

MONMOUTH REAL ESTATE INVESTMENT CORP

Form S-3

August 25, 2006

AS FILED WITH THE SECURITIES AND EXCHANGE COMMISSION ON AUGUST 25, 2006

Registration No. \_\_\_\_\_

**UNITED STATES SECURITIES AND EXCHANGE COMMISSION**

**Washington, D.C. 20549**

**FORM S-3**

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

**MONMOUTH REAL ESTATE INVESTMENT CORPORATION**

(Exact name of registrant as specified in charter)

**Maryland**

(State or other jurisdiction of

incorporation or organization)

**22-1897375**

(I.R.S. Employer

Identification No.)

**Juniper Business Plaza, Suite 3-C, 3499 Route 9 North,**

**Freehold, New Jersey 07728**

**732-577-9996**

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

**Anna T. Chew**

**Juniper Business Plaza, Suite 3-C, 3499 Route 9 North,**

**Freehold, New Jersey 07728**

**732-577-9996**

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

**Copies to:**

**Gary D. Gilson**

**Blackwell Sanders Peper Martin, LLP**

**4801 Main Street, Suite 1000**

**Kansas City, Missouri 64112**

**Approximate date of commencement of proposed sale to the public:**

From time to time after the Registration Statement becomes effective

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

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

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

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

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

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

### Calculation of Registration Fee

Title of each class of securities to be registered	Proposed Maximum Aggregate Offering Price(1)	Amount of Registration Fee (2)(3)
Common Stock(3)		
Preferred Stock(4)	\$100,000,000	\$9,233 (6)

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- (1) The proposed maximum aggregate offering price per class of security will be determined from time to time by the registrant in connection with the issuance by the registrant of the securities registered hereunder and is not specified as to each class of security pursuant to General Instruction II.D. of Form S-3 under the Securities Act.
- (2) Calculated pursuant to Rule 457(o) of the Securities Act. Pursuant to Rule 457(o) under the Securities Act and General Instruction II.D to Form S-3, the table does not specify by each class information as to the amount to be registered, proposed maximum offering price per unit or proposed maximum aggregate offering price.
- (3) Subject to note 5 below, an indeterminable number of shares of common stock of the registrant, as may be sold from time to time, are being registered hereunder by the registrant. Pursuant to Rule 416 under the Securities Act, the shares being registered hereunder include such indeterminate number of shares of common stock as may be issuable with respect to the shares being registered hereunder as a result of stock splits, stock dividends or similar transactions. Pursuant to Rule 457(i) under the Securities Act, the shares being registered hereunder include such indeterminate number of shares of common stock as may be issuable upon conversion or exchange of any preferred stock issued under this registration statement.
- (4) Subject to note 5 below, an indeterminable number of shares of preferred stock of the registrant, as may be sold from time to time, are being registered hereunder by the registrant. Pursuant to Rule 416 under the Securities Act, the shares being registered hereunder include such indeterminate number of preferred stock as may be issuable with respect to the shares being registered hereunder as a result of stock splits, stock dividends or similar transactions.
- (5) In no event will the aggregate offering price of all securities issued from time to time pursuant to this registration statement exceed \$100,000,000. The securities registered hereunder may be sold separately or as units with other securities registered hereunder.
- (6) On February 14, 2003, the Registrant paid a filing fee of \$1,840 in connection with a Registration Statement on Form S-3, File No. 333-103216. Under that Registration Statement 500,000 shares were sold. Accordingly, pursuant to Rule 457(p) under the Securities Act of 1933, as amended, the Registrant is offsetting \$1,467 of that fee against the \$10,700 that would otherwise be due as the registration fee.

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

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

**Subject to Completion**

**Preliminary Prospectus dated August 25, 2006**

**PRELIMINARY PROSPECTUS**

\$100,000,000

MONMOUTH REAL ESTATE INVESTMENT CORPORATION

Common Stock

Preferred Stock

We may use this prospectus to offer and sell our common stock or preferred stock from time to time. Our common stock is listed and traded on the NASDAQ under the symbol MNRTA .

We will provide the specific terms of these securities in supplements to this prospectus in connection with each offering. The securities offered will contain other significant terms and conditions. Please read this prospectus and the applicable prospectus supplement carefully before you invest.

**An investment in our securities involves a high degree of risk. See Risk Factors beginning on page 2 of this prospectus for a discussion of risk factors that you should consider in connection with an investment in our securities.**

**Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed upon the adequacy or accuracy of this prospectus. Any representation to the contrary is a criminal offense.**

The date of this prospectus is \_\_\_\_\_, 2006.

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**ABOUT THIS PROSPECTUS**

This prospectus is part of a registration statement that we filed with the SEC using a shelf registration process. Under this process, we may from time to time sell in one or more offerings any of the securities described in this prospectus, or any combination thereof, up to a total amount of \$100,000,000. In this prospectus, we refer collectively to our common stock and preferred stock as our securities, and collectively refer to our investors as our security holders.

You should read this prospectus and the applicable prospectus supplement together with the additional information described under the heading Where You Can Find More Information in this prospectus. The prospectus supplement may add, update or change the information contained in this prospectus. The registration statement that contains this prospectus and the exhibits to that registration statement contain additional important information about us and the securities offered under this prospectus. Specifically, we have filed certain legal documents that control the terms of the securities as exhibits to the registration statement. We may file certain other legal documents that control the terms of the securities as exhibits to reports we file with the SEC. That registration statement and the other reports can be read at the SEC's website or at the SEC offices mentioned under the heading Where You Can Find More Information, or can be obtained by writing or telephoning us at the following address and telephone number:

Monmouth Real Estate Investment Corporation

Attention: Shareholder Relations

3499 Route 9 N, Suite 3-C

Juniper Business Plaza

Freehold, NJ 07728

(732) 577-9996

**MONMOUTH REAL ESTATE INVESTMENT CORPORATION**

Monmouth Real Estate Investment Corporation is a Maryland corporation operating as a qualified real estate investment trust under Sections 856 through 859 of the Internal Revenue Code (the Code). Currently, we seek to invest in well-located, modern buildings leased to creditworthy tenants on long-term leases and derive our income primarily from the rental of these facilities. At June 30, 2006, we owned approximately 4,434,000 square feet of property, of which approximately 1,640,580 square feet, or 37%, was leased to Federal Express Corporation and its subsidiaries. During fiscal 2005, 2004 and 2003 rental and occupancy charges from properties leased to Federal Express Corporation and its subsidiaries approximated 45%, 48% and 48%, respectively, of our total rental and occupancy charges.

At June 30, 2006, we had investments in forty-one properties. These properties are located in Alabama, Arizona, Colorado, Connecticut, Florida, Georgia, Illinois, Iowa, Kansas, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Nebraska, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Virginia, and Wisconsin. All properties are

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managed by a management company. All properties are leased on a net basis except the property located in Monaca, Pennsylvania.

We compete with other investors in real estate for attractive investment opportunities. These investors include other equity real estate investment trusts, limited partnerships, syndications and private investors, among others.

We have a flexible investment policy concentrating our investments in the area of net-leased industrial properties. Our strategy is to obtain a favorable yield spread between the yield from the net-leased industrial properties and mortgage interest costs. We continue to purchase net-leased industrial properties, since our management believes that there is a potential for long-term capital appreciation through investing in well-located industrial properties. There is the risk that, on expiration of current leases, the properties can become vacant or re-leased at lower rents. The results we obtain by re-leasing the properties will depend on the market for industrial properties at that time.

We also continue to invest in both debt and equity securities of other real estate investment trusts (REITs). We from time to time may purchase these securities on margin when the interest and dividend yields exceed the cost of the funds. Such securities are subject to risk arising from adverse changes in market rates and prices, primarily interest rate risk relating to debt securities and equity price risk relating to equity securities.

Our executive offices are located at Juniper Business Plaza, Suite 3-C, 3499 Route 9 North, Freehold, New Jersey 07728, and our telephone number is (732) 577-9996. Our website is located at [www.mreic.com](http://www.mreic.com). Information contained on our website is not a part of this prospectus.

### **RISK FACTORS**

Set forth below are the risks that we believe are important to investors in our securities. Before you decide to purchase our securities, you should consider carefully the risks described below, together with the information provided in the other parts of this prospectus and any related prospectus supplement.

#### **Real Estate Industry Risks**

*We face risks associated with local real estate conditions in areas where we own properties.* We may be affected adversely by general economic conditions and local real estate conditions. For example, an oversupply of industrial properties in a local area or a decline in the attractiveness of our properties to tenants would have a negative effect on us.

Other factors that may affect general economic conditions or local real estate conditions include:

population and demographic trends;

employment and personal income trends;



zoning, use and other regulatory restrictions;

income tax laws;

changes in interest rates and availability and costs of financing;

competition from other available real estate;

our ability to provide adequate maintenance and insurance; and

increased operating costs, including insurance premiums, utilities and real estate taxes, which may not be offset by increased rents.

***We may be unable to compete with our larger competitors and other alternatives available to tenants or potential tenants of our properties.***

The real estate business is highly competitive. We compete for properties with other real estate investors and purchasers, including other real estate investment trusts, limited partnerships, syndications and private investors, many of whom have greater financial resources, revenues, and geographical diversity than we have. Furthermore, we compete for tenants with other property owners. All of our industrial properties are subject to significant local competition. We also compete with a wide variety of institutions and other investors for capital funds necessary to support our investment activities and asset growth. In addition, our portfolio of industrial properties faces competition from other properties within each submarket where our industrial properties are located. To the extent that we are unable to effectively compete in the marketplace, our business may be adversely affected.

***We are subject to significant regulation that inhibits our activities and may increase our costs.*** Local zoning and use laws, environmental statutes and other governmental requirements may restrict expansion, rehabilitation and reconstruction activities. These regulations may prevent us from taking advantage of economic opportunities. Legislation such as the Americans with Disabilities Act may require us to modify our properties and noncompliance could result in the imposition of fines or an award of damages to private litigants. Future legislation may impose additional requirements. We cannot predict what requirements may be enacted or amended or what costs we will incur to comply with such requirements.

***Our investments are concentrated in the industrial sector and our business would be adversely affected by an economic downturn in that sector.*** Our investments in real estate assets are primarily concentrated in the industrial distribution sector. This concentration may expose us to the risk of economic downturns in this sector to a greater extent than if our business activities included a more significant portion of other sectors of the real estate industry.

**Risks Associated with Our Properties**

***We may be unable to renew leases or relet space as leases expire.*** While we seek to invest in well-located, modern buildings leased to credit-worthy tenants on long term leases, a

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number of our properties are subject to short term leases. When a lease expires, a tenant may elect not to renew it. We may not be able to relet the property on similar terms, if we are able to relet the property at all. The terms of renewal or re-lease (including the cost of required renovations and/or concessions to tenants) may be less favorable to us than the prior lease. If we are unable to relet all or a substantial portion of our properties, or if the rental rates upon such reletting are significantly lower than expected rates, our cash generated before debt repayments and capital expenditures, and our ability to make expected distributions to stockholders, may be adversely affected. We have established an annual budget for renovation and reletting expenses that we believe is reasonable in light of each property's operating history and local market characteristics. This budget, however, may not be sufficient to cover these expenses.

***Our business is substantially dependent on Federal Express Corporation.*** Federal Express Corporation is our largest tenant. As of June 30, 2006, Federal Express Corporation leased approximately 37% of the total square footage that we own. If Federal Express Corporation terminated its leases with us or was unable to make lease payments because of a downturn in its business or otherwise, our financial condition and ability to make distributions to stockholders will be materially and adversely affected.

***We have been and may continue to be affected negatively by tenant financial difficulties and leasing delays.*** At any time, a tenant may experience a downturn in its business that may weaken its financial condition. Similarly, a general decline in the economy may result in a decline in the demand for space at our industrial properties. As a result, our tenants may delay lease commencement, fail to make rental payments when due, or declare bankruptcy. Any such event could result in the termination of that tenant's lease and losses to us, resulting in a decrease of distributions to investors. We receive a substantial portion of our income as rents under long-term leases. If tenants are unable to comply with the terms of their leases because of rising costs or falling sales, we, in our sole discretion, may deem it advisable to modify lease terms to allow tenants to pay a lower rental or a smaller share of operating costs, taxes and insurance. If a tenant becomes insolvent or bankrupt, we cannot be sure that we could recover the premises from the tenant promptly or from a trustee or debtor-in-possession in any bankruptcy proceeding relating to the tenant. We also cannot be sure that we would receive rent in the proceeding sufficient to cover our expenses with respect to the premises. If a tenant becomes bankrupt, the federal bankruptcy code will apply and, in some instances, may restrict the amount and recoverability of our claims against the tenant. A tenant's default on its obligations to us could adversely affect our financial condition and the cash we have available for distribution.

***We may be unable to sell properties when appropriate because real estate investments are illiquid.*** Real estate investments generally cannot be sold quickly and, therefore, will tend to limit our ability to vary our property portfolio promptly in response to changes in economic or other conditions. In addition, the Code limits our ability to sell our properties. The inability to respond promptly to changes in the performance of our property portfolio could adversely affect our financial condition and ability to service debt and make distributions to our stockholders.

***Environmental liabilities could affect our profitability.*** We face possible environmental liabilities. Environmental laws today can impose liability on a previous owner or operator of a property that owned or operated the property at a time when hazardous or toxic substances were

disposed on, or released from, the property. A conveyance of the property, therefore, does not relieve the owner or operator from liability. As a current or former owner and operator of real estate, we may be required by law to investigate and clean up hazardous substances released at the properties we currently own or operate, or have in the past owned or operated. We may also be liable to the government or to third parties for property damage, investigation costs and cleanup costs. In addition, some environmental laws create a lien on the contaminated site in favor of the government for damages and costs the government incurs in connection with the contamination. Contamination may affect adversely our ability to sell or lease real estate or to borrow using the real estate as collateral. We are not aware of any environmental liabilities relating to our investment properties which would have a material adverse effect on our business, assets, or results of operations. However, we cannot assure you that environmental liabilities will not arise in the future.

***Actions by our competitors may decrease or prevent increases of the occupancy and rental rates of our properties.*** We compete with other owners and operators of real estate, some of which own properties similar to ours in the same submarkets in which our properties are located. If our competitors offer space at rental rates below current market rates or below the rental rates we currently charge our tenants, we may lose potential tenants, and we may be pressured to reduce our rental rates below those we currently charge in order to retain tenants when our tenants leases expire. As a result, our financial condition, cash flow, cash available for distribution, trading price of our common stock and ability to satisfy our debt service obligations could be materially adversely affected.

***Coverage under our existing insurance policies may be inadequate to cover losses.*** We generally maintain insurance policies related to our business, including casualty, general liability and other policies, covering our business operations, employees and assets. However, we would be required to bear all losses that are not adequately covered by insurance. In addition, there are certain losses that are not generally insured because it is not economically feasible to insure against them, including losses due to riots or acts of war. If an uninsured loss or a loss in excess of insured limits occurs with respect to one or more of our properties, then we could lose the capital we invested in the properties, as well as the anticipated future revenue from the properties and, in the case of debt, which is with recourse to us, we would remain obligated for any mortgage debt or other financial obligations related to the properties. Although we believe that our insurance programs are adequate, we cannot assure you that we will not incur losses in excess of our insurance coverage, or that we will be able to obtain insurance in the future at acceptable levels and reasonable costs.

***We face risks associated with property acquisitions.*** We acquire individual properties and portfolios of properties, and intend to continue to do so. Our acquisition activities and their success are subject to the following risks:

when we are able to locate a desired property, competition from other real estate investors may significantly increase the purchase price;  
acquired properties may fail to perform as expected;

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the actual costs of repositioning or redeveloping acquired properties may be higher than our estimates;

acquired properties may be located in new markets where we face risks associated with an incomplete knowledge or understanding of the local market, a limited number of established business relationships in the area and a relative unfamiliarity with local governmental and permitting procedures;

we may be unable to quickly and efficiently integrate new acquisitions, particularly acquisition of portfolios of properties, into our existing operations, and as a result, our results of operations and financial condition could be adversely affected; and

we may acquire properties subject to liabilities and without any recourse, or with only limited recourse, with respect to unknown liabilities. As a result, if a claim were asserted against us based upon ownership of those properties, we might have to pay substantial sums to settle it, which could adversely affect our cash flow.

### Financing Risks

***We face risks generally associated with our debt.*** We finance a portion of our investments in properties and marketable securities through debt. This debt creates risks, including:

rising interest rates on our floating rate debt;

failure to repay or refinance existing debt as it matures, which may result in forced disposition of assets on disadvantageous terms;

refinancing terms less favorable than the terms of existing debt; and

failure to meet required payments of principal and/or interest.

***We face risks associated with the use of debt to fund acquisitions, including refinancing risk.*** We are subject to the risks normally associated with debt financing, including the risk that our cash flow will be insufficient to meet required payments of principal and interest. In addition, if we mortgage one or more of our properties to secure payment of indebtedness and we are unable to meet mortgage payments, then the property could be foreclosed upon or transferred to the mortgagee with a consequent loss of income and asset value. A foreclosure of one or more of our properties could adversely affect our financial condition, results of operations, cash flow and ability to pay dividends on, and the market price of, our stock.

***We face risks related to balloon payments.*** Certain of our mortgages will have significant outstanding principal balances on their maturity dates, commonly known as balloon payments. There can be no assurance whether we will be able to refinance such balloon payments on the maturity of the loans, which may force disposition of properties on

disadvantageous terms or require replacement with debt with higher interest rates, either of which would have an adverse impact on our financial performance and ability to pay dividends to investors.

***We face risks associated with our dependence on external sources of capital.*** In order to qualify as a REIT, we are required each year to distribute to our stockholders at least 90% of our REIT taxable income, and we are subject to tax on our income to the extent it is not distributed. Because of this distribution requirement, we may not be able to fund all future capital needs from cash retained from operations. As a result, to fund capital needs, we rely on third-party sources of capital, which we may not be able to obtain on favorable terms, if at all. Our access to third-party sources of capital depends upon a number of factors, including (i) general market conditions; (ii) the market's perception of our growth potential; (iii) our current and potential future earnings and cash distributions; and (iv) the market price of our capital stock. Additional debt financing may substantially increase our debt-to-total capitalization ratio. Additional equity financing may dilute the holdings of our current stockholders.

***A lack of any limitation on our debt could result in our becoming more highly leveraged.*** Our governing documents do not limit the amount of indebtedness we may incur. Accordingly, our board of directors may incur additional debt and would do so, for example, if it were necessary to maintain our status as a REIT. We might become more highly leveraged as a result, and our financial condition and cash available for distribution to stockholders might be negatively affected and the risk of default on our indebtedness could increase.

***Covenants in our credit agreements could limit our flexibility and adversely affect our financial condition.*** The terms of our various credit agreements and other indebtedness require us to comply with a number of customary financial and other covenants, such as maintaining debt service coverage and leverage ratios and maintaining insurance coverage. These covenants may limit our flexibility in our operations, and breaches of these covenants could result in defaults under the instruments governing the applicable indebtedness even if we had satisfied our payment obligations. If we are unable to refinance our indebtedness at maturity or meet our payment obligations, the amount of our distributable cash flow and our financial condition would be adversely affected.

#### **Other Risks**

***We may amend our business policies without your approval.*** Our board of directors determines our growth, investment, financing, capitalization, borrowing, REIT status, operations and distributions policies. Although our board of directors has no present intention to amend or reverse any of these policies, they may be amended or revised without notice to stockholders. Accordingly, stockholders may not have control over changes in our policies. We cannot assure you that changes in our policies will serve fully the interests of all stockholders.

***The market value of our common stock could decrease based on our performance and market perception and conditions.*** The market value of our common stock may be based primarily upon the market's perception of our growth potential and current and future cash dividends, and may be secondarily based upon the real estate market value of our underlying assets. The market price of our common stock is influenced by the dividend on our common

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stock relative to market interest rates. Rising interest rates may lead potential buyers of our common stock to expect a higher dividend rate, which would adversely affect the market price of our common stock. In addition, rising interest rates would result in increased expense, thereby adversely affecting cash flow and our ability to service our indebtedness and pay dividends.

***There are restrictions on the transfer of our capital stock.*** To maintain our qualification as a REIT under the Code, no more than 50% in value of our outstanding capital stock may be owned, actually or by attribution, by five or fewer individuals, as defined in the Code to also include certain entities, during the last half of a taxable year. Accordingly, our charter and bylaws contain provisions restricting the transfer of our capital stock. See Description of Capital Stock - REIT Related Restrictions.

***Our earnings are dependent, in part, upon the performance of our investment portfolio.*** As permitted by the Code, we invest in and own securities of other real estate investment trusts. To the extent that the value of those investments declines or those investments do not provide a return, our earnings could be adversely affected.

***We are subject to restrictions that may impede our ability to effect a change in control.*** Certain provisions contained in our charter and bylaws and certain provisions of Maryland law may have the effect of discouraging a third party from making an acquisition proposal for us and thereby inhibit a change in control. These provisions include the following:

Our charter provides for three classes of directors with the term of office of one class expiring each year, commonly referred to as a "staggered board." By preventing stockholders from voting on the election of more than one class of directors at any annual meeting of stockholders, this provision may have the effect of keeping the current members of our board of directors in control for a longer period of time than stockholders may desire.

Our charter generally limits any holder from acquiring more than 9.8% (in value or in number, whichever is more restrictive) of our outstanding equity stock (defined as all of our classes of capital stock, except our excess stock). While this provision is intended to assure our ability to remain a qualified REIT for Federal income tax purposes, the ownership limit may also limit the opportunity for stockholders to receive a premium for their shares of common stock that might otherwise exist if an investor were attempting to assemble a block of shares in excess of 9.8% of the outstanding shares of equity stock or otherwise effect a change in control.

The request of the holders of a majority or more of our common stock is necessary for stockholders to call a special meeting. We also require advance notice by stockholders for the nomination of directors or proposals of business to be considered at a meeting of stockholders.

***Our Board of Directors may authorize and issue securities without stockholder approval.*** Under our Charter, the board has the power to classify and reclassify any of our unissued shares of capital stock into shares of capital stock with such preferences, rights, powers and restrictions as the board of directors may determine. The authorization and issuance of a

new class of capital stock could have the effect of delaying or preventing someone from taking control of us, even if a change in control were in our stockholders' best interests.

***Maryland business statutes may limit the ability of a third party to acquire control of us.*** Maryland law provides protection for Maryland corporations against unsolicited takeovers by limiting, among other things, the duties of the directors in unsolicited takeover situations. The duties of directors of Maryland corporations do not require them to (a) accept, recommend or respond to any proposal by a person seeking to acquire control of the corporation, (b) authorize the corporation to redeem any rights under, or modify or render inapplicable, any stockholders rights plan, (c) make a determination under the Maryland Business Combination Act or the Maryland Control Share Acquisition Act, or (d) act or fail to act solely because of the effect of the act or failure to act may have on an acquisition or potential acquisition of control of the corporation or the amount or type of consideration that may be offered or paid to the stockholders in an acquisition. Moreover, under Maryland law the act of a director of a Maryland corporation relating to or affecting an acquisition or potential acquisition of control is not subject to any higher duty or greater scrutiny than is applied to any other act of a director. Maryland law also contains a statutory presumption that an act of a director of a Maryland corporation satisfies the applicable standards of conduct for directors under Maryland law.

The Maryland Business Combination Act provides that unless exempted, a Maryland corporation may not engage in business combinations, including mergers, dispositions of 10 percent or more of its assets, certain issuances of shares of stock and other specified transactions, with an interested stockholder or an affiliate of an interested stockholder for five years after the most recent date on which the interested stockholder became an interested stockholder, and thereafter unless specified criteria are met. An interested stockholder is generally a person owning or controlling, directly or indirectly, 10 percent or more of the voting power of the outstanding stock of the Maryland corporation. In our Articles of Incorporation, we have expressly elected that the Maryland Business Combination Act not govern or apply to any transaction with UMH Properties, Inc., a Maryland corporation, or Monmouth Capital Corporation, a New Jersey corporation.

***We may fail to qualify as a REIT.*** If we fail to qualify as a REIT, we will not be allowed to deduct distributions to stockholders in computing our taxable income and will be subject to Federal income tax, including any applicable alternative minimum tax, at regular corporate rates. In addition, we might be barred from qualification as a REIT for the four years following disqualification. The additional tax incurred at regular corporate rates would reduce significantly the cash flow available for distribution to stockholders and for debt service.

Furthermore, we would no longer be required to make any distributions to our stockholders as a condition to REIT qualification. Any distributions to stockholders would be taxable as ordinary income to the extent of our current and accumulated earnings and profits, although such dividend distributions would be subject to a top federal tax rate of 15% through 2010. Corporate distributees, however, may be eligible for the dividends received deduction on the distributions, subject to limitations under the Code.

***To qualify as a REIT, we must comply with certain highly technical and complex requirements.*** We cannot be certain we have complied, and will always be able to comply, with

the requirements to qualify as a REIT because there are few judicial and administrative interpretation of these provisions.. In addition, facts and circumstances that may be beyond our control may affect our ability to continue to qualify as a REIT. We cannot assure you that new legislation, regulations, administrative interpretations or court decisions will not change the tax laws significantly with respect to our qualification as a REIT or with respect to the Federal income tax consequences of qualification. We believe that we have qualified as a REIT since our inception and intend to continue to qualify as a REIT. However, we cannot assure you that we are qualified or will remain qualified.

***There is a risk of changes in the tax law applicable to real estate investment trusts.*** Because the Internal Revenue Service, the United States Treasury Department and Congress frequently review federal income tax legislation, we cannot predict whether, when or to what extent new federal tax laws, regulations, interpretations or rulings will be adopted. Any of such legislative action may prospectively or retroactively modify our tax treatment and, therefore, may adversely affect taxation of us and/or our investors.

***We may be unable to comply with the strict income distribution requirements applicable to REITs.*** To maintain qualification as a REIT under the Code, a REIT must annually distribute to its shareholders at least 90% of its REIT taxable income, excluding the dividends paid deduction and net capital gains. This requirement limits our ability to accumulate capital. We may not have sufficient cash or other liquid assets to meet the distribution requirements. Difficulties in meeting the distribution requirements might arise due to competing demands for our funds or to timing differences between tax reporting and cash receipts and disbursements, because income may have to be reported before cash is received, because expenses may have to be paid before a deduction is allowed or because deductions may be disallowed or limited, or the Internal Revenue Service may make a determination that adjusts reported income. In those situations, we might be required to borrow funds or sell properties on adverse terms in order to meet the distribution requirements and interest and penalties could apply which could adversely affect our financial condition. If we fail to make a required distribution, we would cease to be taxed as a REIT.

***Notwithstanding our status as a REIT, we are subject to various federal, state and local taxes on our income and property.*** For example, we will be taxed at regular corporate rates on any undistributed taxable income, including undistributed net capital gains, provided, however, that properly designated undistributed capital gains will effectively avoid taxation at the security holder level. We may be subject to other Federal income taxes as more fully described in Material United States Federal Income Tax Consequences-Taxation of Us as a REIT. We may also have to pay some state income or franchise taxes because not all states treat REITs in the same manner as they are treated for Federal income tax purposes.

#### **DISCLOSURE REGARDING FORWARD-LOOKING STATEMENTS**

From time to time, we may make forward-looking statements (within the meaning of Section 27A of the Securities Act and Section 21F of the Exchange Act) in documents filed under the Securities Act, the Exchange Act, press releases or other public statements with respect to our financial condition, results of operations and business. Words such as anticipates, expects, intends, plans, believes, seeks, estimates and expressions as they



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relate to us or our management are intended to identify forward-looking statements. These forward-looking statements are not guarantees of future performance and are subject to risks and uncertainties. Potential investors should not place undue reliance on forward-looking statements as they involve numerous risks and uncertainties that could cause actual results to differ materially from the results stated or implied in the forward-looking statements. If we make forward-looking statements, we assume no obligation to update forward-looking statements. In evaluating the securities offered by this prospectus, you should carefully consider the discussion of risks and uncertainties in the section entitled

Risk Factors beginning on page 2 of this prospectus and those in the documents we incorporate by reference that could cause actual results to differ materially from the results contemplated by the forward-looking statements.

### USE OF PROCEEDS

Unless otherwise described in the applicable prospectus supplement, we intend to use the net proceeds of any sale of securities for working capital and general corporate purposes, including, without limitation, the development and acquisition of additional properties.

### RATIO OF EARNINGS TO COMBINED FIXED CHARGES

### AND PREFERRED STOCK DIVIDENDS

The following table sets forth our consolidated ratio of earnings to combined fixed charges and preferred stock dividends for the nine months ended June 30, 2006, and for each of the last five fiscal years.

	<b>Nine Months Ended</b>					
	<b>June 30,</b>	<b>Year Ended September 30,</b>				
	<b><u>2006</u></b>	<b><u>2005</u></b>	<b><u>2004</u></b>	<b><u>2003</u></b>	<b><u>2002</u></b>	<b><u>2001</u></b>
Ratio of Earnings to						
Combined Fixed						
Charges and Preferred						
Stock Dividends	1.76	2.07	2.06	1.85	1.72	1.87

For the purpose of computing these ratios, earnings have been calculated by adding fixed charges, excluding capitalized interest, to pre-tax income from continuing operations. Fixed charges consist of interest costs, whether expensed or capitalized, the estimated interest component of rental expenses and amortization. Preferred stock dividends are the amount of pre-tax earnings that are required to pay the dividends on outstanding preferred securities. We currently do not have, nor have we had in the past, any shares of preferred securities outstanding and, therefore, we have not paid any dividends on preferred securities.

### DESCRIPTION OF CAPITAL STOCK

The following description is only a summary of certain terms and provisions of our capital stock. You should refer to our charter and bylaws for a complete description.

*General.* Our authorized capital stock consists of 35,000,000 shares, initially classified as 30,000,000 shares of common stock, par value \$0.01 per share, and 5,000,000 shares of excess



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stock, par value \$0.01 per share. The excess stock is designed to protect our status as a REIT under the Code. See - REIT Related Restrictions.

As of August 1, 2006, 20,814,885 shares of common stock were issued and outstanding and no shares of excess stock were issued and outstanding. Our outstanding shares of common stock are currently listed on the Nasdaq Stock Market under the symbol MNRTA . We intend to apply the Nasdaq Stock Market to list any additional shares of common stock offered pursuant to any prospectus supplement, and we anticipate that such shares will be so listed.

Under Maryland General Corporation Law ( MGCL ) and our charter, our board of directors has the power, without action by the stockholders, to increase or decrease the aggregate number of shares of stock or the number of shares of stock of any class that we have the authority to issue. Also, our board of directors has the power, without any action by the stockholders, to classify or reclassify any unissued shares of our capital stock including classification into a class or classes of preferred stock, preference stock, special stock or other stock and to divide or classify shares into one or more series of such class. Our board of directors may exercise its power to increase the number of authorized shares or to reclassify any unissued shares in connection with a merger or acquisition, a future underwritten public offering or private placement or a potential hostile takeover.

*REIT Related Restrictions.* To qualify as a REIT under the Code, we must satisfy a number of statutory requirements, including a requirement that no more than 50% in value of our outstanding shares of stock may be owned, actually or constructively, by five or fewer individuals (as defined by the Code to include certain entities) during the last half of a taxable year (other than the first taxable year of REIT status). In addition, if we, or an actual or constructive owner of 10% or more of us, actually or constructively owns 10% or more of a tenant of ours (or a tenant of any partnership in which we are a partner), the rent we receive (either directly or through any such partnership) from such tenant will not be qualifying income for purposes of the REIT gross income tests of the Code. Our capital stock must also 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.

Because we intend to qualify as a REIT under the Code, our charter contains limitations designed to protect our status as a REIT. Under our charter, any person who acquires or attempts to acquire shares of our capital stock (excluding shares of excess stock), in violation of the ownership limitations and transfer restrictions must give written notice to us. In addition, every security holder of more than 5% of the number or value of our outstanding capital stock must give written notice to us of the number of shares of capital stock beneficially or constructively owned. Under our charter, if a transfer of our capital stock or a change in our capital structure would result in (i) any person directly or indirectly acquiring beneficial ownership of more than 9.8% of our capital stock; (ii) our outstanding capital stock being constructively or beneficially owned by fewer than 100 persons; (iii) us being closely held within the meaning of Section 856 of the Code; or (iv) us otherwise failing to qualify as a REIT under the Code, then: (a) our board of directors may take any action it deems advisable to refuse to give effect to, or to prevent, such transfer; (b) any proposed transfer will be void *ab initio* and will not be recognized by us; (c) we will have the right to redeem the shares proposed to be transferred at a price equal to the lesser of the price per share paid in the transaction which created the violation and the last

reported sales price on the Nasdaq Stock Market on the trading date immediately prior to the date we give notice of redemption; and (d) the shares proposed to be transferred will be automatically converted into and exchanged for shares of a separate class of stock, excess stock, having no voting rights. A holder of excess stock does have certain rights in the event of any liquidation, dissolution or winding-up of the corporation. Our charter further provides that the excess stock will be held by a trustee appointed by us in trust (i) for the person or persons to whom the shares are ultimately transferred, until such time as the shares are re-transferred to a person or persons in whose hands the shares would not be excess stock and certain price-related restrictions are satisfied, and (ii) with respect to dividend rights (and rights to funds in excess of the amounts paid to the holder), for the benefit of a charitable beneficiary appointed by us. Our board of directors may, in its sole and absolute discretion, exempt certain persons from the ownership limitations contained in our charter if ownership of shares of capital stock by such persons would not disqualify us as a REIT under the Code.

*Certain Anti-Takeover Effects.* Our charter and bylaws also contain provisions that may be deemed to have anti-takeover effects. For example, our charter (i) does not allow for cumulative voting by stockholders; (ii) provides for a classified board of directors, and (iii) contains limitations on the amount of our securities that any person can own. In addition, our bylaws contain provisions that (i) give our board of directors the exclusive power to fill vacancies on the board and provide that any director so appointed will serve for the remaining term of that directorship; (ii) give our board the exclusive power to determine the numbers of directors; (iii) require advance notice of any security holder nominations for director and proposals of business by stockholders to be conducted at the meeting; (iv) limit stockholders' ability to call a special meeting; (v) give our board of directors the exclusive power to amend our bylaws; (vi) require approval of two-thirds of the shares to remove directors for cause; (vii) require our board of directors to have at least three independent directors as defined by Section 3-802 of the MGCL which allows us to opt into certain statutory anti-takeover provisions; and (viii) specifically opt-into the business combination provisions of the MGCL (with the exception that such provisions do not apply to transactions with UMH Properties, Inc. or Monmouth Capital Corporation, which are affiliates of us). Additionally, our charter provides that our board of directors may authorize additional shares of capital stock and may classify or reclassify only unissued capital stock, including classification into shares of preferred stock, without security holder action. Such stock could be issued in such a way as to have anti-takeover effects.

#### **Description of Common Stock**

*Relationship of Common Stock and Preferred Stock.* As a holder of common stock, your rights will be subject to, and may be adversely affected by, the rights of holders of preferred stock that may be issued in the future. Our board of directors may cause preferred stock to be issued to obtain additional capital, in connection with acquisitions, to our officers, directors and employees pursuant to benefit plans or otherwise and for other corporate purposes.

*Preferences, Sinking Fund Provisions and Preemptive Rights.* As a holder of our common stock, you will have no preferences, conversion, sinking fund, redemption rights or preemptive rights to subscribe for any of our securities.

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*Voting Rights.* Subject to the provisions of our charter regarding restrictions on transfer and ownership of shares of common stock, you will have one vote per share 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 capital stock, the holders of 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 plurality of the outstanding shares of common stock can elect all of the directors then standing for election and the holders of the remaining shares of common stock, if any, will not be able to elect any directors, except as otherwise provided for in any other class or series of our capital stock, including any preferred stock.

*Distributions.* Subject to any preferential rights granted to any class or series of our capital stock, including any preferred stock, and to the provisions of our charter regarding restrictions on transfer and ownership of shares of common stock, as a holder of our common stock, you will be entitled to receive dividends or other distributions if, as and when declared, by our board of directors out of funds legally available for dividends or other distributions to stockholders. Subject to the provisions in our charter regarding restrictions on ownership and transfer, all shares of our common stock have equal distribution rights. We currently pay regular quarterly distributions on our common stock. In the event of our liquidation, dissolution or winding up, after payment of any preferential amounts to any class of preferred stock which may be outstanding and after payment of, or adequate provision for, all of our known debts and liabilities, holders of common stock and, subject to the provisions of our charter, excess stock will be entitled to share ratably in all assets that we may legally distribute to our stockholders.

*Stockholder Liability.* Under Maryland law applicable to Maryland corporations, you will not be liable as a stockholder for our obligations solely as a result of your status as a stockholder.

*Transfer Agent.* The registrar and transfer agent for shares of our common stock is American Stock Transfer & Trust Company.

### **Description of Preferred Stock**

The following description, together with the additional information we include in any applicable prospectus supplement, summarizes the material terms and provisions of the preferred stock that we may offer under this prospectus. As of the date of this prospectus, we did not have any preferred stock outstanding. While the terms we have summarized below will apply generally to any future preferred stock we may offer, we will describe the particular terms of any preferred stock that we may offer in more detail in the applicable prospectus supplement. The terms of any preferred stock we offer under that prospectus may differ from the terms we describe below.

*General.* Shares of preferred stock may be issued from time to time, in one or more series, as authorized by our board of directors. Before issuance of shares of each series, the board of directors is required to fix for each such series, subject to the provisions of MGCL and our charter, the powers, designations, preferences and relative, participating, optional or other special

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rights of such series and qualifications, limitations or restrictions thereof, including such provisions as may be desired concerning voting, redemption, dividends, dissolution or the distribution of assets, conversion or exchange, and such other matters as may be fixed by resolution of the board of directors or a duly authorized committee thereof.

The board of directors could authorize the issuance of shares of preferred stock with terms and conditions which could have the effect of discouraging a takeover or other transaction which holders of some, or a majority of, shares of common stock might believe to be in their best interests, or in which holders of some, or a majority of, shares of common stock might receive a premium for their shares of common stock over the then market price of such shares. The shares of preferred stock will, when issued, be fully-paid and non-assessable and will have no preemptive rights.

The prospectus supplement relating to any shares of preferred stock offered thereby will contain the specific terms, including:

the title and stated value of such shares of preferred stock;

the number of such shares of preferred stock offered, the liquidation preference per share and the offering price of such shares of preferred stock;

the dividend rate(s), period(s) and/or payment date(s) or method(s) of calculation thereof applicable to such shares of preferred stock;

the date from which dividends on such shares of preferred stock will accumulate, if applicable;