subject to U.S. withholding tax as described below. To the extent that such distributions exceed the adjusted tax basis of a non-U.S. stockholder's stock, they will be treated as gain from the sale of the stockholder's stock, the tax treatment of which is described below under Dispositions of Host's Stock.

Host is required to withhold 10% of any distribution in excess of its current and accumulated E&P, even if a lower treaty rate applies and the non-U.S. stockholder is not liable for tax on receipt of that distribution. Consequently, although Host currently intends that its transfer agent will withhold at a rate of 30%, or a lower applicable treaty rate, on the entire amount of any distribution, to the extent that this is not done, any portion of a distribution not subject to withholding at a rate of 30%, or lower applicable treaty rate, would be subject to withholding at a rate of 10%. However, a non-U.S. stockholder may seek a refund of such amounts from the IRS if such distribution was, in fact, in excess of the current or accumulated E&P of Host, and the amount withheld exceeded the non-U.S. stockholder's U.S. tax liability, if any, with respect to the distribution.



---

**Table of Contents**

*Capital Gain Distributions; Retained Net Capital Gains*

Distributions to a non-U.S. stockholder that are designated by Host at the time of distribution as capital gain dividends, other than those arising from the disposition of a U.S. real property interest, generally should not be subject to U.S. federal income taxation, unless:

(1) the investment in the stock is effectively connected with the non-U.S. stockholder's U.S. trade or business, in which case the non-U.S. stockholder will be subject to the same treatment as U.S. stockholders with respect to such gain, except that a stockholder that is a foreign corporation may also be subject to the 30% branch profits tax, as discussed above, or

(2) the non-U.S. stockholder is a nonresident alien individual who is present in the U.S. for 183 days or more during the taxable year and has a tax home in the U.S., in which case the nonresident alien individual will be subject to a 30% tax on the individual's capital gains.

In light of recent amendments to the REIT taxation provisions of the Code, it is not entirely clear whether distributions that are (i) otherwise treated as capital gain dividends, (ii) not attributable to the disposition of a U.S. real property interest, and (iii) paid to a non-U.S. stockholder who owns less than 5% of the value of Host's stock at all times during the relevant taxable year, will be treated as long-term capital gain or as ordinary dividends taxable in the manner described above under Distributions Generally. If Host were to pay a capital gain dividend described in the prior sentence, non-U.S. stockholders should consult their tax advisors regarding the taxation of such distribution in their particular circumstances.

Except as described in the next sentence, under the Foreign Investment in Real Property Tax Act, which is referred to as FIRPTA, distributions to a non-U.S. stockholder that are attributable to gain from sales or exchanges by Host of U.S. real property interests, whether or not designated as capital gain dividends, will be subject to U.S. federal income tax in the manner described above under Distributions Generally. This treatment will not apply, however, to any such distribution received by a non-U.S. stockholder with respect to a class of stock that is not regularly traded on an established securities market located in the U.S. or any such distribution paid to a non-U.S. stockholder who owns, at any time during the tax year in which the distribution is treated as being received, more than 5% of the class of stock with regard to which the distribution is paid. A non-U.S. stockholder receiving a distribution described in the previous sentence will be treated as recognizing gain that is income effectively connected with a U.S. trade or business. Non-U.S. stockholders will be taxed on this gain at the same rates applicable to U.S. stockholders, subject to a special alternative minimum tax in the case of nonresident alien individuals. Also, this gain may be subject to a 30% branch profits tax in the hands of a non-U.S. corporate stockholder, as discussed above.

Host will be required to withhold and to remit to the IRS 35% of any such distribution to a non-U.S. stockholder that is designated as a capital gain dividend or, if greater, 35% of a distribution to such non-U.S. stockholder that could have been designated by Host as a capital gain dividend. Distributions can be designated as a capital gain dividend to the extent of Host's net capital gain for the taxable year of the distribution. The amount withheld is creditable against the non-U.S. stockholder's United States federal income tax liability or refunded when the non-U.S. stockholder properly and timely files a tax return with the IRS.

Although the law is not clear on the matter, it appears that amounts designated by Host as retained capital gains in respect of the stock held by U.S. stockholders (see Federal Income Taxation of Host Annual Distribution Requirements Applicable to REITs above) generally should be treated with respect to non-U.S. stockholders in the same manner as actual distributions by Host of capital gain dividends. Under that approach, the non-U.S. stockholders would be able to offset as a credit against their United States federal income tax liability resulting therefrom their proportionate share of the tax paid by Host on such undistributed capital gains and to receive from the IRS a refund to the extent their proportionate share of such tax paid by Host were to exceed their actual United States federal income tax liability. If Host were to designate any



portion of its net capital gain as undistributed capital gain, a non-U.S. stockholder should consult its tax advisor regarding the taxation of such undistributed capital gain.

---

**Table of Contents**

*Dispositions of Host's Stock*

Gain recognized by a non-U.S. stockholder upon the sale or exchange of Host's stock generally would not be subject to U.S. taxation unless:

the investment in Host's stock is effectively connected with the non-U.S. stockholder's U.S. trade or business, in which case the non-U.S. stockholder will be subject to tax on a net basis in a manner similar to the taxation of U.S. stockholders with respect to any gain;

the non-U.S. stockholder is a nonresident alien individual who is present in the United States for 183 days or more during the taxable year and has a tax home in the United States, in which case any gain from the sale or exchange of Host's stock will be included in determining the individual's net capital gain from U.S. sources for the taxable year, subject to a 30% withholding tax; or

Host's stock constitutes a U.S. real property interest within the meaning of FIRPTA, as described below.

The stock will not constitute a U.S. real property interest so long as Host 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 stock is held directly or indirectly by non-U.S. stockholders. Host believes, but cannot guarantee, that it is a domestically controlled REIT. Even if Host is a domestically controlled REIT, because the stock is publicly traded, no assurance can be given that Host will continue to be a domestically controlled REIT. Notwithstanding the foregoing, gain from the sale or exchange of stock not otherwise subject to FIRPTA will be taxable to a non-U.S. stockholder if either (a) the investment in Host stock is effectively connected with the non-U.S. stockholder's U.S. trade or business, in which case the non-U.S. stockholder will be subject to the same treatment as domestic stockholders with respect to any gain or (b) the non-U.S. stockholder is a nonresident alien individual who is present in the United States for 183 days or more during the taxable year and has a tax home in the United States, in which case the nonresident alien individual will be subject to a 30% United States withholding tax on the amount of such individual's gain.

Even if Host does not qualify as a domestically controlled REIT at the time a non-U.S. stockholder sells its Host stock, gain arising from the sale or exchange by a non-U.S. stockholder of stock would not be subject to United States taxation under FIRPTA as a sale of a United States real property interest if:

(1) such stock is regularly traded, as defined by applicable regulations, on an established securities market such as the NYSE; and

(2) such non-U.S. stockholder owned, actually or constructively, 5% or less of the stock throughout the five-year period ending on the date of the sale or exchange.

If gain on the sale or exchange of stock were subject to taxation under FIRPTA, the non-U.S. stockholder would be subject to regular U.S. income tax with respect to such gain in the same manner as a taxable U.S. stockholder (subject to any applicable alternative minimum tax and a special alternative minimum tax in the case of nonresident alien individuals) and the purchaser of the stock would be required to withhold and remit to the IRS 10% of the purchase price.

**Information Reporting and Backup Withholding Tax Applicable to Stockholders**

*U.S. Stockholders.* In general, information reporting requirements will apply to payments of distributions on Host's stock and payments of the proceeds of the sale of Host's stock to some stockholders, unless an exception applies. Further, the payor will be required to withhold backup withholding tax (currently at a rate of 28%), if:

(1) the payee fails to furnish a taxpayer identification number, or TIN, to the payor or to establish an exemption from backup withholding;

(2) the IRS notifies the payor that the TIN furnished by the payee is incorrect;

## **Table of Contents**

(3) there has been a notified payee under-reporting with respect to interest, dividends or original issue discount described in Section 3406(c) of the Code; or

(4) there has been a failure of the payee to certify under the penalty of perjury that the payee is not subject to backup withholding under the Code.

Some stockholders, including corporations, may be exempt from backup withholding. Any amounts withheld under the backup withholding rules from a payment to a stockholder will be allowed as a credit against the stockholder's U.S. federal income tax and may entitle the stockholder to a refund, provided that the required information is furnished to the IRS. A U.S. stockholder that does not provide Host with a correct taxpayer identification number may also be subject to penalties imposed by the IRS.

*Non-U.S. Stockholders.* Generally, information reporting will apply to payments of distributions on Host's stock, and backup withholding, currently at a rate of 28%, may apply, unless the payee certifies that it is not a U.S. person or otherwise establishes an exemption.

The proceeds of a disposition by a non-U.S. stockholder of stock to or through a foreign office of a broker generally will not be subject to information reporting or backup withholding. However, if the broker is a U.S. person, a controlled foreign corporation for U.S. federal income tax purposes, a foreign person 50% or more of whose gross income from all sources for specified periods is from activities that are effectively connected with a U.S. trade or business, a foreign partnership if partners who hold more than 50% of the interest in the partnership are U.S. persons, or a foreign partnership that is engaged in the conduct of a trade or business in the United States, then information reporting generally will apply as though the payment were made through a U.S. office of a U.S. or foreign broker. Generally, backup withholding does not apply in such a case.

Generally, non-U.S. stockholders will satisfy the information reporting requirements by providing proper IRS withholding certificate (such as the Form W-8BEN). In the absence of a proper withholding certificate, applicable Treasury Regulations provide presumptions regarding the status of holders of Host's stock when payments to the holders cannot be reliably associated with appropriate documentation provided to the payer. If a non-U.S. stockholder fails to comply with the information reporting requirement, payments to such person may be subject to the full withholding tax even if such person might have been eligible for a reduced rate of withholding or no withholding under applicable income tax treaty. Any payment subject to a withholding tax will not be again subject to the backup withholding. Because the application of these Treasury Regulations varies depending on the holder's particular circumstances, a non-U.S. holder of Host's stock is advised to consult its tax advisors regarding the information reporting requirements applicable to it.

## **Sunset of Reduced Tax Rate Provisions**

Several of the tax considerations described herein are subject to a sunset provision. The sunset provisions generally provide that for taxable years beginning after December 31, 2008, certain provisions that are currently in the Code will revert back to a prior version of those provisions. These provisions include provisions related to the reduced maximum income tax rate for capital gains of 15% (rather than 20%) for taxpayers taxed at individual rates, qualified dividend income, including the application of the 15% capital gains rate to qualified dividend income, and certain other tax rate provisions described herein. The impact of this reversion is not discussed herein. Consequently, prospective holders should consult their own tax advisors regarding the effect of sunset provisions on an investment in Host's stock.

**Tax Shelter Reporting**

If a stockholder recognizes a loss as a result of a transaction with respect to Host's stock of at least (i) for a stockholder that is an individual, S corporation, trust, or a partnership with at least one noncorporate partner, \$2 million or more in a single taxable year or \$4 million or more in a combination of taxable years, or (ii) for a stockholder that is either a corporation or a partnership with only corporate partners, \$10 million or more in a

**Table of Contents**

single taxable year or \$20 million or more in a combination of taxable years, such stockholder may be required to file a disclosure statement with the IRS on Form 8886. Direct holders of portfolio securities are in many cases exempt from this reporting requirement, but stockholders of a REIT currently are not exempted. The fact that a loss is reportable under these regulations does not affect the legal determination of whether the taxpayer's treatment of the loss is proper. Stockholders should consult their tax advisors to determine the applicability of these regulations in light of their individual circumstances.

**Table of Contents**

**HOST MARRIOTT CORPORATION UNAUDITED PRO FORMA FINANCIAL STATEMENTS**

On November 14, 2005, Host, together with Host LP, entered into the master agreement and other transaction agreements to acquire 38 hotels from Starwood, which involve the following transactions:

the acquisition by Host LP of the equity interests in Starwood Trust, which at the time the transactions are consummated is expected to hold, directly or indirectly, 18 domestic hotels, pursuant to the merger of a direct, wholly owned subsidiary of Host LP with and into Starwood Trust resulting in Starwood Trust becoming a direct, wholly owned subsidiary of Host LP and SLT Realty Limited Partnership becoming an indirect, majority-owned subsidiary of Host LP;

the acquisition by Host LP of the equity interests in SHC, which, at the time the transactions are consummated is expected to hold, directly or indirectly, three domestic and four foreign hotels;

the merger of an indirect, wholly owned subsidiary of Host LP with and into SLT Realty Limited Partnership resulting in the exchange of all outstanding RP units in SLT Realty Limited Partnership and, if the requisite consent of the holders of Class A RP units in SLT Realty Limited Partnership is obtained by Starwood, all outstanding Class A RP units in SLT Realty Limited Partnership into the right to receive cash, and, if such consent is obtained, resulting in SLT Realty Limited Partnership becoming an indirect wholly owned subsidiary of Host LP;

the acquisition by Host LP of four domestic hotels in a separate asset purchase structured to allow Host to complete like-kind exchange transactions for federal income tax purposes;

the acquisition by Host LP (through certain subsidiary REITs and foreign subsidiaries formed for this transaction) of nine foreign hotels not owned by Starwood Trust, SHC or SLT Realty Limited Partnership through the acquisition of the equity interests in various Starwood subsidiaries; and

the acquisition by Host LP (or a designated taxable REIT subsidiary or other subsidiary of Host LP) of certain domestic improvements and working capital and other ancillary assets from Starwood and SLC Operating Limited Partnership, a Starwood subsidiary.

The Starwood business to be acquired by Host is referred to below as the Starwood portfolio. The terms of the transactions are described in more detail elsewhere in this proxy statement/prospectus and the master agreement and certain other transaction agreements are attached to this proxy statement/prospectus as *Annex A*, *Annex B* and *Annex C*, respectively. The transactions are expected to close in the first quarter of 2006. However, the transactions are subject to a number of terms and conditions that could delay or prevent the closing of the transactions, or result in modifications to the transactions, such as the exclusion of particular hotels from the transactions due to the failure to obtain required consents or certain other developments. For a detailed description of these terms and conditions, see *Material Terms of the Principal Transaction Agreements* beginning on page 79, especially *Conditions to Completion of the Closing Transactions* beginning on page 85 and *Other Agreements Relating to the Period Prior to Closing* *Deferral of Hotels* beginning on page 97. We encourage you to read the transaction agreements carefully and in their entirety.

The following unaudited pro forma financial statements have been prepared based upon the audited consolidated financial statements of Host and the audited combined financial statements of the Starwood portfolio for the year ended December 31, 2004, the unaudited financial statements of Host and the Starwood portfolio for the three quarters ended September 9, 2005 and for the eight months ended August 31, 2005, respectively, and based upon certain assumptions, as set forth in the notes to the unaudited pro forma financial statements, that Host believes are reasonable under the circumstances.

The unaudited pro forma statements of operations of Host for the three quarters ended September 9, 2005 and the year ended December 31, 2004 reflect the following transactions as if they had been completed at the beginning of each period:

the acquisition of the Starwood portfolio;



**Table of Contents**

the January 2006 issuance of mortgage debt of \$135 million Canadian Dollars (\$116 million U.S. Dollars) with an interest rate of 5.195% secured by four of our Canadian properties;

the assumed conversion of all of our Convertible Subordinated Debentures into 30.9 million shares of our common stock;

the January 2006 dispositions of the Fort Lauderdale Marina Marriott and the Albany Marriott, which were considered held-for-sale as of December 31, 2005, and the dispositions of the Chicago Marriott Deerfield Suites and the Marriott at Research Triangle Park, which are expected to close in February 2006;

the acquisition of the Hyatt Regency Washington, D. C. on Capitol Hill on September 30, 2005;

the disposition of 85% of Host's ownership interest in Courtyard by Marriott Joint Venture, LLC on March 29, 2005;

the May 2005 redemption of 4 million shares of 10% Class B preferred shares;

the March 2005 refinancing of approximately \$609 million of senior notes and mortgage debt through the issuance of the \$650 million 6<sup>3</sup>/<sub>8</sub>% Series N senior notes;

the August 2004 redemption of the 4.16 million shares of 10% Class A preferred shares;

the June 2004 issuance of 25 million shares of Host common stock;

the June 2004 issuance of 4 million shares of 8<sup>7</sup>/<sub>8</sub>% Class E preferred shares;

the 2004 acquisitions of the Scottsdale Marriott at McDowell Mountain, the Fairmont Kea Lani and the Embassy Suites Lakefront, Chicago;

the August 2004 issuance of the \$350 million 7% Series L senior notes;

the March 2004 issuance of \$500 million 3.25% Exchangeable Senior Debentures due 2024;

the repayment of approximately \$1.2 billion of senior notes and mortgage debt in 2004; and

certain other investing and financing activities during 2004 and 2005.

The unaudited historical balance sheet of Host as of September 9, 2005 reflects the following transactions as if they had been completed on the balance sheet date:

## Edgar Filing: HOST MARRIOTT CORP/ - Form S-4/A

the acquisition of the Starwood portfolio;

the January 2006 issuance of mortgage debt of \$135 million Canadian Dollars (\$116 million U.S. Dollars) with an interest rate of 5.195% secured by four of our Canadian properties;

the assumed conversion of all of our Convertible Subordinated Debentures into 30.9 million shares of our common stock;

the January 2006 dispositions of the Fort Lauderdale Marina Marriott and the Albany Marriott, which were considered held-for-sale as of December 31, 2005, and the dispositions of the Chicago Marriott Deerfield Suites and the Marriott at Research Triangle Park, which are expected to close in February 2006;

the acquisition of the Hyatt Regency Washington, D.C. on Capitol Hill;

the disposition of the Charlotte Executive Park Marriott;

the prepayment of \$19 million of variable rate mortgage debt associated with certain of our Canadian properties; and

the receipt of \$71 million of cash that had previously been restricted due to covenants in certain of Host's mortgage debt.

In accordance with the Statement of Financial Accounting Standards No. 141, Business Combinations, Host will account for the acquisition of the Starwood portfolio as a business combination. Upon consummation of the transactions, Host will record the cash consideration, the market value of the Host common stock issued,

**Table of Contents**

the fair value of the assets and liabilities assumed, as well as any direct transaction costs. Based on the guidance set forth in Emerging Issues Task Force Issue No. 99-12, the market value of the Host common stock issued in the transactions, or \$16.97, has been calculated based on the average of the closing prices of Host common stock during the range of trading days from two days before and after November 14, 2005, the announcement date.

The total transaction costs for the acquisition of the Starwood portfolio consist of the following (in millions):

Issuance of 133.5 million shares of Host common stock at \$16.97 per share	\$ 2,265
Assumption of \$600 million of senior notes with a fair value of \$654 million	654
Assumption of \$104 million of mortgage debt with a fair value of \$116 million	116
Cash (1)	1,063
	<hr/>
Total consideration to Starwood and Starwood equityholders	4,098
Costs and expenses (1)	97
	<hr/>
Total transaction costs	<u>\$ 4,195</u>

(1) For purposes of the preparation of these unaudited pro forma financial statements, these amounts will be funded from available cash and a draw on the bridge loan facility. The costs and expenses include approximately \$10 million for estimated property-level working capital.

For purposes of the preparation of the unaudited pro forma financial statements, Host has presented the assets and liabilities at their book value except for the following:

Property and equipment is recorded at the stepped-up basis based on the purchase price noted above;

Senior notes are recorded at fair value based on the market price as of September 9, 2005; and,

Mortgage debt is recorded at fair value based on the expected future debt service payments discounted at risk adjusted rates as of September 9, 2005.

The pro forma adjustments as presented are based on estimates and certain information that is currently available and may change as additional information becomes available, as estimates are refined or as additional events occur. Specifically, while the purchase price has been allocated among individual properties, we are in the beginning stages of evaluating the fair value of the allocation of the purchase price among each individual hotel's assets and liabilities including land, property and equipment items, other assets and liabilities, assumed agreements, including ground and retail space leases and other intangible assets. Host management does not anticipate that there will be material changes in the total purchase price allocation as presented in these unaudited pro forma financial statements. To the extent there is any excess of the purchase price over the fair value of the net assets acquired, it will be recorded as goodwill for accounting purposes.

The unaudited pro forma financial statements are for illustrative purposes only and do not purport to be indicative of the financial position or results of operations that would actually have been achieved had the transactions occurred on the dates indicated or which may be achieved in the future. In the opinion of Host management, all material adjustments necessary to reflect the effects of the transactions that can be factually supported within the SEC regulations covering the preparation of unaudited pro forma financial statements have been made.

The unaudited pro forma financial statements should be read in conjunction with the separate historical consolidated financial statements and accompanying notes of Host which are incorporated by reference into this proxy statement/prospectus and the combined financial statements and accompanying notes of the Starwood portfolio to be acquired by Host in the transactions which are included elsewhere in this proxy statement/prospectus.

**Table of Contents**

**HOST MARRIOTT CORPORATION**  
**UNAUDITED PRO FORMA BALANCE SHEET**

SEPTEMBER 9, 2005

(IN MILLIONS)

	A	B	C	D	E	F	G	H	Host	
Host	Starwood		Host	Hyatt					Host	
Historical	Starwood		Pro	Convertible					Pro Forma	
Balance	Portfolio	Portfolio	Forma	Subordinated	2006	Regency	Charlotte	Other	Balance	
Sheet	Historical	Adjustments	For Starwood	Debt	Dispositions	Acquisition	Disposition	Financing	Sheet	
Sheet	Historical	Adjustments	Acquisition	Conversion	Dispositions	Acquisition	Disposition	Financing	Sheet	
<b>ASSETS</b>										
Property and equipment, net	\$ 7,204	\$ 2,475	\$ 1,701	\$ 11,380	\$	\$ (105)	\$ 279	\$	\$ 11,554	
Assets held for sale	13			13			(13)			
Goodwill		536	(536)							
Due from managers	66	2	8	76					76	
Investments in affiliates	42			42	(17)				25	
Deferred financing costs	69		9	78	(11)				67	
Furniture, fixtures and equipment replacement fund	154			154					154	
Other	133	10	(10)	133					133	
Restricted cash	165	8	(8)	165				(71)	94	
Cash	402		(444)	(42)		251	(279)	20	168	
<b>Total assets</b>	<b>\$ 8,248</b>	<b>\$ 3,031</b>	<b>\$ 720</b>	<b>\$ 11,999</b>	<b>\$ (28)</b>	<b>\$ 146</b>	<b>\$</b>	<b>\$ 7</b>	<b>\$ 97</b>	<b>\$ 12,221</b>
<b>LIABILITIES AND STOCKHOLDERS EQUITY</b>										
<b>Debt</b>										
Senior notes	\$ 3,054	\$ 1,050	\$ (396)	\$ 3,708	\$	\$	\$	\$	\$ 3,708	
Mortgage debt	1,858	408	(292)	1,974				97	2,071	
Convertible subordinated debentures	492			492	(492)					
Other	97		716	813					813	
<b>Total debt (I)</b>	<b>5,501</b>	<b>1,458</b>	<b>28</b>	<b>6,987</b>	<b>(492)</b>			<b>97</b>	<b>6,592</b>	
Accounts payable and accrued expenses	129			129					129	
Other	153	99	(99)	153					153	
<b>Total liabilities</b>	<b>5,783</b>	<b>1,557</b>	<b>(71)</b>	<b>7,269</b>	<b>(492)</b>			<b>97</b>	<b>6,874</b>	
Minority interest of Host LP	117			117					117	
Minority interest of outside partners	28			28					28	
Stockholders equity	2,320	1,474	791	4,585	464	146		7	5,202	
<b>Total liabilities and stockholders equity</b>	<b>\$ 8,248</b>	<b>\$ 3,031</b>	<b>\$ 720</b>	<b>\$ 11,999</b>	<b>\$ (28)</b>	<b>\$ 146</b>	<b>\$</b>	<b>\$ 7</b>	<b>\$ 97</b>	<b>\$ 12,221</b>

See Notes to Unaudited Pro Forma Balance Sheet.

**Table of Contents**

**HOST MARRIOTT CORPORATION**

**NOTES TO UNAUDITED PRO FORMA BALANCE SHEET**

- A. This column represents the historical balance sheet for the Starwood portfolio. There are several differences in the financial statement presentation for Host's financial statements and the financial statements of the Starwood portfolio. The historical financial information for the Starwood portfolio has been adjusted to reflect a presentation consistent with Host's financial statements. These adjustments include:

Host's balance sheet is presented on an unclassified basis (without regard to whether an asset or liability is current or long-term), consistent with real estate industry practice. The financial statements of the Starwood portfolio are presented on a classified basis, which designates assets or liabilities as current or long-term; and,

Host's financial statements present working capital provided to the managers of the company's hotels on a net basis as one line-item (due from manager). The financial statements of the Starwood portfolio present each of the separate components of amounts due from manager.

- B. This column represents adjustments to the financial statements of the Starwood portfolio that are necessary to reflect Host's cost basis in the acquisition of the Starwood portfolio. There are also other differences with respect to the composition of line items (such as debt repaid prior to closing by Starwood that will not be assumed by Host, deferred tax liabilities and severance liabilities that will not be assumed by Host and other such items). Accordingly, we have reflected the following adjustments to record the transactions:

increase the historical property and equipment balance for the Starwood portfolio by \$1,701 million to \$4,176 million for the acquisition of 38 hotels;

increase the historical due from manager balance for the Starwood portfolio by \$8 million to \$10 million to reflect the estimated net working capital required for the Starwood portfolio;

decrease the historical senior notes balance of the Starwood portfolio to reflect the \$450 million repayment of Sheraton Holding Corporation notes that have been made by Starwood subsequent to September 9, 2005. The remaining balance of \$654 million reflects the fair value of the Sheraton Holding Corporation debt as of September 9, 2005 that is expected to be assumed by Host;

decrease the historical mortgage debt balance of the Starwood portfolio to reflect the \$304 million amount of mortgage debt that will be retained or repaid by Starwood prior to closing. The remaining balance of \$116 million reflects the fair value of the mortgage debt as of September 9, 2005 of the Starwood portfolio that is expected to be assumed by Host.

increase other debt by \$716 million to reflect the borrowing under the bridge loan facility;

decrease cash by \$444 million for estimated transaction costs and available cash used to fund the transaction;

increase deferred financing costs to reflect costs of \$9 million as a result of the issuance of the bridge loan; and

## Edgar Filing: HOST MARRIOTT CORP/ - Form S-4/A

increase the historical stockholders' equity of the Starwood portfolio by \$791 million to record the difference between the historical equity balance of the Starwood portfolio of \$1,474 million and the fair value of the Host stock issuance of \$2,265 million, which is based on the issuance of 133.5 million shares of Host common stock priced at \$16.97 per share.

- C. Represents Host's pro forma balance sheet as adjusted to reflect the acquisition of the Starwood portfolio.
  
- D. Represents the adjustment to record the assumed conversion of all of our Convertible Preferred Securities (and the underlying \$492 million of Convertible Subordinated Debentures) into 30.9 million common shares. On January 11, 2006, Host completed the redemption of \$86 million of the Convertible Subordinated Debentures and issued approximately 5.6 million shares of Host common stock.



**Table of Contents**

Also on January 11, 2006, Host announced its intention to exercise its option to cause the conversion rights of the remaining Convertible Preferred Securities to expire effective February 10, 2006. Host is exercising this right because the market price of its common stock has exceeded 120% of the adjusted conversion price for 20 out of the last 30 trading days. Each of the Convertible Preferred Securities are currently convertible into 3.2357 shares of Host common stock per \$50 liquidation amount of the preferred security, which equates to a conversion price of \$15.367. The last reported sale price on February 6, 2006 of Host common stock was \$20.15 and, as a result, the company expects that all of the remaining security holders will elect to convert their interests to common stock. The adjustment also includes the elimination of our equity investment of \$17 million in the trust that issues the Convertible Preferred Securities and the write-off of the remaining deferred financing costs of \$11 million related to the debentures.

- E. Represents the adjustment to record the January 2006 sales of the Fort Lauderdale Marina Marriott and the Albany Marriott which were considered held-for-sale as of December 31, 2005, and the assumed sales of the Chicago Marriott Deerfield Suites and the Marriott at Research Triangle Park, which are expected to close in February 2006.
- F. Represents the adjustment to record the acquisition of the Hyatt Regency Washington, D. C. on Capitol Hill for \$279 million on September 30, 2005.
- G. Represents the adjustment to record the sale on October 7, 2005 of the Charlotte Executive Park Marriott for \$20 million, net of closing costs.
- H. Represents the issuance of \$135 million Canadian Dollars (\$116 million U.S. Dollars) of mortgage debt secured by four of our Canadian properties, the prepayment of \$19 million of mortgage debt and the reclassification of restricted cash, which was released by the lender in the fourth quarter, to available cash as a result of meeting certain debt covenant restrictions at the end of the third quarter.
- I. The pro forma aggregate debt maturities at September 9, 2005 are as follows (in millions):

2005	\$ 21
2006	230
2007	1,591
2008	435
2009	782
Thereafter	3,471
	<hr/>
	6,530
Capital lease obligations	8
Discount on senior notes	(12)
Fair value adjustment for assumed debt	66
	<hr/>
	\$ 6,592
	<hr/>

**Table of Contents****HOST MARRIOTT CORPORATION****UNAUDITED PRO FORMA STATEMENT OF OPERATIONS****YEAR-TO-DATE ENDED SEPTEMBER 9, 2005****(IN MILLIONS, EXCEPT PER SHARE AMOUNTS)**

	A	B	C	D	E	F	G	H	I	M		
							2005	2006/	2005		Host	
	Host		Host				Sale of	2005 Redemptions		Minority	Pro	
	Historical	Starwood	Starwood	Forma	Convertible		Courtyard by	Debt	and	Interest/	Forma	
	Income	Portfolio	Portfolio	for	Subordinated		2005 Marriott	Debt	Equity	Income	Income	
	Statement	Historical	Adjustments	Acquisition	Conversion	Dispositions	Acquisition	Joint Ventures	Issuance	Repayments	Transactions	Statement
<b>REVENUES</b>												
Rooms	\$ 1,612	\$ 517	\$	\$ 2,129	\$	\$ (34)	\$ 28	\$	\$	\$	\$	\$ 2,123
Food and beverage	785	237		1,022		(14)	14					1,022
Other	174	57		231		(3)	2					230
Total hotel sales	2,571	811		3,382		(51)	44					3,375
Rental income	76			76								76
Total revenues	2,647	811		3,458		(51)	44					3,451
<b>EXPENSES</b>												
Rooms	392	145		537		(8)	4					533
Food and beverage	592	182		774		(10)	11					775
Hotel departmental expenses	710	213		923		(14)	8					917
Management fees	112	23	16	151		(4)	3					150
Other property-level expenses	205	54		259		(2)	4					261
Depreciation and amortization	254	85	4	343		(4)	6					345
Corporate and other expenses	45	5	(2)	48								48
Total operating costs and expenses	2,310	707	18	3,035		(42)	36					3,029
OPERATING PROFIT	337	104	(18)	423		(9)	8					422
Interest income	17			17								17
Interest expense	(317)	(62)	(10)	(389)	23			(13)	45			(334)
Net gains on property transactions	77			77				(69)				8
Gain on foreign currency and derivative contracts	1			1								1
Minority interest expense	(12)			(12)						2		(10)
Equity in earnings (losses) of affiliates	(1)			(1)				4				3
INCOME (LOSS) BEFORE INCOME TAXES	102	42	(28)	116	23	(9)	8	(65)	(13)	45	2	107
Benefit from (provision for) income taxes	(23)	3	(7)	(27)				26				(1)

Edgar Filing: HOST MARRIOTT CORP/ - Form S-4/A

INCOME (LOSS) FROM CONTINUING OPERATIONS	<b>79</b>	45	(35)	<b>89</b>	23	(9)	8	(39)	(13)	45	2	<b>106</b>
Less: Dividends on preferred stock	<b>(21)</b>			<b>(21)</b>							3	<b>(18)</b>
Issuance costs of redeemed preferred stock	<b>(4)</b>			<b>(4)</b>							4	
<hr/>												
Net income (loss) from continuing operations available to common stockholders	<b>\$ 54</b>	\$ 45	\$ (35)	<b>\$ 64</b>	\$ 23	\$ (9)	\$ 8	\$ (39)	\$ (13)	\$ 45	\$ 9	<b>\$ 88</b>
<hr/>												
Basic earnings (loss) from continuing operations per share	<b>\$ 0.15</b>	\$ 0.34	\$ (0.26)	<b>\$ 0.13</b>								<b>\$ 0.17</b>
Diluted earnings (loss) from continuing operations per share	<b>\$ 0.15</b>	\$ 0.34	\$ (0.26)	<b>\$ 0.13</b>								<b>\$ 0.17</b>
Weighted average basic common shares	<b>352.6</b>	133.5	133.5	<b>486.1</b>	30.9							<b>517.0</b>
Weighted average diluted common shares	<b>355.0</b>	133.5	133.5	<b>488.5</b>	30.9							<b>519.4</b>

See Notes to Unaudited Pro Forma Statement of Operations.

**Table of Contents****HOST MARRIOTT CORPORATION****UNAUDITED PRO FORMA STATEMENT OF OPERATIONS****YEAR ENDED DECEMBER 31, 2004****(IN MILLIONS, EXCEPT PER SHARE AMOUNTS)**

	A	B	C	D	E	F	G	H	I	J	K	L	M
							2005 Sale of					2004	
							Courtyard by	2005 Debt				Debt	Host Pro Forma
	Host Historical		Host Pro Forma	Convertible	Subordinated	2005	Marriott Joint	Redemptions 2006/2005	and	2004	2004 Redemptions	Minority Interest/	Income
	Income	Starwood Portfolio	Starwood Portfolio	Starwood Portfolio	Debt	2006	2005	2006/2005	2004	2004	Debt	and	Equity
	Statement	Historical	Adjustments	Acquisition	Conversion	Dispositions	Acquisition	Net	Issuance	Prepayments	Prepayments	Transactions	Statement
<b>REVENUES</b>													
Rooms	\$ 2,147	\$ 741	\$ 2,888	\$ (45)	\$ 33	\$	\$	\$	\$ 46	\$	\$	\$	\$ 2,922
Food and beverage	1,137	373	1,510	(20)	17				13				1,520
Other	238	84	322	(4)	2				6				326
Total hotel sales	3,522	1,198	4,720	(69)	52				65				4,768
Rental income	106		106										106
Other income	1		1										1
Total revenues	3,629	1,198	4,827	(69)	52				65				4,875
<b>EXPENSES</b>													
Rooms	534	209	743	(11)	8				10				750
Food and beverage	853	284	1,137	(14)	14				8				1,145
Hotel departmental expenses	979	300	1,279	(19)	27				18				1,305
Management fees	145	34	202	(4)	3				2				203
Other property-level expenses	292	79	371	(3)	3				3				374
Depreciation and amortization	353	130	482	(6)	8				9				493
Corporate and other expenses	67	7	71										71
Total operating costs and expenses	3,223	1,043	4,285	(57)	63				50				4,341
OPERATING PROFIT	406	155	542	(12)	(11)				15				534
Interest income	11		11										11
Interest expense	(483)	(96)	(587)	33				(48)	54	(1)	(19)	90	(478)
Net gains on property transactions	17		17										17
Loss on foreign currency and derivative contracts	(6)		(6)										(6)

Edgar Filing: HOST MARRIOTT CORP/ - Form S-4/A

Minority interest expense	(4)	(1)	(5)									(2)	(7)		
Equity in earnings (losses) of affiliates	(16)		(16)		19								3		
<b>INCOME (LOSS) BEFORE INCOME TAXES</b>															
	(75)	59	(28)	(44)	33	(12)	(11)	19	(48)	54	14	(19)	90	(2)	74
Benefit from (provision for) income taxes	10	(2)	(4)	4				(7)							(3)
<b>INCOME (LOSS) FROM CONTINUING OPERATIONS</b>															
	(65)	57	(32)	(40)	33	(12)	(11)	12	(48)	54	14	(19)	90	(2)	71
Less: Dividends on preferred stock	(37)			(37)										13	(24)
Issuance costs of redeemed preferred stock	(4)			(4)										4	
<b>Net income (loss) from continuing operations available to common stockholders</b>															
	\$ (106)	\$ 57	\$ (32)	\$ (81)	\$ 33	\$ (12)	\$ (11)	\$ 12	\$ (48)	\$ 54	\$ 14	\$ (19)	\$ 90	\$ 15	\$ 47
<b>Basic earnings (loss) from continuing operations per share</b>															
	\$ (0.31)	\$ 0.43	\$ (0.24)	\$ (0.17)											\$ .09
<b>Diluted earnings (loss) from continuing operations per share</b>															
	\$ (0.31)	\$ 0.43	\$ (0.24)	\$ (0.17)											\$ .09
<b>Weighted average basic common shares</b>															
	337.3	133.5	133.5	470.8	30.9								15.3	517.0	
<b>Weighted average diluted common shares</b>															
	337.3	133.5	133.5	470.8	30.9								18.3	520.0	

See Notes to Unaudited Pro Forma Statement of Operations.

**Table of Contents**

**HOST MARRIOTT CORPORATION**

**NOTES TO THE UNAUDITED PRO FORMA STATEMENTS OF OPERATIONS**

A. Represents the historical results of operations for the Starwood portfolio.

B. Represents certain adjustments to the historical results of operations for the Starwood portfolio including:

An adjustment to depreciation expense for property and equipment to reflect expected depreciation based on Host's stepped-up basis.

An adjustment to interest expense for debt retained by Starwood as well as for debt repayments and anticipated repayments by Starwood (including the termination of related interest rate swap agreements) subsequent to September 9, 2005, as well as Host's draw of \$716 million from the bridge loan facility, including the amortization of the deferred financing costs of \$9 million related to the bridge loan facility. We calculated the financing costs, which fluctuate based on the amount drawn under the facility, based on the requirements of the facility agreement and amortized the deferred financing costs based on the life of the loan, which is one year. The adjustment also includes the amortization of premiums on the assumption of the senior note debt and mortgage debt.

An adjustment to management fee expense to reflect the new license and operating agreements under which the properties will operate upon completion of the transactions.

An adjustment to reduce the historical corporate expenses of the Starwood portfolio to reflect the incremental corporate expenses expected to be incurred by Host as a result of the acquisition.

An adjustment to reflect the effect of the acquisition of the Starwood portfolio on income taxes and minority interest expense.

C. Represents Host's pro forma statement of operations as adjusted to reflect the acquisition of the Starwood portfolio.

D. Represents the adjustment to decrease interest expense due to the assumed conversion of all \$492 million of our Convertible Subordinated Debentures into 30.9 million shares of common stock including the elimination of the related amortization of deferred financing fees.

E. Represents the adjustment to eliminate the operations of the Fort Lauderdale Marina Marriott and the Albany Marriott, which were sold in January 2006 and the operations of the Chicago Marriott Deerfield Suites and the Marriott at Research Triangle Park, the sales of which are expected to close in February 2006.

F. Represents the adjustment to record the historical revenues and operating expenses associated with the September 2005 purchase of the Hyatt Regency Washington, D. C. on Capitol Hill.

G. Represents the adjustment to eliminate the non-recurring gain of \$69 million associated with the sale of 85% of our interest in the Courtyard by Marriott Joint Venture, LLC in 2005 and the adjustment to equity in earnings (losses) of affiliates related to our current percentage ownership in the joint venture and the related tax benefit (provision).

H.

## Edgar Filing: HOST MARRIOTT CORP/ - Form S-4/A

Represents the adjustment to record interest expense, including the related amortization of deferred financing fees, as a result of the issuance of the \$650 million, 6 3/8% Series N senior notes in March 2005, and the issuance of \$135 million Canadian Dollar mortgage debt (\$116 million U.S. Dollars) with an interest rate of 5.195%.

- I. Represents the adjustment to record interest expense (including the prepayment premiums and the recognition of deferred financing fees and original issue discounts) related to the prepayment, redemption or discharge of the following debt in 2005:

\$300 million of 8<sup>3</sup>/<sub>8</sub>% Series E senior notes;

\$140 million of 9% mortgage debt on two Ritz-Carlton hotels;

\$169 million of 7<sup>7</sup>/<sub>8</sub>% Series B senior notes;

\$20 million of 8.35% mortgage associated with the sale of the Hartford Marriott at Farmington; and

\$19 million of variable rate mortgage debt with a weighted average interest rate of 4.36% in 2004 and 5.76% in 2005 associated with certain of our Canadian properties.

**Table of Contents**

- J. Represents the adjustment to record the revenues, operating expenses and interest expense associated with the acquisitions of the Scottsdale Marriott at McDowell Mountain (including the assumption of the related \$34 million mortgage debt), the Fairmont Kea Lani, Maui and the Embassy Suites Lakefront, Chicago in 2004 prior to the respective acquisition dates in 2004.
- K. Represents the adjustment to record interest expense, including the amortization of the deferred financing costs, as a result of the issuance of the \$350 million 7% Series L senior notes and the issuance of the \$500 million 3.25% Exchangeable Senior Debentures during 2004.
- L. Represents the adjustment to interest expense (including the prepayment premiums and the recognition of deferred financing fees and original issue discounts) related to the prepayment, redemption or discharge of the following debt in 2004:
- the redemption of \$895 million of 7<sup>7</sup>/<sub>8</sub>% Series B senior notes;
- the redemption of \$218 million of 8.45% Series C senior notes; and
- the repayment of various mortgage loans totaling \$116 million with an average interest rate of approximately 8%.
- M. Represents the adjustment to record the effect of the above transactions, except for the merger transactions, and the decrease in net income (loss) from continuing operations related to the probable and completed dispositions of five and nine hotels in 2005 and 2004, respectively on the minority interest expense. This adjustment also includes the effect of dividends paid on preferred stock and issuance costs of redeemed preferred stock and the adjustment to the weighted average share count from the probable and completed issuances and redemptions of common and preferred stock during 2006, 2005 and 2004 including:
- the assumed issuance of 30.9 million shares of common stock in 2006 for the conversion of all of the Convertible Subordinated Debentures;
- the redemption of 4 million shares of 10% Class B preferred shares in May 2005;
- the redemption of 4.16 million shares of 10% Class A preferred stock in August 2004;
- the issuance of 4 million shares of 8<sup>7</sup>/<sub>8</sub>% Class E preferred stock in May 2004;
- the issuance of 25 million shares of common stock during 2004; and
- the dilutive effect of shares issuable under our comprehensive stock plans, less shares assumed purchased at the average market price.



**Table of Contents**

**DESCRIPTION OF HOST CAPITAL STOCK**

**General**

Host's charter provides for the issuance of up to 750,000,000 shares of common stock, \$0.01 par value per share, and up to 50,000,000 shares of preferred stock, \$0.01 par value per share. Of the 50,000,000 shares of preferred stock, (i) 650,000 shares have been classified as Series A Junior Participating Preferred Stock, (ii) 5,980,000 shares have been classified as 10% Class C Cumulative Redeemable Preferred Stock and (iii) 8,000,000 shares have been classified as 8 <sup>7</sup>/<sub>8</sub>% Class E Cumulative Redeemable Preferred Stock. As of February 6, 2006, the following shares of Host stock are outstanding:

common stock 353,040,316 shares;

10% Class C Cumulative Redeemable Preferred Stock 5,980,000 shares; and

8 <sup>7</sup>/<sub>8</sub>% Class E Cumulative Redeemable Preferred Stock 4,034,300 shares.

Under Maryland law, Host stockholders generally are not liable for Host's debts or obligations.

Host's charter authorizes its board of directors to classify and reclassify any unissued shares of common stock and preferred stock into other classes or series of stock. Prior to issuance of shares of each class or series, Host's board of directors is required by Maryland law and by its charter to set, subject to charter restrictions on transfer of Host stock, the terms, preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications and terms or conditions of redemption for each class or series. Thus, Host's board of directors could authorize the issuance of shares of common stock or preferred stock with terms and conditions which could have the effect of delaying, deferring or preventing a transaction or a change in control that might involve a premium price for holders of Host common stock or otherwise be in their best interest.

Host believes that the power to issue additional shares of common stock or preferred stock and to classify or reclassify unissued shares of common or preferred stock and thereafter to issue the classified or reclassified shares provides it with increased flexibility in structuring possible future financings and acquisitions and in meeting other needs which might arise. These actions can be taken without stockholder approval, unless stockholder approval is required by applicable law or the rules of any stock exchange or automated quotation system on which Host's securities may be listed or traded. Although Host has no present intention of doing so, it could issue a class or series of stock that could delay, defer or prevent a transaction or a change in control that might involve a premium price for holders of common stock or otherwise be in their best interest.

**Common Stock**

All shares of common stock offered pursuant to the proxy/prospectus of which this registration statement forms a part and any applicable supplement, when issued, will be duly authorized, fully paid and nonassessable. Holders of Host common stock are entitled to receive dividends

## Edgar Filing: HOST MARRIOTT CORP/ - Form S-4/A

when authorized by Host's board of directors out of assets legally available for the payment of dividends. Holders of Host common stock are also entitled to share ratably in Host's assets legally available for distribution to its stockholders in the event of a liquidation, dissolution or winding up, after payment of or adequate provision for all known debts and liabilities. These rights are subject to the preferential rights of any other class or series of Host's stock and to the provisions of Host's charter regarding restrictions on transfer of its stock.

Subject to Host's charter restrictions on transfer of its stock (see Restrictions on Ownership and Transfer beginning on page 162), each outstanding share of common stock entitles the holder to one vote on all matters submitted to a vote of stockholders, including the election of directors. Except as provided with respect to any other class or series of stock, the holders of Host common stock will possess the exclusive voting power. There is no cumulative voting in the election of directors, which means that the holders of a majority of the outstanding shares of common stock can elect all of the directors then standing for election, and the holders of the remaining shares will not be able to elect any directors.

## **Table of Contents**

Holders of Host common stock have no preference, conversion, exchange, sinking fund or redemption rights and have no preemptive rights to subscribe for any of its securities. Subject to Host's charter restrictions on transfer of its stock, all shares of common stock will have equal dividend, liquidation and other rights.

Under Maryland law, a Maryland corporation generally cannot dissolve, amend its charter, merge, sell all or substantially all of its assets, engage in a share exchange or engage in similar transactions outside the ordinary course of business, unless the transaction is advised by its board of directors and approved by the affirmative vote of stockholders holding at least two-thirds of the shares entitled to vote on the matter. However, a Maryland corporation may provide in its charter for approval of these matters by a lesser percentage, but not less than a majority of all of the votes entitled to be cast on the matter. Host's charter does not provide for a lesser percentage in these situations. Also, because many of the operating assets are held by Host's subsidiaries, these subsidiaries may be able to merge or sell all or substantially all of their assets without the approval of Host stockholders.

### *Transfer Agent and Registrar*

The transfer agent and registrar for the common stock is Computershare Trust Company, N.A.

### *Stockholder Rights Plan/Preferred Stock Purchase Rights*

Host's board of directors has adopted a stockholder rights plan pursuant to a Rights Agreement dated as of November 23, 1998, as amended as of December 18, 1998 and August 21, 2002, between Host and The Bank of New York, as rights agent. Each share of common stock issued by Host between the date of adoption of the Rights Agreement and the Rights Distribution Date (defined below) or the date, if any, on which the Rights are redeemed, would have one preferred stock purchase right (a "Right") attached to it. The Rights will expire on November 22, 2008, unless earlier redeemed or exchanged. Each Right, when exercisable, would entitle the holder to purchase one unit of Host Series A Junior Participating Preferred Stock, equal to one one-thousandth of a share of such stock, at a purchase price equal to \$55.00 per unit, subject to adjustment. Until a Right is exercised, the holder of the Right, as such, would have no rights as a stockholder of Host, including, without limitation, the right to vote or to receive dividends.

The Rights Agreement provides that the Rights initially attach to all certificates representing common stock then outstanding. The Rights would separate from the common stock and a distribution of Rights certificates would occur (a "Rights Distribution Date") upon the earlier to occur of:

ten days following a public announcement that a person or group of affiliated or associated persons (an "Acquiring Person") has acquired, or obtained the right to acquire, beneficial ownership of 20% or more of the outstanding common stock (the "Stock Acquisition Date"); or

ten business days, or some later date as Host's board of directors may determine, following the commencement of a tender offer or exchange offer, the consummation of which would result in the beneficial ownership by a person of 20% or more of the outstanding common stock.

For the purposes of determining the 20% threshold amount, the following shares of common stock are not included:

Edgar Filing: HOST MARRIOTT CORP/ - Form S-4/A

shares received pursuant to the Agreement and Plan of Merger, dated November 23, 1998, pursuant to which Host Marriott Corporation, a Delaware corporation, was merged into Host, in exchange for shares of common stock of Host Marriott Corporation which the holder beneficially owned on February 3, 1989 and owned continuously thereafter;

shares acquired by a person pursuant to a gift, bequest, inheritance or distribution from a trust or from a corporation controlled by that person where the shares of common stock were exempt shares under the Rights Agreement immediately prior to their acquisition and where the shares of common stock were beneficially owned by that person continuously after their acquisition; and

## **Table of Contents**

shares acquired as a result of a stock dividend, stock distribution or other recapitalization relating to exempt shares under the Rights Agreement.

Until the Rights Distribution Date, the Rights will be represented by the common stock certificates, and will be transferred with, and only with, the common stock certificates. The Rights are not exercisable until the Rights Distribution Date.

If a person becomes the beneficial owner of 20% or more of the then outstanding common stock, except in connection with an offer for all outstanding common stock which the directors by a two-thirds vote determine to be fair to and otherwise in the best interests of Host and its stockholders, each holder of a Right would, after the end of a redemption period, have the right to exercise the Right by purchasing, for an amount equal to the purchase price, shares of common stock having a value equal to two times the purchase price, subject to the ownership limit. All Rights acquired by the Acquiring Person will be null and void.

Each holder of a Right would have the right to receive, upon exercise, common shares of the acquiring company having a value equal to two times the purchase price of the Right if, at any time following the Stock Acquisition Date,

Host is acquired in a merger or other business combination transaction in which it is not the surviving corporation, other than a merger which follows an offer described in the preceding paragraph; or

50% or more of Host's assets or earning power is sold or transferred.

At any time after a person becomes an Acquiring Person, Host's board of directors may exchange the Rights at an exchange ratio of one share of Host common stock per Right.

In general, Host's board of directors may redeem the Rights at a price of \$.005 per Right at any time until ten days after an Acquiring Person has been identified as an Acquiring Person. If the decision to redeem the Rights occurs after a person becomes an Acquiring Person, the decision will require a two-thirds vote of directors.

The Rights have certain anti-takeover effects. The exercise of the Rights will cause substantial dilution to a person or group that attempts to acquire Host. The Rights, however, would not interfere with any merger or other business combination approved by Host's board of directors since Host's board of directors may, at its option, at any time prior to any person becoming an Acquiring Person, redeem all rights or amend the Rights Agreement to exempt the person from the Rights Agreement.

## **Preferred Stock**

Host's charter originally authorized Host's board of directors to issue 50,000,000 shares of preferred stock. As of February 6, 2006, there is outstanding:

Edgar Filing: HOST MARRIOTT CORP/ - Form S-4/A

5,980,000 shares of 10% Class C Cumulative Redeemable Preferred Stock (which are referred to as the Class C preferred stock ); and

4,034,300 shares of 8<sup>7</sup>/<sub>8</sub>% Class E Cumulative Redeemable Preferred Stock (which are referred to as the Class E preferred stock ).

Host s board of directors has the power to classify or reclassify any unissued preferred shares into one or more classes or series of capital stock, including common stock.

## Table of Contents

### **Restrictions on Ownership and Transfer**

For Host to qualify as a REIT under the Code, no more than 50% in value of its outstanding shares of stock may be owned, actually or constructively, by five or fewer individuals, as defined in the Code to include certain entities:

during the last half of a taxable year other than the first year for which an election to be treated as a REIT has been made; or

during a proportionate part of a shorter taxable year.

In addition, if Host, or one or more owners of 10% or more of Host, actually or constructively owns 10% or more of a tenant of Host or a tenant of any partnership in which Host is a partner, the rent received by Host either directly or through any such partnership from such tenant generally will not be qualifying income for purposes of the REIT gross income tests of the Code unless the tenant qualifies as a taxable REIT subsidiary and the leased property is a qualified lodging facility under the Code. A REIT's shares also must be beneficially owned by 100 or more persons during at least 335 days of a taxable year of twelve months or during a proportionate part of a shorter taxable year other than the first year for which an election to be treated as a REIT has been made.

Primarily because Host's board of directors believes it is desirable for Host to qualify as a REIT, Host's charter provides that, subject to certain exceptions, no person or persons acting as a group may own, or be deemed to own by virtue of the attribution provisions of the Code, more than:

9.8% of the lesser of the number or value of shares of common stock outstanding; or

9.8% of the lesser of the number or value of the issued and outstanding preferred or other shares of any class or series of Host's stock.

The foregoing is subject to a limitation on the application of the group limitation, but no other element of the ownership limit, to any group that otherwise exceeded the ownership limit at the effective time of such merger solely by reason of its status as a group.

The ownership attribution rules under the Code are complex and may cause capital stock owned actually or constructively by a group of related individuals and/or entities to be owned constructively by one individual or entity. As a result, the acquisition of less than 9.8% of the common stock or the acquisition or ownership of an interest in an entity that owns, actually or constructively, common stock, by an individual or entity could nevertheless cause that individual or entity, or another individual or entity, to own constructively in excess of 9.8% of the outstanding common stock and thus subject such common stock to the remedy provision under the ownership limit. Host's board of directors may grant an exemption from the ownership limit with respect to one or more persons who would not be treated as individuals for purposes of the Code if it is satisfied, based upon an opinion of counsel and/or such other evidence as is satisfactory to Host's board of directors in its sole discretion, that:

such ownership will not cause a person who is an individual to be treated as owning capital stock in excess of the ownership limit, applying the applicable constructive ownership rules; and

## Edgar Filing: HOST MARRIOTT CORP/ - Form S-4/A

will not otherwise jeopardize Host's status as a REIT by, for example, causing any tenant of Host LP to be considered a related party tenant for purposes of the REIT qualification rules.

As a condition of such waiver, Host's board of directors may require undertakings or representations from the applicant with respect to preserving the REIT status of Host.

Host's board of directors will have the authority to increase the ownership limit from time to time, but will not have the authority to do so to the extent that after giving effect to such increase, five beneficial owners of capital stock could beneficially own in the aggregate more than 49.5% of the outstanding capital stock.



**Table of Contents**

The charter further prohibits:

any person from actually or constructively owning shares of beneficial interest of Host that would result in Host being closely held under Section 856(h) of the Code or otherwise cause Host to fail to qualify as a REIT; and

any person from transferring shares of Host's capital stock if such transfer would result in shares of Host's capital stock being owned by fewer than 100 persons.

Any person who acquires or attempts or intends to acquire actual or constructive ownership of shares of Host's capital stock that will or may violate any of the foregoing restrictions on transferability and ownership is required to give notice immediately to Host and provide Host with such other information as Host may request in order to determine the effect of such transfer on Host's status as a REIT.

If any purported transfer of shares of Host's capital stock or any other event would otherwise result in any person violating the ownership limit or the other restrictions in Host's charter, then any such purported transfer will be void and of no force or effect with respect to the purported transferee (the Prohibited Transferee) as to that number of shares that exceeds the ownership limit (referred to as excess shares) and

the Prohibited Transferee shall acquire no right or interest in such excess shares; and

in the case of any event other than a purported transfer, the person or entity holding record title to any such shares in excess of the ownership limit (the Prohibited Owner) shall cease to own any right or interest in such excess shares.

Any excess shares described above will be transferred automatically, by operation of law, to a trust, the beneficiary of which will be a qualified charitable organization selected by Host (the Beneficiary). The automatic transfer shall be deemed to be effective as of the close of business on the business day prior to the date of the violating transfer. Within 20 days of receiving notice from Host of the transfer of shares to the trust, the trustee of the trust, who shall be designated by Host and be unaffiliated with Host and any Prohibited Transferee or Prohibited Owner, will be required to sell the excess shares to a person or entity who could own the shares without violating the ownership limit, and distribute to the Prohibited Transferee an amount equal to the lesser of the price paid by the Prohibited Transferee for the excess shares or the sales proceeds received by the trust for the excess shares. In the case of any excess shares resulting from any event other than a transfer, or from a transfer for no consideration, such as a gift, the trustee will be required to sell the excess shares to a qualified person or entity and distribute to the Prohibited Owner an amount equal to the lesser of the fair market value of the excess shares as of the date of the event or the sales proceeds received by the trust for the excess shares. In either case, any proceeds in excess of the amount distributable to the Prohibited Transferee or Prohibited Owner, as applicable, will be distributed to the Beneficiary. Prior to a sale of any excess shares by the trust, the trustee will be entitled to receive, in trust for the Beneficiary, all dividends and other distributions paid by Host with respect to those excess shares, and also will be entitled to exercise all voting rights with respect to those excess shares. Subject to Maryland law, effective as of the date that the shares have been transferred to the trust, the trustee shall have the authority to rescind as void any vote cast by a Prohibited Transferee prior to the discovery by Host that the shares have been transferred to the trust and to recast the vote in accordance with the desires of the trustee acting for the benefit of the Beneficiary.

However, if Host has already taken irreversible corporate action, then the trustee shall not have the authority to rescind and recast its vote. Any dividend or other distribution paid to the Prohibited Transferee or Prohibited Owner, prior to the discovery by Host that the shares had been automatically transferred to a trust as described above, will be required to be repaid to the trustee upon demand for distribution to the Beneficiary. If the transfer to the trust as described above is not automatically effective to prevent violation of the ownership limit, then the charter provides that the transfer of the excess shares will be void.

Edgar Filing: HOST MARRIOTT CORP/ - Form S-4/A

In addition, shares of Host's stock held in the trust shall be deemed to have been offered for sale to Host, or its designee, at a price per share equal to the lesser of the price per share in the transaction that resulted in the

## **Table of Contents**

transfer to the trust or, in the case of a devise or gift, the market value at the time of the devise or gift and the market value of the shares on the date Host, or its designee, accepts the offer. Host will have the right to accept the offer until the trustee has sold the shares held in the trust. Upon such a sale to Host, the interest of the Beneficiary in the shares sold will terminate and the trustee will distribute the net proceeds of the sale to the Prohibited Owner.

The foregoing restrictions on transferability and ownership will not apply if Host's board of directors determines that it is no longer in the best interests of Host to attempt to qualify, or to continue to qualify, as a REIT.

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

All persons who own, directly or by virtue of the attribution provisions of the Code, more than 5%, or some other percentage between 1/2 of 1% and 5% as provided in the rules and regulations under the Code, of the lesser of the number or value of the outstanding shares of Host's capital stock must give a written notice to Host within 30 days after the end of each taxable year. In addition, each stockholder will, upon demand, be required to disclose to Host in writing such information with respect to the direct, indirect and constructive ownership of shares of Host's capital stock as Host's board of directors deems reasonably necessary to comply with the provisions of the Code applicable to a REIT, to comply with the requirements of any taxing authority or governmental agency or to determine any such compliance.

The ownership limit could have the effect of delaying, deferring or preventing a change in control or other transaction which might involve a premium for Host stockholders over the then prevailing market price or otherwise be in their best interest.

## **Certain Provisions of Maryland Law and of Host's Charter and Bylaws**

The following description of certain provisions of Maryland law and of Host's charter and bylaws is only a summary. For a complete description, please refer to the Maryland General Corporation Law and Host's charter and bylaws, both of which are exhibits to the registration statement of which this proxy statement/prospectus is included.

### *Election of the Board of Directors*

Host's charter provides that the number of directors may be established by Host's board of directors but may not be fewer than three nor more than thirteen. Any vacancy will be filled, at any regular meeting or at any special meeting called for that purpose, by a majority of the remaining directors, (except that a vacancy resulting from an increase in the number of directors must be filled by a majority of the entire board of directors) and, in the case of a vacancy resulting from the removal of a director by stockholders, by the holders of two-thirds of the votes entitled to be cast in the election of directors.

### *Removal of Directors*

## Edgar Filing: HOST MARRIOTT CORP/ - Form S-4/A

Host's charter provides that, except for any directors who may be elected by holders of a class or series of shares other than common stock, a director may be removed only for cause and only by the affirmative vote of at least two-thirds of the votes entitled to be cast in the election of directors. Vacancies on Host's board of directors may be filled by the affirmative vote of the remaining directors except that a vacancy resulting from an increase in the number of directors must be filled by a majority of the entire Host board of directors. Any vacancy resulting from the removal of a director by the stockholders may be filled by the affirmative vote of holders of at least two-thirds of the votes entitled to be cast in the election of directors. The affirmative vote of holders of at least two-thirds of all the votes entitled to be cast is required to amend, alter, change, repeal or adopt any provisions

**Table of Contents**

inconsistent with the foregoing director removal provisions. These provisions preclude stockholders from removing incumbent directors except for cause and by a substantial affirmative vote and, thus, may reduce the vulnerability of Host to an unsolicited takeover proposal which may not be in the best interest of the stockholders.

*Business Combinations*

Under Maryland law, business combinations between a Maryland corporation and an interested stockholder or an affiliate of an interested stockholder are prohibited for five years after the most recent date on which the interested stockholder becomes an interested stockholder. These business combinations include a merger, consolidation, share exchange, or, in circumstances specified in the statute, an asset transfer or issuance or reclassification of equity securities. An interested stockholder is defined as:

any person who beneficially owns ten percent or more of the voting power of the corporation's shares; or

an affiliate or associate of the corporation who, at any time within the two-year period prior to the date in question, was the beneficial owner of ten percent or more of the voting power of the then outstanding voting stock of the corporation.

A person is not an interested stockholder under the statute if the board of directors approved in advance the transaction by which he otherwise would have become an interested stockholder. However, in approving a transaction, the board of directors may provide that its approval is subject to compliance, at or after the time of approval, with any terms and conditions determined by the board.

After the five-year prohibition, any business combination between the Maryland corporation and an interested stockholder generally must be recommended by the board of directors of the corporation and approved by the affirmative vote of at least:

80% of the votes entitled to be cast by holders of outstanding shares of voting stock of the corporation; and

two-thirds of the votes entitled to be cast by holders of voting stock of the corporation other than shares held by the interested stockholder with whom or with whose affiliate the business combination is to be effected or held by an affiliate or associate of the interested stockholder.

These super-majority vote requirements do not apply if the corporation's common stockholders receive a minimum price, as defined under Maryland law, for their shares in the form of cash or other consideration in the same form as previously paid by the interested stockholder for its shares.

The statute permits various exemptions from its provisions, including business combinations that are exempted by the board of directors before the time that the interested stockholder becomes an interested stockholder.

## Edgar Filing: HOST MARRIOTT CORP/ - Form S-4/A

Host's board of directors has not opted out of the business combinations provisions of the Maryland General Corporation Law and is subject to the five-year prohibition and the super-majority voting requirements with respect to business combinations involving Host; however, as permitted under Maryland law, Host's board of directors may elect to opt out of these provisions in the future.

The business combination statute may discourage others from trying to acquire control of Host and increase the difficulty of consummating any offer.

### *Control Share Acquisitions*

Maryland law 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

**Table of Contents**

matter. Shares owned by the acquiror, by officers or by directors who are employees of the corporation are excluded from shares entitled to vote on the matter. Control shares are voting shares of stock which, if aggregated with all other shares of stock owned by the acquiror or in respect of which the acquiror is able to exercise or direct the exercise of voting power (except solely by virtue of a revocable proxy), would entitle the acquiror to exercise voting power in electing directors within one of the following ranges of voting power:

one-tenth or more but less than one-third;

one-third or more but less than a majority; or

a majority or more of all voting power.

Control shares do not include shares the acquiring person is then entitled to vote as a result of having previously obtained stockholder approval. A control share acquisition means the acquisition of control shares, subject to certain exceptions.

A person who has made or proposes to make a control share acquisition may compel the board of directors of the corporation to call a special meeting of stockholders to be held within 50 days of demand to consider the voting rights of the shares. The right to compel the calling of a special meeting is subject to the satisfaction of certain conditions, including an undertaking to pay the expenses of the meeting. If no request for a meeting is made, the corporation may itself present the question at any stockholders meeting.

If voting rights are not approved at the meeting or if the acquiring person does not deliver an acquiring person statement as required by the statute, then the corporation may redeem for fair value any or all of the control shares, except those for which voting rights have previously been approved. The right of the corporation to redeem control shares is subject to certain conditions and limitations. Fair value is determined, without regard to the absence of voting rights for the control shares, as of the date of the last control share acquisition by the acquiror or of any meeting of stockholders at which the voting rights of the shares are considered and not approved. If voting rights for control shares are approved at a stockholders meeting and the acquiror becomes entitled to vote a majority of the shares entitled to vote, all other stockholders may exercise appraisal rights. The fair value of the shares as determined for purposes of appraisal rights may not be less than the highest price per share paid by the acquiror in the control share acquisition.

The control share acquisition statute does not apply (a) to shares acquired in a merger, consolidation or share exchange if the corporation is a party to the transaction, or (b) to acquisitions approved or exempted by the charter or bylaws of the corporation.

Host's board of directors has not opted out of the control share provisions of the Maryland General Corporation Law but, as permitted under Maryland law, may elect to opt out of these provisions in the future.

*Amendment to the Charter and Bylaws*

Host's charter may be amended by the affirmative vote of the holders of not less than a majority of all of the votes entitled to be cast on the matter; provided, however, that any amendment to certain charter provisions specifically identified in the charter, including provisions on

## Edgar Filing: HOST MARRIOTT CORP/ - Form S-4/A

removal of directors and filling vacancies, restrictions on ownership and transferability of stock, the vote required for certain extraordinary transactions and indemnification, must be approved by the affirmative vote of holders of not less than two-thirds of all of the votes entitled to be cast on the matter.

As permitted under the Maryland General Corporation Law, the charter and bylaws of Host provide that the directors have the exclusive right to amend the bylaws. Amendment of this provision in the charter also would require action by Host's board of directors and the affirmative vote of holders of not less than two-thirds of all votes entitled to be cast on the matter.



## **Table of Contents**

### *Dissolution of the Company*

The dissolution of Host must be approved by the affirmative vote of the holders of not less than two-thirds of all of the votes entitled to be cast on the matter.

### *Advance Notice of Director Nominations and New Business*

Host's bylaws provide that with respect to an annual meeting of stockholders, nominations of individuals for election to Host's board of directors and the proposal of business to be considered by stockholders may be made only (i) pursuant to Host's notice of the meeting, (ii) by Host's board of directors or (iii) by a stockholder who is entitled to vote at the meeting and who has complied with the advance notice procedures of the bylaws. With respect to special meetings of stockholders, only the business specified in Host's notice of the meeting may be brought before the meeting. Nominations of individuals for election to Host's board of directors at a special meeting may be made only (i) pursuant to Host's notice of the meeting, (ii) by Host's board of directors, or (iii) provided that Host's board of directors has determined that directors will be elected at the meeting, by a stockholder who is entitled to vote at the meeting and who has complied with the advance notice provisions of the bylaws.

### *Subtitle 8*

Subtitle 8 of Title 3 of the Maryland General Corporation Law permits a Maryland corporation with a class of equity securities registered under the Securities Exchange Act of 1934 and at least three independent directors to elect to be subject, by provision in its charter or bylaws or a resolution of its board of directors and notwithstanding any contrary provision in the charter or bylaws, to any or all of five provisions:

a classified board;

a two-thirds vote requirement for removing a director;

a requirement that the number of directors be fixed only by vote of the directors;

a requirement that a vacancy on the board be filled only by the remaining directors and for the remainder of the full term of the class of directors in which the vacancy occurred; and

a majority requirement for the calling of a special meeting of stockholders.

Through provisions in Host's charter and bylaws unrelated to Subtitle 8, Host already (a) requires a two-thirds vote for the removal of any director from Host's board of directors, (b) vests in the board the exclusive power to fix the number of directorships and (c) requires to call a special meeting of stockholders, unless called by Host's president or the board, the request of holders of a majority of the votes entitled to be cast at the special meeting. As of the date of this proxy/prospectus, Host's board has not made any election to be subject to any provisions of Subtitle 8.

*Anti-takeover Effect of Certain Provisions of Maryland Law and of the Charter and Bylaws*

The business combination provisions and the control share acquisition provisions of Maryland law, the provisions of Host's charter on removal of directors, the share ownership and transfer restrictions in the charter and the advance notice provisions of Host's bylaws could delay, defer or prevent a transaction or a change in control of Host that might involve a premium price for holders of common stock or otherwise be in their best interest.

Table of Contents**COMPARISON OF THE RIGHTS OF HOST STOCKHOLDERS AND STARWOOD TRUST SHAREHOLDERS**

Upon completion of the transactions, the holders of Starwood Trust's Class B shares and Class A Exchangeable Preferred Shares will no longer be shareholders of Starwood Trust and will become holders of Host common stock. Each Class B share of Starwood Trust is currently paired with one share of Starwood common stock and one Class B share, which is collectively referred to as a paired share. Each Class A Exchangeable Preferred Share of Starwood Trust is currently exchangeable for one paired share of Starwood and Starwood Trust. The rights of holders of paired shares of Starwood and Starwood Trust are currently governed (i) with respect to the Starwood common stock portion of a paired share, by Titles 1-3 of the Corporations and Associations Article of the Annotated Code of Maryland, which is referred to throughout this proxy statement/prospectus as Titles 1-3, the Starwood charter and the Starwood bylaws, and (ii) with respect to the Class B share portion of a paired share, by Title 8 of the Corporations and Associations Article of the Annotated Code of Maryland, which is referred to throughout this proxy statement/prospectus as Title 8, the Starwood Trust declaration of trust and the Starwood Trust bylaws. The rights of holders of Host common stock are governed by Titles 1-3, the Host charter and the Host bylaws.

The following discussion summarizes certain significant differences between the rights of Starwood Trust shareholders and the rights of Host stockholders. Because the Class B shares of Starwood Trust and the shares of Starwood common stock trade together as a unit, the following discussion also summarizes certain rights of holders of Starwood common stock. It is not a complete summary of the provisions affecting, and the differences between, the rights of Starwood Trust shareholders and the rights of Host stockholders and is subject to and qualified in its entirety by reference to Titles 1-3, Title 8, the Host charter and bylaws, the Starwood charter and bylaws and the Starwood Trust declaration of trust and bylaws.

	<u>Host</u>	<u>Starwood and Starwood Trust</u>
<b>Authorized and Issued Shares</b>	<p>The authorized capital stock of Host consists of 750,000,000 shares of common stock, par value \$.01 per share, and 50,000,000 shares of preferred stock, par value \$.01 per share. Of the 50,000,000 shares of preferred stock, (i) 650,000 shares have been classified as Series A Junior Participating Preferred Stock, (ii) 5,980,000 shares have been classified as 10% Class C Cumulative Redeemable Preferred Stock and (iii) 8,000,000 shares have been classified as 8<sup>7</sup>/<sub>8</sub>% Class E Cumulative Redeemable Preferred Stock. As of February 6, 2006, there were 353,040,316 shares of common stock issued and outstanding, 5,980,000 shares of 10% Class C Cumulative Redeemable Preferred Stock issued and outstanding and 4,034,300 shares of 8<sup>7</sup>/<sub>8</sub>% Class E Cumulative Redeemable Preferred Stock issued and outstanding.</p>	<p><b>Starwood.</b> The authorized capital stock of Starwood consists of (i) 1,000,000,000 shares of common stock, par value \$.01 per share, (ii) 200,000,000 shares of preferred stock, par value \$.01 per share, (iii) 50,000,000 shares of excess common stock, par value \$.01 per share and (iv) 100,000,000 shares of excess preferred stock, par value \$.01 per share.</p> <p><b>Starwood Trust.</b> The beneficial interest of Starwood Trust is divided into shares consisting of (i) 5,000 Class A shares, par value \$.01 per share, (ii) 1,000,000,000 Class B shares, par value \$.01 per share, (iii) 30,000,000 Class A Exchangeable Preferred Shares, par value \$.01 per share, (iv) 15,000,000 Class B Exchangeable Preferred Shares, par value \$.01 per share and (v) 55,000 Trust Preferred Shares, par value \$.01 per share. Starwood Trust has also designated two classes of</p>

**Table of Contents**

	<b>Host</b>	<b>Starwood and Starwood Trust</b>
		<p>Excess Shares , consisting of (1) 200,000,000 Excess Trust Shares, par value \$.01 per share and (2) 50,000,000 Excess Preferred Shares, par value \$.01 per share. As of September 30, 2005, there were 100 Class A shares issued and outstanding, 219,272,686 Class B shares issued and outstanding, 562,222 Class A Exchangeable Preferred Shares issued and outstanding and 24,627 Class B Exchangeable Preferred Shares issued and outstanding.</p>
<b>Voting Rights</b>	<p>The holders of shares of Host common stock are entitled to one vote per share of Host common stock.</p>	<p><b>Starwood.</b> The holders of shares of Starwood common stock are entitled to one vote per share of Starwood common stock.</p> <p><b>Starwood Trust.</b> The holders of Class B shares of Starwood Trust are not entitled to vote upon any matter regardless of whether the holders of Class A shares of Starwood Trust have the right to vote on such matter. Notwithstanding the foregoing, so long as any Class B shares of Starwood Trust are outstanding, the affirmative vote of at least a majority of the votes entitled to be cast by the holders of Class B shares of Starwood Trust shall be required to effect any amendment, alteration or repeal of any provision of Starwood Trust's declaration of trust that materially and adversely affects the rights of such holders disproportionately to the effect of such amendment, alteration or repeal on the holders of Class A shares of Starwood Trust. The holders of Class A Exchangeable Preferred Shares of Starwood Trust are entitled to vote upon all matters upon which holders of Class B shares of Starwood Trust may vote, and are entitled to the number of votes equal to the largest whole number of Class B shares of</p>

**Table of Contents**

	<b>Host</b>	<b>Starwood and Starwood Trust</b>
		Starwood Trust for which such shares of Class A Exchangeable Preferred Shares of Starwood Trust could be exchanged pursuant to Starwood Trust's declaration of trust as of the relevant record date. Notwithstanding the foregoing, so long as any Class A Exchangeable Preferred Shares of Starwood Trust are outstanding, the affirmative vote of at least a majority of the votes entitled to be cast by the holders of Class A Exchangeable Preferred Shares of Starwood Trust shall be required to effect any amendment, alteration or repeal of any provision of Starwood Trust's declaration of trust that materially and adversely affects the rights of such holders disproportionately to the effect of such amendment, alteration or repeal on the holders of Class B shares of Starwood Trust.
<b>Dividends</b>	Host's bylaws provide that dividends upon Host common stock may be authorized by Host's board of directors at any regular or special meeting, and may be paid in cash, property, or shares of Host common stock. Before payment of any dividend, Host may set aside out of any funds available for dividends the sum or sums as Host's board of directors from time to time, in its absolute discretion, deems proper as a reserve fund.	<p><b>Starwood.</b> Starwood's bylaws provide that dividends upon Starwood common stock may be declared by Starwood's board of directors at any regular, annual or special meeting, and may be paid in cash, property, or shares of Starwood common stock. However, the board of directors, in its sole discretion, may fix a sum which may be set aside as a reserve for any proper purpose, and from time to time may increase, diminish or vary such reserves. Such reserves may be set aside before the payment of any dividends.</p> <p><b>Starwood Trust.</b> The holders of Class B shares of Starwood Trust are entitled to receive a noncumulative dividend in an amount per share equal to \$0.84, subject to adjustment as set forth in Starwood Trust's declaration of trust, as and if authorized by Starwood Trust's board of trustees. Subject to limited exceptions set</p>

**Table of Contents**

	<b>Host</b>	<b>Starwood and Starwood Trust</b>
		<p>forth in Starwood Trust’s declaration of trust, so long as any Class B shares of Starwood Trust are outstanding, no dividend on Class A shares of Starwood Trust may be declared, paid or set apart for payment unless and until all accrued dividends on the Class B shares of Starwood Trust have been paid or are concurrently declared and paid. The holders of Class A Exchangeable Preferred Shares of Starwood Trust are entitled to the following dividends: (1) upon the payment by Starwood of any distribution with respect to the shares of Starwood common stock, each Class A Exchangeable Preferred Share of Starwood Trust automatically has the right to receive an amount equal to the value of such distribution multiplied by the number of shares of Starwood common stock for which each Class A Exchangeable Preferred Share of Starwood Trust is then exchangeable as of the record date for such distribution and (2) no dividend may be declared with respect to the Class B shares of Starwood Trust unless Starwood Trust’s board of trustees concurrently declares a dividend entitling each Class A Exchangeable Preferred Share of Starwood Trust to receive an amount equal to the Class B share dividend multiplied by the number of Class B shares of Starwood Trust for which each Class A Exchangeable Preferred Share of Starwood Trust is then exchangeable as of the record date for such dividend.</p>
<b>Number of Directors or Trustees</b>	<p>Host’s charter provides that the number of directors may be established by the board of directors but may not be fewer than three nor more than thirteen. Host’s board of directors currently consists of seven directors.</p>	<p><b>Starwood.</b> Starwood’s charter and bylaws provide that the number of directors is set by the board of directors but may not be fewer than three nor more than twenty. Starwood’s board of directors currently consists of ten directors.</p>

**Table of Contents**

	<b>Host</b>	<b>Starwood and Starwood Trust</b>
<b>Election of Directors or Trustees</b>	<p>Host's charter does not provide for cumulative voting. At each annual meeting, directors shall be elected to serve a term of one year, which means that the holders of a majority of the outstanding shares of common stock can elect all of the directors then standing for election, and the holders of the remaining shares will not be able to elect any directors.</p>	<p><b>Starwood Trust.</b> Starwood Trust's declaration of trust and bylaws provide that the number of trustees is set by the board of trustees but may not be fewer than three nor more than twenty. Starwood Trust's board of trustees currently consists of ten trustees.</p> <p><b>Starwood.</b> Starwood's charter does not provide for cumulative voting. At each annual meeting of shareholders, directors shall be elected to serve a term of one year. A plurality of all the votes cast at a meeting of stockholders duly called and at which a quorum is present shall be sufficient to elect a director.</p>
<b>Classes of Directors or Trustees</b>	<p>Host does not have separate classes for its board of directors.</p>	<p><b>Starwood Trust.</b> Starwood Trust's declaration of Trust does not provide for cumulative voting. At each annual meeting of shareholders, trustees shall be elected to serve for a term of one year. A majority of votes cast at a meeting of shareholders is required to elect a director.</p> <p><b>Starwood.</b> Starwood does not have separate classes for its board of directors.</p> <p><b>Starwood Trust.</b> Starwood Trust does not have separate classes for its board of trustees.</p>
<b>Removal of Directors or Trustees</b>	<p>Host's charter provides that, except for any directors who may be elected by holders of a class or series of shares other than common stock, a director may be removed only for cause and only by the affirmative vote of at least two-thirds of the votes entitled to be cast in the election of directors.</p>	<p><b>Starwood.</b> Starwood's charter provides that the stockholders may remove any director, but only for cause, and only by the affirmative vote of at least two-thirds of all the votes entitled to be cast for the election of directors.</p> <p><b>Starwood Trust.</b> Starwood's declaration of trust provides that a trustee may be removed at any time, with or without cause, by vote or written consent of holders of at least two-thirds of the outstanding shares</p>

**Table of Contents**

	<b>Host</b>	<b>Starwood and Starwood Trust</b>
<b>Vacancies on the Board of Directors or the Board of Trustees</b>	<p>Host's charter provides that vacancies on the board of directors may be filled by the affirmative vote of the remaining directors except that a vacancy resulting from an increase in the number of</p> <p>directors must be filled by a majority of the entire board of directors. Any vacancy resulting from the removal of a director by</p> <p>the stockholders may be filled by the affirmative vote of holders of at least two-thirds of the votes entitled to be cast in the election of directors.</p>	<p>of beneficial interest entitled to vote thereon, or with cause by all remaining trustees.</p> <p><b>Starwood.</b> Starwood's bylaws provide that any vacancy resulting from an increase in the authorized number of directors may be filled only by a majority vote of the entire board. Any vacancies resulting from any other cause may be filled only by a majority vote of the directors then in office, even if less than a quorum.</p> <p><b>Starwood Trust.</b> Starwood Trust's declaration of trust and bylaws provide that vacancies occurring among the trustees (including vacancies created by increases in number) may be filled by a majority of the remaining trustees, though less than a quorum, or by a sole remaining trustee.</p>
<b>Stockholder Action by Written Consent</b>	<p>Host's bylaws provide that any action required or permitted to be taken at any meeting of stockholders may be taken without a meeting if unanimous written consent setting forth the action is given by each stockholder entitled to vote thereon.</p>	<p><b>Starwood.</b> Starwood's bylaws provide that any action that is required or permitted to be taken by stockholders may be taken without a meeting if there is filed a unanimous written consent which sets forth the action and is signed by each stockholder entitled to vote on any matter and a written waiver of any right to dissent signed by each stockholder entitled to notice of the meeting but not entitled to vote at it.</p> <p><b>Starwood Trust.</b> Starwood Trust's declaration of trust and bylaws provide that any action that is required or permitted to be taken by shareholders may be taken without a meeting on written consent signed by a majority, or such larger proportion as would be required for a vote of shareholders at a meeting,</p>



**Table of Contents**

	<b>Host</b>	<b>Starwood and Starwood Trust</b>
		of all outstanding shares entitled to vote thereon.
<b>Amendment to Charter or Declaration of Trust</b>	Host's charter may be amended by the affirmative vote of the holders of not less than a majority of all of the votes entitled to be cast on the matter; provided, however, that any amendment to certain charter provisions specifically identified in the charter, including provisions on removal of directors and filling vacancies, restrictions on ownership and transferability of stock, the vote required for certain extraordinary transactions and indemnification, must be approved by the affirmative vote of holders of not less than two-thirds of all of the votes entitled to be cast on the matter.	<b>Starwood.</b> Starwood's charter may be amended by the affirmative vote of the holders of not less than a majority of all the votes entitled to be cast on the matter; provided, however, that the affirmative vote of holders of at least two-thirds of the voting power of all the then outstanding shares of capital stock, voting together as a single class, is required to alter, amend or repeal any restriction on the transferability of stock.  <b>Starwood Trust.</b> Starwood's declaration of trust may be amended by the vote or written consent of shareholders holding a majority of the outstanding shares entitled to vote thereon; provided, however, that the board of trustees may repeal any provision of the declaration of trust without shareholder approval to the extent that such provision conflicts with the REIT provisions of the Code or of the State of Maryland. The amendment of certain provisions of the declaration of trust requires the affirmative vote of the holders of at least two-thirds (2/3) of the voting power of all of the then-outstanding shares of beneficial interest voting together as a single class.
<b>Amendment of Bylaws</b>	Host's charter and bylaws provide that the directors have the exclusive right to amend the bylaws.	<b>Starwood.</b> Starwood's bylaws provide that the directors have the exclusive right to amend the bylaws.  <b>Starwood Trust.</b> Starwood Trust's bylaws provide that the trustees have the exclusive right to amend the bylaws.
<b>Special Meeting of Stockholders</b>	Host's charter and bylaws provide that special meetings of stockholders may only be called by Host's chief executive officer, the	<b>Starwood.</b> Starwood's bylaws provide that special meetings may be called by the chairman, the chief executive officer, the president, the

**Table of Contents**

	<b>Host</b>	<b>Starwood and Starwood Trust</b>
	chairman of the board, or Host's board of directors, or by the request of holders of a majority of the votes entitled to be cast at the special meeting.	board of directors, any two or more directors or by the request of a majority of the votes entitled to be cast at the special meeting.
<b>Quorum</b>	Host's bylaws provide that the holders of a majority of the capital stock issued and outstanding and entitled to vote thereat, present, in person or represented by proxy will constitute a quorum at all meetings of the stockholders.	<p><b>Starwood Trust.</b> Starwood Trust's bylaws provide that special meetings of shareholders may be called by the chairman, the chief executive officer, by any two or more trustees, or by one or more shareholders holding not less than 25% of the outstanding shares of beneficial interest entitled to vote.</p> <p><b>Starwood.</b> Starwood's bylaws provide that the presence in person or by proxy of stockholders entitled to cast a majority of all votes entitled to be cast at such meeting on any matter will constitute a quorum.</p> <p><b>Starwood Trust.</b> Starwood Trust's bylaws provide that the presence in person or by proxy of persons entitled to cast a majority of the voting shares at any meeting will constitute a quorum.</p>
<b>Notice of Stockholder Meetings</b>	Host's bylaws provide that with respect to an annual meeting of stockholders, nominations of individuals for election to the board of directors and the proposal of business to be considered by stockholders may be made only (i) pursuant to Host's notice of the meeting, (ii) by the board of directors or (iii) by a stockholder who is entitled to vote at the meeting and who has complied with the advance notice procedures of the bylaws. With respect to special meetings of stockholders, only the business specified in Host's notice of the meeting may be brought before the meeting. Nominations of individuals for election to the board of directors at	<b>Starwood.</b> Starwood's bylaws provide that with respect to an annual meeting of stockholders, nominations for persons for election to the board of directors and the proposal of business to be considered by the stockholders may be made only (i) pursuant to Starwood's notice of meeting, (ii) by or at the direction of the directors or (iii) by any stockholder of Starwood who was a stockholder of record both at the time of giving of notice provided for in the bylaws and at the time of the annual meeting, who is entitled to vote at the meeting and who complied with the notice procedures set forth in the bylaws. With respect to special meetings of stockholders, only the

**Table of Contents**

	<b>Host</b>	<b>Starwood and Starwood Trust</b>
	<p>a special meeting may be made only (i) pursuant to Host's notice of the meeting, (ii) by the board of directors, or (iii) provided that the board of directors has determined that directors will be elected at the meeting, by a stockholder who is entitled to vote at the meeting and who has complied with the advance notice provisions of the bylaws.</p>	<p>business specified in Starwood's notice of the meeting may be brought before the meeting. Nominations for persons for election to the board of directors may be made at a special meeting of stockholders at which directors are to be elected (i) pursuant to Starwood's notice of meeting, (ii) by or at the direction of the board of directors or (iii) provided that the board of directors has determined that directors will be elected at such special meeting, by any stockholder of Starwood who was a stockholder of record both at the time of giving of notice provided for in the Starwood bylaws and at the time of the special meeting, who is entitled to vote at the meeting and who complied with the notice procedures set forth in the bylaws.</p> <p><b>Starwood Trust.</b> Starwood Trust's bylaws provide that with respect to an annual meeting of stockholders, nominations of persons for election as trustees at an annual meeting of the shareholders may be made at such meeting only by or at the direction of the trustees, by any nominating committee or person appointed by the trustees, or by any shareholder entitled to vote for the election of trustees at the meeting who complies with the notice procedures set forth in the bylaws.</p>
<b>Business Combinations</b>	<p>Under Maryland law, business combinations between a Maryland corporation and an interested stockholder or an affiliate of an interested stockholder are prohibited for five years after the most recent date on which the interested stockholder becomes an interested stockholder. These business combinations include a merger, consolidation,</p>	<p><b>Starwood.</b> All business combinations have been exempted from the Maryland business combination statute by resolution of the board of directors in November, 1994.</p> <p><b>Starwood Trust.</b> All business combinations have been exempted from the Maryland business combination statute by resolution of</p>

**Table of Contents**

<b>Host</b>	<b>Starwood and Starwood Trust</b>
<p>share exchange, or, in circumstances specified in the statute, an asset transfer or issuance or reclassification of equity securities. An interested stockholder is defined as:</p> <p style="padding-left: 40px;">any person who beneficially owns ten percent or more of the voting power of the corporation's shares; or</p> <p style="padding-left: 40px;">an affiliate or associate of the corporation who, at any time within the two-year period prior to the date in question, was the beneficial owner of ten percent or more of the voting</p> <p style="padding-left: 40px;">power of the then outstanding voting stock of the corporation</p> <p>A person is not an interested stockholder under the statute if the board of directors approved in advance the transaction by which he otherwise would have become an interested stockholder. However, in approving a transaction, the board of directors may provide that its approval is subject to compliance, at or after the time of approval, with any terms and conditions determined by the board.</p> <p>After the five-year prohibition, any business combination between the Maryland corporation and an interested stockholder generally must be recommended by the board of directors of the corporation and approved by the affirmative vote of at least:</p> <p style="padding-left: 40px;">80% of the votes entitled to be cast by holders of outstanding shares of voting stock of the corporation; and</p> <p style="padding-left: 40px;">two-thirds of the votes entitled to be cast by holders of voting stock of the corporation other than shares held by the interested stockholder with</p>	<p>the board of trustees in November, 1994.</p>



**Table of Contents**

	<b>Host</b>	<b>Starwood and Starwood Trust</b>
	<p>whom or with whose affiliate the business combination is to be effected or held by an affiliate or associate of the interested stockholder.</p> <p>These super-majority vote requirements do not apply if the corporation's common stockholders receive a minimum price, as defined under Maryland law, for their shares in the form of cash or other consideration in the same form as previously paid by the interested stockholder for its shares.</p> <p>The statute permits various exemptions from its provisions, including business combinations that are exempted by the board of directors before the time that the interested stockholder becomes an interested stockholder.</p> <p>Host's board of directors has not opted out of the business combinations provisions of the Maryland law and is subject to the five-year prohibition and the super-majority voting requirements with respect to business combinations involving Host; however, as permitted under Maryland law, Host's board of directors may elect to opt out of these provisions in the future.</p>	
<b>Control Share Acquisitions</b>	<p>Maryland law 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. Shares owned by the acquiror, by officers or by directors who are employees of the corporation are excluded from shares entitled to vote on the matter. Control shares are voting shares of stock which, if</p>	<p><b>Starwood.</b> Starwood's bylaws provide that the control share provisions provided under Maryland law do not apply to any shares of stock of Starwood.</p> <p><b>Starwood Trust.</b> Starwood Trust's bylaws provide that the control share provisions provided under Maryland law do not apply to any shares of beneficial interest of Starwood Trust.</p>

**Table of Contents**

<b>Host</b>	<b>Starwood and Starwood Trust</b>
<p>aggregated with all other shares of stock owned by the acquiror or in respect of which the acquiror is able to exercise or direct the exercise of voting power (except solely by virtue of a revocable proxy), would entitle the acquiror to exercise voting power in electing directors within one of the following ranges of voting power:</p> <p style="text-align: center;">one-tenth or more but less than one-third;</p> <p style="text-align: center;">one-third or more but less than a majority</p> <p style="text-align: center;">a majority or more of all voting power.</p> <p>Control shares do not include shares the acquiring person is then entitled to vote as a result of having previously obtained stockholder approval. A control share acquisition means the acquisition of control shares, subject to certain exceptions.</p> <p>A person who has made or proposes to make a control share acquisition may compel the board of directors of the corporation to call a special meeting of stockholders to be held within 50 days of demand to consider the voting rights of the shares. The right to compel the calling of a special meeting is subject to the satisfaction of certain conditions, including an undertaking to pay the expenses of the meeting. If no request for a meeting is made, the corporation may itself present the question at any stockholders meeting.</p> <p>If voting rights are not approved at the meeting or if the acquiring person does not deliver an acquiring person statement as required by the statute, then the</p>	





Table of Contents

	<u>Host</u>	<u>Starwood and Starwood Trust</u>
	<p>corporation may redeem for fair value any or all of the control shares, except those for which voting rights have previously been approved. The right of the corporation to redeem control shares is subject to certain conditions and limitations. Fair value is determined, without regard to the absence of voting rights for the control shares, as of the date of the last control share acquisition by the acquiror or of any meeting of stockholders at which the voting rights of the shares are considered and not approved. If voting rights for control shares are approved at a stockholders meeting and the acquiror becomes entitled to vote a majority of the shares entitled to vote, all other stockholders may exercise appraisal rights. The fair value of the shares as determined for purposes of appraisal rights may not be less than the highest price per share paid by the acquiror in the control share acquisition.</p> <p>The control share acquisition statute does not apply (a) to shares acquired in a merger, consolidation or share exchange if the corporation is a party to the transaction, or (b) to acquisitions approved or exempted by the charter or bylaws of the corporation.</p> <p>Host's board of directors has not opted out of the control share provisions of Maryland law but, as permitted under Maryland law, may elect to opt out of these provisions in the future</p>	
<b>Dissolution of Company/Trust</b>	<p>The dissolution of Host must be approved by the affirmative vote of the holders of not less than two-thirds of all of the votes entitled to be cast on the matter.</p>	<p><b>Starwood.</b> A majority of the entire board of directors must adopt a resolution which declares that dissolution of Starwood is advisable. The resolution must then be approved by the affirmative vote of the holders of not less than two-thirds of all the votes entitled to be cast on the matter.</p>

**Table of Contents**

	<b>Host</b>	<b>Starwood and Starwood Trust</b>
<b>Restrictions on the Ownership, Transfer or Issuance of Shares</b>	<p>Host’s charter provides that, subject to certain exceptions, no person or persons acting as a group may own, or be deemed to own by virtue of the attribution provisions of the Code, more than 9.8% of the lesser of the number or value of shares of common stock outstanding. Host’s board of directors may, subject to certain limitations, grant an exemption from the ownership limit with respect to one or more persons who would not be treated as individuals for purposes of the Code. In addition, the Host charter prohibits any transfer that would result in Host being closely held under the Code, or would result in shares of Host’s capital stock being owned by fewer than 100 persons. If any purported transfer of shares of Host’s capital stock would result in any person violating the ownership limit or other provisions in the Host charter, then any such purported transfer will be void with respect to the purported transferee (the Prohibited Transferee) as to that number of shares that exceeds the ownership limit (referred to as excess shares), and the Prohibited Transferee will acquire no right or interest in such excess shares. Any excess shares described above will be transferred automatically, by operation of law, to a trust, the beneficiary of which will be a</p>	<p><i>Starwood Trust.</i> A majority of the entire board of trustees must adopt a resolution which declares that termination of Starwood Trust is</p> <p>advisable. The resolution must then be approved by the affirmative vote of the holders of two-thirds in interest of all outstanding shares of beneficial interest entitled to vote thereon.</p> <p>Starwood’s governing documents provide (subject to certain exceptions) that no one person or group may own or be deemed to own more than 8% of Starwood’s outstanding stock or Starwood Trust’s shares of beneficial interest, whether measured by vote, value or number of shares. There is an exception for shareholders who owned more than 8% as of February 1, 1995, who may not own or be deemed to own more than the lesser of 9.9% and the percentage of shares they held on that date, provided, that if the percentage of shares beneficially owned by such a</p> <p>holder decreases after February 1, 1995, such a holder may not own or be deemed to own more than the greater of 8% and the percentage owned after giving effect to the decrease. Starwood Trust may waive this limitation if it become satisfied that such ownership will not jeopardize Starwood Trust’s status as a REIT. In addition, if shares which would cause Starwood Trust to be beneficially owned by fewer than 100 persons are issued or transferred to any person, such issuance or transfer shall be null and void.</p> <p>If a transfer or other event occurs that would, if effective, result in someone owning our capital stock or shares of beneficial interest in violation of this 8% limitation, such transfer will be deemed void with respect to the number of shares that</p>

Table of Contents

Host	Starwood and Starwood Trust
<p>qualified charitable organization selected by Host (the Beneficiary). The automatic transfer shall be deemed to be effective as of the close of business on the business day prior to the date of the violating transfer. Within 20 days of receiving notice from Host of the transfer of shares to the trust, the trustee of the trust, who shall be designated by Host and be unaffiliated with Host and any Prohibited Transferee or Prohibited Owner, will be required to sell the excess shares to a person or entity who could own the shares without violating the ownership limit, and distribute to the Prohibited Transferee an amount equal to the lesser of the price paid by the Prohibited Transferee for the excess shares or the sales proceeds received by the trust for the excess shares. In the case of any excess shares resulting from any event other than a transfer, or from a transfer for no consideration, such as a gift, the trustee will be required to sell the excess shares to a qualified person or entity and distribute to the Prohibited Owner an amount equal to the lesser of the fair market value of the excess shares as of the date of the event or the sales proceeds received by the trust for the excess shares. In either case, any proceeds in excess of the amount distributable to the Prohibited Transferee or Prohibited Owner, as applicable, will be distributed to the Beneficiary. Prior to a sale of any excess shares by the trust, the trustee will be entitled to receive, in trust for the Beneficiary, all dividends and other distributions paid by Host with respect to those excess shares, and also will be entitled to exercise all voting rights with respect to those excess shares. Subject to Maryland law, effective</p>	<p>would be owned in violation of the 8% limitation. The shares that exceed the limit would automatically be exchanged for Excess Trust Shares or Excess Corporation Stock, as applicable (collectively, Excess Stock), to the extent necessary to ensure that the transfer or other event would not result in ownership of Starwood Trust's shares of beneficial interest or Starwood's capital stock in excess of the 8% limitation. the extent necessary to ensure that the transfer or other event would not result in ownership of Starwood Trust's shares of beneficial interest or Starwood's capital stock in excess of the 8% limitation.</p> <p>Any Excess Trust Shares and Excess Corporation Stock that Starwood Trust and Starwood, respectively, may issue in exchange for shares will be attached in the same manner that the Class B shares of Starwood Trust and the common shares of Starwood are currently attached. While outstanding, Excess Stock will be held in trust. The trustees of the trust shall be independent of Starwood, Starwood Trust and the holder of Excess Stock. If, after the transfer or other event resulting in an exchange of shares in Starwood Trust or the stock of Starwood for Excess Stock and prior to discovery of such exchange, dividends or distributions are paid with respect to the capital stock or shares of beneficial interest that were exchanged for Excess Stock, then such dividends or distributions are to be repaid to the trustee upon demand.</p> <p>While Excess Stock is held in trust, a beneficial interest in that trust may be transferred by the trustee only to a person whose ownership of shares in Starwood Trust or the stock of Starwood will not violate the 8%</p>

Table of Contents

Host	Starwood and Starwood Trust
<p>limitation. At the time of this as of the date that the shares have been transferred to the trust, the trustee shall have the authority to rescind as void any vote cast by a Prohibited Transferee prior to the discovery by Host that the shares have been transferred to the trust and to recast the vote in accordance with the desires of the trustee acting for the benefit of the Beneficiary.</p> <p>However, if Host has already taken irreversible corporate action, then the trustee shall not have the authority to rescind and recast its vote. Any dividend or other distribution paid to the Prohibited Transferee or Prohibited Owner, prior to the discovery by Host that the shares had been automatically transferred to a trust as described above, will be required to be repaid to the trustee upon demand for distribution to the Beneficiary. If the transfer to the trust as described above is not automatically effective to prevent violation of the ownership limit, then the charter provides that the transfer of the excess shares will be void.</p> <p>In addition, shares of Host's stock held in the trust shall be deemed to have been offered for sale to Host, or its designee, at a price per share equal to the lesser of the price per share in the transaction that resulted in the transfer to the trust or, in the case of a devise or gift, the market value at the time of the devise or gift and the market value of the shares on the date Host, or its designee, accepts the offer. Host will have the right to accept the offer until the trustee has sold the shares held in the trust. Upon such a sale to Host, the interest of the Beneficiary in the shares sold</p>	<p>will terminate and the trustee will transfer the Excess Stock will be automatically exchanged for the same number of shares in Starwood Trust or the stock of Starwood of the same type and class as the shares in Starwood Trust or the stock of Starwood for which the Excess Stock was originally exchanged. Starwood's and Starwood Trust's governing documents provide that holders of Excess Stock may not receive an amount that reflects any appreciation in the shares in Starwood Trust or the stock of Starwood for which such Excess Stock was exchanged during the period that such Excess Stock was</p> <p>outstanding. Any excess amount so received must be turned over to one or more charitable organizations selected by the trustee as the charitable beneficiary of the trust.</p> <p>Starwood Trust's and Starwood's governing documents further provide that the respective entity may purchase, for a period of 90 days following the time the Excess Stock is created, all or any portion of the Excess Stock from the original transferee shareholder at the lesser of the price paid for the shares in Starwood Trust or the stock of Starwood by the purported transferee and the closing market price for the shares in Starwood Trust or the stock of Starwood on the date the option to purchase is exercised. The 90-day period begins on the date of the violative transfer if the original transferee-shareholder gives Starwood notice of the transfer or, if no notice is given, on the date Starwood determine in good faith that a violative transfer has been made.</p>

**Table of Contents**

	<b>Host</b>	<b>Starwood and Starwood Trust</b>
	distribute the net proceeds of the sale to the Prohibited Owner.	
<b>Shareholder Rights Plan</b>	Host has a shareholder rights plan.	<p><b>Starwood.</b> Starwood has a shareholder rights plan.</p> <p><b>Starwood Trust.</b> Starwood Trust does not have a shareholder rights plan.</p>
<b>Director, Trustee and Officer Liability and Indemnification</b>	<p>Host's charter provides that no director or officer of Host shall be liable to Host or its stockholders for money damages, except to the extent permitted by Maryland law now or hereafter in force, such as in the event of an improper benefit or deliberate dishonesty.</p> <p>Host's charter provides that Host shall indemnify its directors and officers, whether serving Host or at its request any other entity, to the full extent permitted by Maryland law now or hereafter in force, including the advance of expenses under the procedures and to the full extent permitted by law. The foregoing right of indemnification shall not be exclusive of any other rights to which those seeking indemnification may be entitled. The board of directors may take such action as is necessary to carry out the indemnification provisions of the charter and is expressly empowered to adopt, approve and amend from time to time such bylaws, resolutions or contracts implementing such provisions or such further indemnification arrangements as may be permitted by law. No amendment of Host's charter or repeal of any of its provisions shall limit or eliminate the right to indemnification provided in the charter with respect to acts or omissions occurring prior to such amendment or repeal.</p>	<p><b>Starwood.</b> As permitted by Maryland law now or hereafter in force, Starwood's charter provides that no director or officer of Starwood shall be liable to Starwood or its stockholders for money damages.</p> <p>Starwood's charter provides that Starwood shall indemnify its directors and officers, whether serving Starwood or at its request any other entity, to the full extent required or permitted by Maryland law now or hereafter in force, including the advance of expenses under the procedures and to the full extent permitted by law. The foregoing right of indemnification shall not be exclusive of any other rights to which those seeking indemnification may be entitled. The board of directors may take such action as is necessary to carry out the indemnification provision and is expressly empowered to adopt, approve and amend from time to time such bylaws, resolutions or contracts implementing such provisions or such further indemnification arrangements as may be permitted by law. No amendment of Starwood's charter or repeal of any of its provisions shall limit or eliminate the right to indemnification provided in the charter with respect to acts or omissions occurring prior to such amendment or repeal.</p>

Table of Contents

Host	Starwood and Starwood Trust
	<p><i>Starwood Trust.</i> As permitted by Maryland law now or hereafter in force, Starwood Trust's declaration of trust provides that no trustee or officer of Starwood Trust shall be liable to Starwood Trust or its shareholders for money damages</p> <p>arising out of acts or omissions occurring on or after June 6, 1988, except (i) to the extent that it is proved that such person actually received an improper benefit or profit in money, property, or services, for the amount of the benefit or profit in money, property, or services actually received, or (ii) to the extent that a judgment or final adjudication adverse to such person is entered in a proceeding based on a finding in the proceeding that such person's action, or failure to act, was the result of active and deliberate dishonesty which was material to the cause of action adjudicated in the proceeding.</p> <p>Starwood Trust's declaration of trust provides that Starwood Trust</p> <p>shall indemnify its trustees and officers to the fullest extent permitted by Maryland law now or hereafter in force. Such laws shall be fully applicable to Starwood Trust and to its trustees and officers as if Starwood Trust were a corporation organized under the laws of the State of Maryland and its trustees and officers were, respectively, directors and officers of such corporation. The rights accruing to any person under the declaration of trust provisions shall not exclude any other right to which he may be lawfully entitled, nor shall anything contained in the declaration of trust restrict the right of Starwood Trust to indemnify or reimburse such person in any proper case even though not specifically provided for in the declaration of trust, nor shall anything contained</p>

---

**Table of Contents**

<b>Host</b>	<b>Starwood and Starwood Trust</b>
186	therein restrict such right of a trustee to contribution as may be available under applicable law.

**Table of Contents**

**ADDITIONAL INFORMATION**

**Stockholder Proposals**

Pursuant to Rule 14a-8 under the Exchange Act, stockholders may present proposals for inclusion in a company's proxy statement and for consideration at the next annual meeting of its stockholders by submitting their proposals to the company in a timely manner.

Host will hold an annual meeting in the year 2006, which is tentatively scheduled to be held on May 18, 2006. For any proposal to be considered for inclusion in Host's proxy statement and form of proxy for submission to the stockholders at the Host 2006 annual meeting, it must comply with the SEC's proxy rules, and be submitted in writing by notice delivered or mailed by first-class United States mail, postage prepaid, to the Corporate Secretary, Host Marriott Corporation, 6903 Rockledge Drive, Suite 1500, Bethesda, Maryland 20817-1109, and must have been received no later than December 12, 2005.

Additionally, Host's bylaws include requirements which must be met if a stockholder would like to nominate a candidate for director or bring other business before the stockholders at the Host 2006 annual meeting, whether or not the proposal or nomination is requested to be included in the proxy statement. Those requirements include written notice to the Corporate Secretary (at the above address), which must have been received no earlier than October 13, 2005 and no later than December 12, 2005, and which notice must have contained all of the information required under Host's bylaws, a copy of which is available, at no charge, from the Corporate Secretary.

**Legal Matters**

The validity of Host common stock offered by this proxy statement/prospectus will be passed upon for Host by its counsel, Venable LLP. The material federal income tax considerations to holders of shares of Host common stock as described in "Material Federal Income Tax Considerations to Holders of Shares of Host Common Stock" beginning on page 120 will be passed upon for Host by Hogan & Hartson LLP. The material federal income tax consequences of the REIT merger to holders of paired shares of Starwood and Starwood Trust and the holders of Class A Exchangeable Preferred Shares of Starwood Trust as described in "Material Federal Income Tax Consequences of the REIT merger to Holders of Paired Shares of Starwood and Starwood Trust and Holders of Starwood Trust Class A Exchangeable Preferred Shares" beginning on page 116 will be passed upon for Starwood and Starwood Trust by Sidley Austin LLP.

**Experts**

The consolidated financial statements and schedule of real estate and accumulated depreciation of Host Marriott Corporation as of December 31, 2004 and 2003, and for each of the years in the three-year period ended December 31, 2004, and management's assessment of the effectiveness of internal control over financial reporting as of December 31, 2004 have been incorporated by reference herein in reliance upon the reports of KPMG LLP, independent registered public accounting firm, incorporated by reference herein, and upon the authority of said firm as experts in accounting and auditing.



## Edgar Filing: HOST MARRIOTT CORP/ - Form S-4/A

The consolidated financial statements of Starwood and Starwood Trust, respectively, appearing in Starwood and Starwood Trust's Joint Annual Report (Form 10-K) for the year ended December 31, 2004 (including schedules appearing therein), and Starwood and Starwood Trust management's assessment of the effectiveness of internal control over financial reporting as of December 31, 2004 included therein, have been audited by Ernst & Young LLP, independent registered public accounting firm, as set forth in their reports thereon, included therein, and incorporated herein by reference. Such consolidated financial statements and management's assessment are incorporated herein by reference in reliance upon such reports given on the authority of such firm as experts in accounting and auditing.

## **Table of Contents**

The combined financial statements of the business currently contemplated to be acquired by Host as of December 31, 2004 and 2003, and for each of the three years in the period ended December 31, 2004, included in the proxy statement of Host, which is referred to and made a part of this prospectus and registration statement have been audited by Ernst & Young LLP, independent registered public accounting firm, as set forth in their report appearing elsewhere herein, and are included in reliance upon such report given on the authority of such firm as experts in accounting and auditing.

## **Where You Can Find More Information**

Host, on the one hand, and Starwood Trust, on the other hand, file annual, quarterly and current reports, proxy statements and other information with the SEC. You may read and copy these reports, statements or other information filed by Host and Starwood Trust at the SEC's Public Reference Room at 100 F Street, N.E., Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information on the public reference rooms. The SEC filings of Host and Starwood Trust are also available to the public from commercial document retrieval services and at the website maintained by the SEC at [www.sec.gov](http://www.sec.gov).

Host has filed a registration statement on Form S-4 to register with the SEC the Host common stock to be issued in the transactions contemplated by the master agreement. This proxy statement/prospectus is a part of that registration statement and constitutes a prospectus of Host, in addition to being a proxy statement of Host for its special meeting. The registration statement, including the attached annexes, exhibits and schedules, contains additional relevant information about Host and Host common stock. As allowed by SEC rules, this proxy statement/prospectus does not contain all the information you can find in the registration statement or the exhibits to the registration statement.

The SEC allows Host to incorporate by reference information into this proxy statement/prospectus. This means that Host can disclose important information to you by referring you to another document filed separately by the SEC. The information incorporated by reference is considered to be a part of this proxy statement/prospectus, except for information that is superseded by information that is included directly in this proxy statement/prospectus or incorporated by reference subsequent to the date of this proxy statement/prospectus. Host does not incorporate by reference the contents of Host's or Starwood Trust's websites into this proxy statement/prospectus.

Host incorporates by reference the documents listed below into this proxy statement/prospectus and any filings made by Host with the SEC pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act between the date of this proxy statement/prospectus and the date of the Host special meeting (in each case, other than information in such documents that is deemed not to be filed):

Annual Report on Form 10-K of Host Marriott Corporation for the fiscal year ended December 31, 2004 (including information specifically incorporated by reference therein from Host's Proxy Statement for its 2005 Annual Meeting) and filed on March 1, 2005;

Current Report on Form 8-K of Host Marriott Corporation dated December 31, 2004 and filed on January 6, 2005;

Current Report on Form 8-K of Host Marriott Corporation dated and filed on February 24, 2005;

Current Report on Form 8-K of Host Marriott Corporation dated February 17, 2005 and filed on February 24, 2005;

Edgar Filing: HOST MARRIOTT CORP/ - Form S-4/A

Current Report on Form 8-K/A of Host Marriott Corporation dated February 24, 2005 and filed on February 25, 2005;

Current Report on Form 8-K of Host Marriott Corporation dated and filed on March 2, 2005;

Current Report on Form 8-K of Host Marriott Corporation dated March 2, 2005 and filed on March 3, 2005;

**Table of Contents**

Current Report on Form 8-K of Host Marriott Corporation dated March 3, 2005 and filed on March 4, 2005;