

CBL & ASSOCIATES PROPERTIES INC  
Form 424B7  
March 30, 2011

Filed pursuant to Rule 424(b)(7)  
File Number 333-161182

## Calculation of Registration Fee

Title of Securities to be Registered	Amount to be Registered	Proposed Maximum Offering Price per Share(1)	Proposed Maximum Aggregate Offering Price(1)	Amount of Registration Fee(2)
Common Stock, Par Value \$.01 per Share	1,355,671	\$17.24	\$23,371,768.04	\$2,713.46

(1) Estimated solely for purposes of calculating the registration fee in accordance with Rules 457(c) and 457(r) of the Securities Act of 1933, as amended, or the Securities Act, and based upon the average of the high and low sales price of a share of the Registrant's common stock as reported by the New York Stock Exchange on March 24, 2011.

(2) Calculated pursuant to Rules 456(b), 457(c) and 457(r) of the Securities Act.

## PROSPECTUS SUPPLEMENT

(To Prospectus Dated August 7, 2009)

1,355,671 Shares

CBL & Associates Properties, Inc.  
Common Stock  
(Par Value \$.01 per Share)

The selling stockholders listed on page S-26 of this Prospectus Supplement may offer and sell from time to time up to 1,355,671 shares of the common stock of CBL & Associates Properties, Inc. by using this Prospectus Supplement. Information about the selling stockholders and the times and manner in which they may offer and sell shares of our common stock using this Prospectus Supplement is described under the sections entitled "Selling Stockholders" and "Plan of Distribution" in this Prospectus Supplement.

This Prospectus Supplement should be read in conjunction with the Prospectus, and is qualified by reference to the Prospectus, except to the extent that the information presented or incorporated by reference herein supersedes the information contained in the Prospectus. This Prospectus Supplement is not complete without, and may not be delivered or utilized except in connection with, the Prospectus, including any amendments or supplements thereto.

We will not receive any of the proceeds from the sale of these shares by the selling stockholders. We will pay all expenses associated with the registration of the shares of common stock offered by the selling stockholders pursuant to this Prospectus Supplement.

Our common stock is listed on the New York Stock Exchange and traded under the symbol "CBL". The last reported sale price of our common stock on the New York Stock Exchange on March 29, 2011, was \$17.22 per share.

Investing in our common stock involves certain risks. See "Risk Factors" commencing on page S-7 of this Prospectus Supplement.

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Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this Prospectus Supplement or the accompanying Prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

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The date of this Prospectus Supplement is March 30, 2011.



You should rely only on information contained in or incorporated by reference in this Prospectus Supplement and the accompanying Prospectus. Neither we nor the selling stockholders have authorized anyone to provide you with different information. We are not making an offer of these securities in any state where the offer is not permitted. You should not assume that the information contained or incorporated by reference in this Prospectus Supplement and the accompanying Prospectus is accurate as of any date other than the date of the respective documents.

This document is in two parts. The first part is the Prospectus Supplement, which describes the specific terms of this offering. The second part is the accompanying Prospectus, which gives more general information, some of which may not apply to this offering.

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### INCORPORATION OF CERTAIN DOCUMENTS BY REFERENCE

The SEC's rules allow us to incorporate by reference information into this Prospectus Supplement. This means that we can disclose important information to you by referring you to another document. Any information referred to in this way is considered part of this Prospectus Supplement from the date we file that document.

We have filed the documents listed below with the SEC under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and they are incorporated herein by reference:

- Our Annual Report on Form 10-K for the year ended December 31, 2010, as amended by Amendment No. 1 thereto on Form 10-K/A filed on March 3, 2011 (as amended, our "2010 Annual Report").

- Our Proxy Statement filed on March 25, 2011.

- Current Reports on Form 8-K dated and filed on the following dates:

Dated	Filed
December 31, 2010*	January 6, 2011*
February 7, 2011	February 11, 2011
February 7, 2011	February 14, 2011
March 28, 2011	March 30, 2011

\* Other than information that has been furnished to, and not filed with, the SEC, which information is not incorporated into this Prospectus Supplement or the accompanying Prospectus.

Any document which we file pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act after the date of this Prospectus Supplement and prior to termination of this offering of securities (other than, in each case, documents or information deemed to have been furnished and not filed in accordance with SEC rules) will be deemed to be incorporated by reference into, and to be part of, this Prospectus Supplement from the date of filing of each such document.

Any statement contained in this Prospectus Supplement or in a document incorporated or deemed to be incorporated by reference into this Prospectus Supplement will, to the extent applicable, be deemed to be modified, superseded or replaced by later statements included in supplements or amendments to this Prospectus Supplement or in subsequently filed documents which are in, or deemed to be incorporated by reference in, this Prospectus Supplement.

We will provide without charge to each person, including any beneficial owner, to whom a copy of this Prospectus Supplement is delivered, upon the written or oral request of any such person, a copy of any or all documents incorporated by reference herein (other than exhibits to those documents, unless such exhibits are specifically incorporated by reference into such documents). Such requests should be addressed to our Vice President – Corporate Communications and Investor Relations, CBL Center, 2030 Hamilton Place Blvd., Suite 500, Chattanooga, Tennessee 37421-6000 (telephone number (423) 855-0001).



## CAUTIONARY STATEMENTS CONCERNING FORWARD-LOOKING INFORMATION

This Prospectus Supplement, the accompanying Prospectus and the documents incorporated by reference herein and therein may include forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended (“Securities Act”), and Section 21E of the Securities Exchange Act of 1934, as amended (“Exchange Act”). Forward-looking statements are made pursuant to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995, as amended. All statements other than statements of historical fact should be considered to be forward-looking statements.

Forward-looking statements can often be identified by the use of forward-looking terminology, such as “will”, “should”, “could”, “projects”, “goals”, “objectives”, “targets”, “predicts”, “expects”, “anticipates”, “intends”, “plans”, “believes”, “seeks”, “will be” and variations of these words and similar expressions. Any forward-looking statement speaks only as of the date on which it is made and is qualified in its entirety by reference to the factors discussed throughout this Prospectus Supplement, the accompanying Prospectus and the documents incorporated by reference in this Prospectus Supplement and the accompanying Prospectus.

Although we believe the expectations reflected in any forward-looking statements are based on reasonable assumptions, forward-looking statements are not guarantees of future performance or results and we can give no assurance that these expectations will be achieved. It is possible that the actual results may differ materially from those indicated by these forward-looking statements due to a variety of known and unknown risks and uncertainties. Some of the factors that could cause actual results to differ include, without limitation:

- general industry, economic and business conditions;
- interest rate fluctuations, costs and availability of capital and capital requirements;
  - costs and availability of real estate;
  - inability to consummate acquisition opportunities;
- competition from other companies and retail formats;
  - changes in retail rental rates in our markets;
    - shifts in customer demands;
    - tenant bankruptcies or store closings;
  - changes in vacancy rates at our properties;
    - changes in operating expenses;
- changes in applicable laws, rules and regulations; and
- the ability to obtain suitable equity and/or debt financing and the continued availability of financing in the amounts and on the terms necessary to support our future refinancing requirements and business.

This list of risks and uncertainties, however, is only a summary and is not intended to be exhaustive. For a discussion of these and other factors that could cause actual results to differ from those contemplated in the forward-looking statements, please see the discussion under “Risk Factors,” beginning on page S-7 of this Prospectus Supplement and on page 6 of the accompanying Prospectus and under “Risk Factors” in our 2010 Annual Report, which is incorporated by reference in this Prospectus Supplement and the accompanying Prospectus and has been filed with the SEC, as well as other information contained in our publicly available filings with the SEC. We do not undertake to update any of these factors or to announce publicly any revisions to forward-looking statements, whether as a result of new information, future events or otherwise.

## PROSPECTUS SUMMARY

This summary does not contain all of the information that you should consider before investing in our common stock. You should read the entire Prospectus Supplement and the accompanying Prospectus carefully, including the matters discussed under the caption “Risk Factors” and the detailed information and financial statements included or incorporated by reference in this Prospectus Supplement. When used in this Prospectus Supplement, the terms “the Company,” “we,” “our” and “us,” except as otherwise indicated or as the context otherwise indicates, refer to CBL & Associates Properties, Inc. and all entities owned or controlled by us. The term “you” refers to a prospective investor.

### Company Overview

We are a self-managed, self-administered, fully integrated real estate investment trust (“REIT”). We own, develop, acquire, lease, manage and operate regional shopping malls, open-air centers, community centers and office properties. We currently own interests in a portfolio of properties, consisting of enclosed regional malls, open-air centers, associated centers (each of which is part of a regional shopping mall complex), community centers, office buildings (including our corporate office building) and joint venture investments in similar types of properties. We may also own from time to time shopping center properties that are under development or construction, as well as options to acquire certain shopping center development sites owned by third parties. Our shopping center properties are located in 26 domestic states but are primarily in the Southeastern and Midwestern United States. We have elected to be taxed as a REIT for federal income tax purposes.

We conduct substantially all of our business through CBL & Associates Limited Partnership, our “Operating Partnership.” We currently own an indirect majority interest in the Operating Partnership, and one of our wholly owned subsidiaries, CBL Holdings I, Inc., a Delaware corporation, is its sole general partner. We conduct our property management and development activities through CBL & Associates Management, Inc. (the “Management Company”) to comply with certain technical requirements of the Internal Revenue Code of 1986, as amended. The Operating Partnership owns 100% of both of the Management Company’s preferred stock and common stock.

In order for us to maintain our qualification as a REIT for federal income tax purposes, our Certificate of Incorporation provides for an ownership limit which generally prohibits, with certain exceptions, direct or constructive ownership by one person, as defined in our Certificate of Incorporation, of equity securities representing more than 6% of the combined total value of our outstanding equity securities.

We were organized on July 13, 1993 as a Delaware corporation to acquire substantially all of the real estate properties owned by our predecessor company, CBL & Associates, Inc., and its affiliates. Our principal executive offices are located at CBL Center, 2030 Hamilton Place Blvd., Suite 500, Chattanooga, Tennessee 37421-6000, and our telephone number is (423) 855-0001. Our website can be found at [cblproperties.com](http://cblproperties.com). The information contained on or connected to our website is not, and you must not consider the information to be, a part of this Prospectus Supplement or the accompanying Prospectus.



### The Offering

Common Stock Offered by the Selling Stockholders	1,355,671 shares of common stock, which we issued to the selling stockholders in exchange for special common units of limited partnership interest in our Operating Partnership. See “Selling Stockholders” and “Plan of Distribution.”
Use of Proceeds	We will not receive any proceeds from the sale of shares by the selling stockholders. See “Use of Proceeds.”
Market Information for the Common Stock	New York Stock Exchange (NYSE) Symbol: CBL. On March 29, 2011, the last reported sale price of our common stock on the NYSE was \$17.22 per share.
Risk Factors	Before investing in our common stock, you should carefully read and consider the information set forth in the “Risk Factors” section of this Prospectus Supplement, beginning on page S-7.
Plan of Distribution	<p>The shares may be offered and sold from time to time in one or more transactions, in private or public transactions, on the NYSE, in the over-the-counter market, in negotiated transactions or otherwise, at a fixed price or prices that may be changed, at market prices prevailing at the time of sale, at negotiated prices, without consideration or by any other legally available means. Sales may be made directly or through brokers, dealers, agents or underwriters who may be compensated for their role in such transactions.</p> <p>Any or all of the shares may be sold from time to time. Since each selling stockholder may ultimately sell all, a portion or none of the shares of common stock offered by means of this Prospectus Supplement from time to time after the date hereof, we cannot determine how many shares each selling stockholder will sell or how many shares each may retain upon completion of this offering. See “Plan of Distribution.”</p>

## RISK FACTORS

Before you consider investing in our common stock, you should be aware that there are risks in making this investment. You should carefully consider these risk factors, which may adversely affect our business, financial condition, results of operations and cash flows, together with all of the information included or incorporated by reference in this Prospectus Supplement, before you decide to invest in our common stock.

### RISKS RELATED TO REAL ESTATE INVESTMENTS

Real property investments are subject to various risks, many of which are beyond our control, that could cause declines in the operating revenues and/or the underlying value of one or more of our Properties.

A number of factors may decrease the income generated by a retail shopping center property, including:

- National, regional and local economic climates, which may be negatively impacted by loss of jobs, production slowdowns, adverse weather conditions, natural disasters, acts of violence, war or terrorism, declines in residential real estate activity and other factors which tend to reduce consumer spending on retail goods.
- Adverse changes in levels of consumer spending, consumer confidence and seasonal spending (especially during the holiday season when many retailers generate a disproportionate amount of their annual profits).
- Local real estate conditions, such as an oversupply of, or reduction in demand for, retail space or retail goods, and the availability and creditworthiness of current and prospective tenants.
- Increased operating costs, such as increases in repairs and maintenance, real property taxes, utility rates and insurance premiums.
- Delays or cost increases associated with the opening of new or renovated properties, due to higher than estimated construction costs, cost overruns, delays in receiving zoning, occupancy or other governmental approvals, lack of availability of materials and labor, weather conditions, and similar factors which may be outside our ability to control.
  - Perceptions by retailers or shoppers of the safety, convenience and attractiveness of the shopping center.
- The willingness and ability of the shopping center's owner to provide capable management and maintenance services.
  - The convenience and quality of competing retail properties and other retailing options, such as the Internet.

In addition, other factors may adversely affect the value of our Properties without affecting their current revenues, including:

- Adverse changes in governmental regulations, such as local zoning and land use laws, environmental regulations or local tax structures that could inhibit our ability to proceed with development, expansion, or renovation activities that otherwise would be beneficial to our Properties.

- Potential environmental or other legal liabilities that reduce the amount of funds available to us for investment in our Properties.
- Any inability to obtain sufficient financing (including construction financing and permanent debt), or the inability to obtain such financing on commercially favorable terms, to fund repayment of maturing loans, new developments, acquisitions, and property expansions and renovations which otherwise would benefit our Properties.
- An environment of rising interest rates, which could negatively impact both the value of commercial real estate such as retail shopping centers and the overall retail climate.

Illiquidity of real estate investments could significantly affect our ability to respond to adverse changes in the performance of our Properties and harm our financial condition.

Substantially all of our total consolidated assets consist of investments in real properties. Because real estate investments are relatively illiquid, our ability to quickly sell one or more Properties in our portfolio in response to changing economic, financial and investment conditions is limited. The real estate market is affected by many factors, such as general economic conditions, availability of financing, interest rates and other factors, including supply and demand for space, that are beyond our control. We cannot predict whether we will be able to sell any Property for the price or on the terms we set, or whether any price or other terms offered by a prospective purchaser would be acceptable to us. We also cannot predict the length of time needed to find a willing purchaser and to close the sale of a Property. In addition, current economic and capital market conditions might make it more difficult for us to sell Properties or might adversely affect the price we receive for Properties that we do sell, as prospective buyers might experience increased costs of debt financing or other difficulties in obtaining debt financing.

Moreover, there are some limitations under federal income tax laws applicable to REITs that limit our ability to sell assets. In addition, because our Properties are generally mortgaged to secure our debts, we may not be able to obtain a release of a lien on a mortgaged Property without the payment of the associated debt and/or a substantial prepayment penalty, which restricts our ability to dispose of a Property, even though the sale might otherwise be desirable. Furthermore, the number of prospective buyers interested in purchasing shopping centers is limited. Therefore, if we want to sell one or more of our Properties, we may not be able to dispose of it in the desired time period and may receive less consideration than we originally invested in the Property.

Before a Property can be sold, we may be required to make expenditures to correct defects or to make improvements. We cannot assure you that we will have funds available to correct those defects or to make those improvements, and if we cannot do so, we might not be able to sell the Property, or might be required to sell the Property on unfavorable terms. In acquiring a property, we might agree to provisions that materially restrict us from selling that property for a period of time or impose other restrictions, such as limitations on the amount of debt that can be placed or repaid on that property. These factors and any others that would impede our ability to respond to adverse changes in the performance of our Properties could adversely affect our financial condition and results of operations.

We may elect not to proceed with certain development or expansion projects once they have been undertaken, resulting in charges that could have a material adverse effect on our results of operations for the period in which the charge is taken.

We intend to pursue development and expansion activities as opportunities arise. In connection with any development or expansion, we will incur various risks, including the risk that development or

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expansion opportunities explored by us may be abandoned for various reasons including, but not limited to, credit disruptions that require the Company to conserve its cash until the capital markets stabilize or alternative credit or funding arrangements can be made. Developments or expansions also include the risk that construction costs of a project may exceed original estimates, possibly making the project unprofitable. Other risks include the risk that we may not be able to refinance construction loans which are generally with full recourse to us, the risk that occupancy rates and rents at a completed project will not meet projections and will be insufficient to make the project profitable, and the risk that we will not be able to obtain anchor, mortgage lender and property partner approvals for certain expansion activities.

When we elect not to proceed with a development opportunity, the development costs ordinarily are charged against income for the then-current period. Any such charge could have a material adverse effect on our results of operations for the period in which the charge is taken.

Certain of our Properties are subject to ownership interests held by third parties, whose interests may conflict with ours and thereby constrain us from taking actions concerning these properties which otherwise would be in the best interests of the Company and our stockholders.

We own partial interests in 21 malls, 13 associated centers, six community centers and eight office buildings. We manage all but three of these Properties. Governor's Square, Governor's Plaza and Kentucky Oaks are all owned by joint ventures and are managed by a property manager that is affiliated with the third party managing general partner. The property manager performs the property management and leasing services for these three Properties and receives a fee for its services. The managing partner of the Properties controls the cash flow distributions, although our approval is required for certain major decisions.

Where we serve as managing general partner (or equivalent) of the entities that own our Properties, we may have certain fiduciary responsibilities to the other owners of those entities. In certain cases, the approval or consent of the other owners is required before we may sell, finance, expand or make other significant changes in the operations of such Properties. To the extent such approvals or consents are required, we may experience difficulty in, or may be prevented from, implementing our plans with respect to expansion, development, financing or other similar transactions with respect to such Properties.

With respect to those Properties for which we do not serve as managing general partner (or equivalent), we do not have day-to-day operational control or control over certain major decisions, including leasing and the timing and amount of distributions, which could result in decisions by the managing entity that do not fully reflect our interests. This includes decisions relating to the requirements that we must satisfy in order to maintain our status as a REIT for tax purposes. However, decisions relating to sales, expansion and disposition of all or substantially all of the assets and financings are subject to approval by the Operating Partnership.

Bankruptcy of joint venture partners could impose delays and costs on us with respect to the jointly owned retail properties.

In addition to the possible effects on our joint ventures of a bankruptcy filing by us, the bankruptcy of one of the other investors in any of our jointly owned shopping centers could materially and adversely affect the relevant Property or Properties. Under the bankruptcy laws, we would be precluded from taking some actions affecting the estate of the other investor without prior approval of the bankruptcy court, which would, in most cases, entail prior notice to other parties and a hearing in the bankruptcy court. At a minimum, the requirement to obtain court approval may delay the actions we

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would or might want to take. If the relevant joint venture through which we have invested in a Property has incurred recourse obligations, the discharge in bankruptcy of one of the other investors might result in our ultimate liability for a greater portion of those obligations than we would otherwise bear.

We may incur significant costs related to compliance with environmental laws, which could have a material adverse effect on our results of operations, cash flows and the funds available to us to pay dividends.

Under various federal, state and local laws, ordinances and regulations, a current or previous owner or operator of real estate may be liable for the costs of removal or remediation of petroleum, certain hazardous or toxic substances on, under or in such real estate. Such laws typically impose such liability without regard to whether the owner or operator knew of, or was responsible for, the presence of such substances. The costs of remediation or removal of such substances may be substantial. The presence of such substances, or the failure to promptly remove or remediate such substances, may adversely affect the owner's or operator's ability to lease or sell such real estate or to borrow using such real estate as collateral. Persons who arrange for the disposal or treatment of hazardous or toxic substances may also be liable for the costs of removal or remediation of such substances at the disposal or treatment facility, regardless of whether such facility is owned or operated by such person. Certain laws also impose requirements on conditions and activities that may affect the environment or the impact of the environment on human health. Failure to comply with such requirements could result in the imposition of monetary penalties (in addition to the costs to achieve compliance) and potential liabilities to third parties. Among other things, certain laws require abatement or removal of friable and certain non-friable asbestos-containing materials in the event of demolition or certain renovations or remodeling. Certain laws regarding asbestos-containing materials require building owners and lessees, among other things, to notify and train certain employees working in areas known or presumed to contain asbestos-containing materials. Certain laws also impose liability for release of asbestos-containing materials into the air and third parties may seek recovery from owners or operators of real properties for personal injury or property damage associated with asbestos-containing materials. In connection with the ownership and operation of properties, we may be potentially liable for all or a portion of such costs or claims.

All of our Properties (but not properties for which we hold an option to purchase but do not yet own) have been subject to Phase I environmental assessments or updates of existing Phase I environmental assessments. Such assessments generally consisted of a visual inspection of the Properties, review of federal and state environmental databases and certain information regarding historic uses of the property and adjacent areas and the preparation and issuance of written reports. Some of the Properties contain, or contained, underground storage tanks used for storing petroleum products or wastes typically associated with automobile service or other operations conducted at the Properties. Certain Properties contain, or contained, dry-cleaning establishments utilizing solvents. Where believed to be warranted, samplings of building materials or subsurface investigations were undertaken. At certain Properties, where warranted by the conditions, we have developed and implemented an operations and maintenance program that establishes operating procedures with respect to asbestos-containing materials. The cost associated with the development and implementation of such programs was not material. We have also obtained environmental insurance coverage at certain of our Properties.

We believe that our Properties are in compliance in all material respects with all federal, state and local ordinances and regulations regarding the handling, discharge and emission of hazardous or toxic substances. As of December 31, 2010, we have recorded in our financial statements a liability of \$2.9 million related to potential future asbestos abatement activities at our Properties which are not expected to have a material impact on our financial condition or results of operations. We have not been notified by any governmental authority, and are not otherwise aware, of any material noncompliance, liability or claim relating to hazardous or toxic substances in connection with any of our present or

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former Properties. Therefore, we have not recorded any liability related to hazardous or toxic substances. Nevertheless, it is possible that the environmental assessments available to us do not reveal all potential environmental liabilities. It is also possible that subsequent investigations will identify material contamination, that adverse environmental conditions have arisen subsequent to the performance of the environmental assessments, or that there are material environmental liabilities of which management is unaware. Moreover, no assurances can be given that (i) future laws, ordinances or regulations will not impose any material environmental liability or (ii) the current environmental condition of the Properties has not been or will not be affected by tenants and occupants of the Properties, by the condition of properties in the vicinity of the Properties or by third parties unrelated to us, the Operating Partnership or the relevant Property's partnership.

Possible terrorist activity or other acts of violence could adversely affect our financial condition and results of operations.

Future terrorist attacks in the United States, and other acts of violence, including terrorism or war, might result in declining consumer confidence and spending, which could harm the demand for goods and services offered by our tenants and the values of our Properties, and might adversely affect an investment in our securities. A decrease in retail demand could make it difficult for us to renew or re-lease our Properties at lease rates equal to or above historical rates and, to the extent our tenants are affected, could adversely affect their ability to continue to meet obligations under their existing leases. Terrorist activities also could directly affect the value of our Properties through damage, destruction or loss. Furthermore, terrorist acts might result in increased volatility in national and international financial markets, which could limit our access to capital or increase our cost of obtaining capital.

#### RISKS RELATED TO OUR BUSINESS AND THE MARKET FOR OUR STOCK

Declines in economic conditions, including increased volatility in the capital and credit markets, could adversely affect our business, results of operations and financial condition.

An economic recession can result in extreme volatility and disruption of our capital and credit markets. The resulting economic environment may be affected by dramatic declines in the stock and housing markets, increases in foreclosures, unemployment and costs of living, as well as limited access to credit. This economic situation can, and most often will, impact consumer spending levels, which can result in decreased revenues for our tenants and related decreases in the values of our Properties. A sustained economic downward trend could impact our tenants' ability to meet their lease obligations due to poor operating results, lack of liquidity, bankruptcy or other reasons. Our ability to lease space and negotiate rents at advantageous rates could also be affected in this type of economic environment. Additionally, access to capital and credit markets could be disrupted over an extended period, which may make it difficult to obtain the financing we may need for future growth and/or to meet our debt service obligations as they mature. Any of these events could harm our business, results of operations and financial condition.

Any future common stock offerings and common stock dividends may result in dilution of our common stock.

We are not restricted by our organizational documents, contractual arrangements or otherwise from issuing additional common stock, including any securities that are convertible into or exchangeable or exercisable for, or that represent the right to receive, common stock or any substantially similar securities in the future. Future sales or issuances of substantial amounts of our common stock may be at



prices below the then-current market price of our common stock and may adversely impact the market price of our common stock. Additionally, the market price of our common stock could decline as a result of sales of a large number of shares of our common stock in the market after a common stock offering or the perception that such sales could occur.

The market price of our common stock or other securities may fluctuate significantly.

The market price of our common stock or other securities may fluctuate significantly in response to many factors, including:

- actual or anticipated variations in our operating results, funds from operations, cash flows or liquidity;
  - changes in our earnings estimates or those of analysts;
    - changes in our dividend policy;
- impairment charges affecting the carrying value of one or more of our Properties or other assets;
- publication of research reports about us, the retail industry or the real estate industry generally;
- increases in market interest rates that lead purchasers of our securities to seek higher dividend or interest rate yields;
  - changes in market valuations of similar companies;
- adverse market reaction to the amount of our outstanding debt at any time, the amount of our maturing debt in the near and medium term and our ability to refinance such debt and the terms thereof or our plans to incur additional debt in the future;
  - additions or departures of key management personnel;
    - actions by institutional security holders;
  - speculation in the press or investment community;
- the occurrence of any of the other risk factors included in, or incorporated by reference in, this report; and
  - general market and economic conditions.

Many of the factors listed above are beyond our control. Those factors may cause the market price of our common stock or other securities to decline significantly, regardless of our financial performance and condition and prospects. It is impossible to provide any assurance that the market price of our common stock or other securities will not fall in the future, and it may be difficult for holders to sell such securities at prices they find attractive, or at all.

The issuance of additional preferred stock may adversely affect the earnings per share available to common shareholders and amounts available to common shareholders for payments of dividends.

In March 2010, we completed an equity offering of 6,300,000 depositary shares, each representing 1/10th of a share of our 7.375% Series D Cumulative Redeemable Preferred Stock, having a

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liquidation preference of \$25.00 per share. The securities are redeemable at liquidation preference, plus accrued and unpaid dividends, at any time at the option of the Company. The shares issued in the March 2010 offering will accrue dividends totaling approximately \$11.6 million annually, decreasing earnings per share available to our common shareholders and the amounts available to our common shareholders for dividend payments.

In October 2010, we completed an additional equity offering of 4,400,000 depositary shares, each representing 1/10th of a share of our 7.375% Series D Cumulative Redeemable Preferred Stock, having a liquidation preference of \$25.00 per share. Subsequent thereto, the underwriters of the offering exercised their option to purchase an additional 450,000 depositary shares. As a result of the exercise of this option, the Company sold a total of 4,850,000 depositary shares in the offering. The securities are redeemable at liquidation preference, plus accrued and unpaid dividends, at any time at the option of the Company. The shares issued in the October 2010 offering will accrue dividends totaling approximately \$8.9 million annually, decreasing earnings per share available to our common shareholders and the amounts available to our common shareholders for dividend payments.

We are not restricted by our organizational documents, contractual arrangements or otherwise from issuing additional preferred shares, including any securities that are convertible into or exchangeable or exercisable for, or that represent the right to receive, preferred stock or any substantially similar securities in the future.

Competition could adversely affect the revenues generated by our Properties, resulting in a reduction in funds available for distribution to our stockholders.

There are numerous shopping facilities that compete with our Properties in attracting retailers to lease space. In addition, retailers at our Properties face competition for customers from:

- discount shopping centers;
  - outlet malls;
  - wholesale clubs;
  - direct mail;
- television shopping networks; and
  - shopping via the internet.

Each of these competitive factors could adversely affect the amount of rents and tenant reimbursements that we are able to collect from our tenants, thereby reducing our revenues and the funds available for distribution to our stockholders.

We compete with many commercial developers, real estate companies and major retailers for prime development locations and for tenants. New regional malls or other retail shopping centers with more convenient locations or better rents may attract tenants or cause them to seek more favorable lease terms at, or prior to, renewal.



Increased operating expenses and decreased occupancy rates may not allow us to recover the majority of our common area maintenance (CAM) and other operating expenses from our tenants, which could adversely affect our financial position, results of operations and funds available for future distributions.

Energy costs, repairs, maintenance and capital improvements to common areas of our Properties, janitorial services, administrative, property and liability insurance costs and security costs are typically allocable to our Properties' tenants. Our lease agreements typically provide that the tenant is liable for a portion of the CAM and other operating expenses. While historically our lease agreements provided for variable CAM provisions, the majority of our current leases require an equal periodic tenant reimbursement amount for our cost recoveries which serves to fix our tenants' CAM contributions to us. In these cases, a tenant will pay a single specified rent amount, or a set expense reimbursement amount, subject to annual increases, regardless of the actual amount of operating expenses. The tenant's payment remains the same regardless of whether operating expenses increase or decrease, causing us to be responsible for any excess amounts or to benefit from any declines. As a result, the CAM and tenant reimbursements that we receive may or may not allow us to recover a substantial portion of these operating costs.

Additionally, in the event that our Properties are not fully occupied, we would be required to pay the portion of any operating, redevelopment or renovation expenses allocable to the vacant space(s) that would otherwise typically be paid by the residing tenant(s). Our cost recovery ratio was 101.9% for 2010.

The loss of one or more significant tenants, due to bankruptcies or as a result of consolidations in the retail industry, could adversely affect both the operating revenues and value of our Properties.

Regional malls are typically anchored by well-known department stores and other significant tenants who generate shopping traffic at the mall. A decision by an anchor tenant or other significant tenant to cease operations at one or more Properties could have a material adverse effect on those Properties and, by extension, on our financial condition and results of operations. The closing of an anchor or other significant tenant may allow other anchors and/or tenants at an affected Property to terminate their leases, to seek rent relief and/or cease operating their stores or otherwise adversely affect occupancy at the Property. In addition, key tenants at one or more Properties might terminate their leases as a result of mergers, acquisitions, consolidations, dispositions or bankruptcies in the retail industry. The bankruptcy and/or closure of one or more significant tenants, if we are not able to successfully re-tenant the affected space, could have a material adverse effect on both the operating revenues and underlying value of the Properties involved, reducing the likelihood that we would be able to sell the Properties if we decided to do so, or we may be required to incur redevelopment costs in order to successfully obtain new anchors or other significant tenants when such vacancies exist.

Our Properties may be subject to impairment charges which can adversely affect our financial results.

We periodically evaluate long-lived assets to determine if there has been any impairment in their carrying values and record impairment losses if the undiscounted cash flows estimated to be generated by those assets are less than their carrying amounts or if there are other indicators of impairment. If it is determined that an impairment has occurred, the amount of the impairment charge is equal to the excess of the asset's carrying value over its estimated fair value, which could have a material adverse effect on our financial results in the accounting period in which the adjustment is made. Our estimates of undiscounted cash flows expected to be generated by each Property are based on a number of





assumptions such as leasing expectations, operating budgets, estimated useful lives, future maintenance expenditures, intent to hold for use and capitalization rates. These assumptions are subject to economic and market uncertainties including, but not limited to, demand for space, competition for tenants, changes in market rental rates and costs to operate each Property. As these factors are difficult to predict and are subject to future events that may alter our assumptions, the future cash flows estimated in our impairment analyses may not be achieved. During the second quarter of 2010, we recorded a non-cash loss on impairment of real estate of \$25.4 million related to one of our Properties. During the fourth quarter of 2010, we incurred losses on impairment of real estate of \$14.8 million related to the disposition of three of our Properties and a parcel of land.

Inflation or deflation may adversely affect our financial condition and results of operations.

Increased inflation could have a pronounced negative impact on our mortgage and debt interest and general and administrative expenses, as these costs could increase at a rate higher than our rents. Also, inflation may adversely affect tenant leases with stated rent increases, which could be lower than the increase in inflation at any given time. Inflation could also have an adverse effect on consumer spending which could impact our tenants' sales and, in turn, our percentage rents, where applicable.

Deflation can result in a decline in general price levels, often caused by a decrease in the supply of money or credit. The predominant effects of deflation are high unemployment, credit contraction and weakened consumer demand. Restricted lending practices could impact our ability to obtain financings or refinancings for our Properties and our tenants' ability to obtain credit. Decreases in consumer demand can have a direct impact on our tenants and the rents we receive.

Certain agreements with prior owners of Properties that we have acquired may inhibit our ability to enter into future sale or refinancing transactions affecting such Properties, which otherwise would be in the best interests of the Company and our stockholders.

Certain Properties that we originally acquired from third parties had unrealized gain attributable to the difference between the fair market value of such Properties and the third parties' adjusted tax basis in the Properties immediately prior to their contribution of such Properties to the Operating Partnership pursuant to our acquisition. For this reason, a taxable sale by us of any of such Properties, or a significant reduction in the debt encumbering such Properties, could result in adverse tax consequences to the third parties who contributed these Properties in exchange for interests in the Operating Partnership. Under the terms of these transactions, we have generally agreed that we either will not sell or refinance such an acquired Property for a number of years in any transaction that would trigger adverse tax consequences for the parties from whom we acquired such Property, or else we will reimburse such parties for all or a portion of the additional taxes they are required to pay as a result of the transaction. Accordingly, these agreements may cause us not to engage in future sale or refinancing transactions affecting such Properties which otherwise would be in the best interests of the Company and our stockholders, or may increase the costs to us of engaging in such transactions.

Uninsured losses could adversely affect our financial condition, and in the future our insurance may not include coverage for acts of terrorism.

We carry a comprehensive blanket policy for general liability, property casualty (including fire, earthquake and flood) and rental loss covering all of the Properties, with specifications and insured limits customarily carried for similar properties. However, even insured losses could result in a serious disruption to our business and delay our receipt of

revenue. Furthermore, there are some types of losses,

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including lease and other contract claims, as well as some types of environmental losses, that generally are not insured or are not economically insurable. If an uninsured loss or a loss in excess of insured limits occurs, we could lose all or a portion of the capital we have invested in a Property, as well as the anticipated future revenues from the Property. If this happens, we, or the applicable Property's partnership, may still remain obligated for any mortgage debt or other financial obligations related to the Property.

The general liability and property casualty insurance policies on our Properties currently include coverage for losses resulting from acts of terrorism, whether foreign or domestic. While we believe that the Properties are adequately insured in accordance with industry standards, the cost of general liability and property casualty insurance policies that include coverage for acts of terrorism has risen significantly subsequent to September 11, 2001. The cost of coverage for acts of terrorism is currently mitigated by the Terrorism Risk Insurance Act ("TRIA"). If TRIA is not extended beyond its current expiration date of December 31, 2014, we may incur higher insurance costs and greater difficulty in obtaining insurance that covers terrorist-related damages. Our tenants may also experience similar difficulties.

The U.S. federal income tax treatment of corporate dividends may make our stock less attractive to investors, thereby lowering our stock price.

The maximum U.S. federal income tax rate for qualified dividends received by individual taxpayers has been reduced generally from 38.6% to 15.0% (currently effective through December 31, 2012). However, dividends payable by REITs are generally not eligible for such treatment. Although this legislation did not have a directly adverse effect on the taxation of REITs or dividends paid by REITs, the more favorable treatment for certain non-REIT dividends could cause individual investors to consider investments in non-REIT corporations as more attractive relative to an investment in a REIT, which could have an adverse impact on the market price of our stock.

## RISKS RELATED TO DEBT AND FINANCIAL MARKETS

A deterioration of the capital and credit markets could adversely affect our ability to access funds and the capital needed to refinance debt or obtain new debt.

We are significantly dependent upon external financing to fund the growth of our business and ensure that we meet our debt servicing requirements. Our access to financing depends on the willingness of lending institutions to grant credit to us and conditions in the capital markets in general. An economic recession may cause extreme volatility and disruption in the capital and credit markets. We rely upon our largest credit facilities as sources of funding for numerous transactions. Our access to these funds is dependent upon the ability of each of the participants to the credit facilities to meet their funding commitments. When markets are volatile, access to capital and credit markets could be disrupted over an extended period of time and many financial institutions may not have the available capital to meet their previous commitments. The failure of one or more significant participants to our credit facilities to meet their funding commitments could have an adverse affect on our financial condition and results of operations. This may make it difficult to obtain the financing we may need for future growth and/or to meet our debt service obligations as they mature. Although we have successfully obtained debt for refinancings of our maturing debt, acquisitions and the construction of new developments in the past, we cannot make any assurances as to whether we will be able to obtain debt in the future, or that the financing options available to us will be on favorable or acceptable terms.



Our indebtedness is substantial and could impair our ability to obtain additional financing.

At December 31, 2010, our total share of consolidated and unconsolidated debt outstanding was approximately \$5,750.6 million, which represented approximately 59.6% of our total market capitalization at that time, and our total share of consolidated and unconsolidated debt maturing in 2011, 2012 and 2013, giving effect to all maturity extensions that are available at our election, was approximately \$348.6 million, \$992.7 million and \$1,042.1 million, respectively. Our significant leverage could have important consequences. For example, it could:

- result in the acceleration of a significant amount of debt for non-compliance with the terms of such debt or, if such debt contains cross-default or cross-acceleration provisions, other debt;
- result in the loss of assets due to foreclosure or sale on unfavorable terms, which could create taxable income without accompanying cash proceeds;
- materially impair our ability to borrow unused amounts under existing financing arrangements or to obtain additional financing or refinancing on favorable terms or at all;
- require us to dedicate a substantial portion of our cash flow to paying principal and interest on our indebtedness, reducing the cash flow available to fund our business, to pay dividends, including those necessary to maintain our REIT qualification, or to use for other purposes;
  - increase our vulnerability to an economic downturn;
  - limit our ability to withstand competitive pressures; or
- reduce our flexibility to respond to changing business and economic conditions.

If any of the foregoing occurs, our business, financial condition, liquidity, results of operations and prospects could be materially and adversely affected, and the trading price of our common stock or other securities could decline significantly.

Rising interest rates could both increase our borrowing costs, thereby adversely affecting our cash flows and the amounts available for distributions to our stockholders, and decrease our stock price, if investors seek higher yields through other investments.

An environment of rising interest rates could lead holders of our securities to seek higher yields through other investments, which could adversely affect the market price of our stock. One of the factors that may influence the price of our stock in public markets is the annual distribution rate we pay as compared with the yields on alternative investments. Numerous other factors, such as governmental regulatory action and tax laws, could have a significant impact on the future market price of our stock. In addition, increases in market interest rates could result in increased borrowing costs for us, which may adversely affect our cash flow and the amounts available for distributions to our stockholders.

As of December 31, 2010, our total share of consolidated and unconsolidated variable rate debt was \$1,682.4 million. Increases in interest rates will increase our cash interest payments on the variable rate debt we have outstanding from time to time. If we do not have sufficient cash flow from operations, we might not be able to make all required payments of principal and interest on our debt, which could result in a default or have a material adverse

effect on our financial condition and results of operations, and which might adversely affect our cash flow and our ability to make distributions to shareholders. These significant debt payment obligations might also require us to use a significant portion of our cash

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flow from operations to make interest and principal payments on our debt rather than for other purposes such as working capital, capital expenditures or distributions on our common equity.

Certain of our credit facilities, the loss of which could have a material, adverse impact on our financial condition and results of operations, are conditioned upon the Operating Partnership continuing to be managed by certain members of its current senior management and by such members of senior management continuing to own a significant direct or indirect equity interest in the Operating Partnership.

Certain of the Operating Partnership's lines of credit are conditioned upon the Operating Partnership continuing to be managed by certain members of its current senior management and by such members of senior management continuing to own a significant direct or indirect equity interest in the Operating Partnership (including both units of limited partnership in the Operating Partnership and shares of our common stock owned by such members of senior management). If the failure of one or more of these conditions resulted in the loss of these credit facilities and we were unable to obtain suitable replacement financing, such loss could have a material, adverse impact on our financial position and results of operations.

Our hedging arrangements might not be successful in limiting our risk exposure, and we might be required to incur expenses in connection with these arrangements or their termination that could harm our results of operations or financial condition.

From time to time, we use interest rate hedging arrangements to manage our exposure to interest rate volatility, but these arrangements might expose us to additional risks, such as requiring that we fund our contractual payment obligations under such arrangements in relatively large amounts or on short notice. Developing an effective interest rate risk strategy is complex, and no strategy can completely insulate us from risks associated with interest rate fluctuations. We cannot assure you that our hedging activities will have a positive impact on our results of operations or financial condition. We might be subject to additional costs, such as transaction fees or breakage costs, if we terminate these arrangements. In addition, although our interest rate risk management policy establishes minimum credit ratings for counterparties, this does not eliminate the risk that a counterparty might fail to honor its obligations, particularly given current market conditions.

The covenants in our credit facilities might adversely affect us.

Our credit facilities require us to satisfy certain affirmative and negative covenants and to meet numerous financial tests. The financial covenants under the credit facilities require, among other things, that our Debt to Gross Asset Value ratio, as defined in the agreements to our credit facilities, be less than 65%, that our Interest Coverage ratio, as defined, be greater than 1.75, and that our Debt Service Coverage ratio, as defined, be greater than 1.50. Compliance with each of these ratios is dependent upon our financial performance. The Debt to Gross Asset Value ratio is based, in part, on applying a capitalization rate to our earnings before income taxes, depreciation and amortization ("EBITDA"), as defined in the agreements to our credit facilities. Based on this calculation method, decreases in EBITDA would result in an increased Debt to Gross Asset Value ratio, although overall debt levels remain constant. As of December 31, 2010, the Debt to Gross Asset Value ratio was 52.7% and we were in compliance with all other covenants related to our credit facilities.





## RISKS RELATED TO GEOGRAPHIC CONCENTRATIONS

Since our Properties are located principally in the Southeastern and Midwestern United States, our financial position, results of operations and funds available for distribution to shareholders are subject generally to economic conditions in these regions.

Our Properties are located principally in the southeastern and midwestern United States. Our Properties located in the southeastern United States accounted for approximately 47.5% of our total revenues from all Properties for the year ended December 31, 2010 and currently include 43 malls, 20 associated centers, ten community centers and 18 office buildings. Our Properties located in the midwestern United States accounted for approximately 33.2% of our total revenues from all Properties for the year ended December 31, 2010 and currently include 26 malls and four associated centers. Our results of operations and funds available for distribution to shareholders therefore will be subject generally to economic conditions in the southeastern and midwestern United States. While we already have Properties located in six states across the southwestern, northeastern and western regions, we will continue to look for opportunities to geographically diversify our portfolio in order to minimize dependency on any particular region; however, the expansion of the portfolio through both acquisitions and developments is contingent on many factors including consumer demand, competition and economic conditions.

Our financial position, results of operations and funds available for distribution to shareholders could be adversely affected by any economic downturn affecting the operating results at our Properties in the St. Louis, MO, Nashville, TN, Kansas City (Overland Park), KS, Madison, WI, and Chattanooga, TN metropolitan areas, which are our five largest markets.

Our Properties located in the St. Louis, MO, Nashville, TN, Kansas City (Overland Park), KS, Madison, WI, and Chattanooga, TN metropolitan areas accounted for approximately 9.7%, 4.0%, 3.1%, 2.9% and 2.7%, respectively, of our total revenues for the year ended December 31, 2010. No other market accounted for more than 2.6% of our total revenues for the year ended December 31, 2010. Our financial position and results of operations will therefore be affected by the results experienced at Properties located in these metropolitan areas.

## RISKS RELATED TO INTERNATIONAL INVESTMENTS

Ownership interests in investments or joint ventures outside the United States present numerous risks that differ from those of our domestic investments.

International development and ownership activities yield additional risks that differ from those related to our domestic properties and operations. These additional risks include, but are not limited to:

- Impact of adverse changes in exchange rates of foreign currencies;
- Difficulties in the repatriation of cash and earnings;
- Differences in managerial styles and customs;
- Changes in applicable laws and regulations in the United States that affect foreign operations;
- Changes in foreign political, legal and economic environments; and

- Differences in lending practices.

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Our international activities are currently limited in their scope. We have an investment in a mall operating and real estate development company in China that is immaterial to our consolidated financial position. However, should our investments in international joint ventures or investments grow, these additional risks could increase in significance and adversely affect our results of operations.

## RISKS RELATED TO DIVIDENDS

We may change the dividend policy for our common stock in the future.

We issued 4,754,355 shares of common stock for a portion of our dividend payment for the first quarter of 2009. All subsequent dividend payments through the date of issuance of this report have been paid in cash. Depending upon our liquidity needs, we reserve the right to pay any or all of a dividend in a combination of cash and shares of common stock, in accordance with applicable revenue procedures of the IRS. In the event that we pay a portion of our dividends in shares of our common stock pursuant to such procedures, taxable U.S. stockholders would be required to pay tax on the entire amount of the dividend, including the portion paid in shares of common stock, in which case such stockholders may have to use cash from other sources to pay such tax. If a U.S. stockholder sells the common stock it receives as a dividend in order to pay its taxes, the sales proceeds may be less than the amount included in income with respect to the dividend, depending on the market price of our common stock at the time of the sale. Furthermore, with respect to non-U.S. stockholders, we may be required to withhold federal tax with respect to our dividends, including dividends that are paid in common stock. In addition, if a significant number of our stockholders sell shares of our common stock in order to pay taxes owed on dividends, such sales would put downward pressure on the market price of our common stock.

The decision to declare and pay dividends on our common stock in the future, as well as the timing, amount and composition of any such future dividends, will be at the sole discretion of our Board of Directors and will depend on our earnings, taxable income, funds from operations, liquidity, financial condition, capital requirements, contractual prohibitions or other limitations under our indebtedness and preferred stock, the annual distribution requirements under the REIT provisions of the Internal Revenue Code of 1986, as amended (the "Internal Revenue Code"), Delaware law and such other factors as our Board of Directors deems relevant. Any dividends payable will be determined by our Board of Directors based upon the circumstances at the time of declaration. Any change in our dividend policy could have a material adverse effect on the market price of our common stock.

Since we conduct substantially all of our operations through our Operating Partnership, our ability to pay dividends on our common and preferred stock depends on the distributions we receive from our Operating Partnership.

Because we conduct substantially all of our operations through our Operating Partnership, our ability to pay dividends on our common and preferred stock will depend almost entirely on payments and distributions we receive on our interests in our Operating Partnership. Additionally, the terms of some of the debt to which our Operating Partnership is a party may limit its ability to make some types of payments and other distributions to us. This in turn may limit our ability to make some types of payments, including payment of dividends to our stockholders, unless we meet certain financial tests. As a result, if our Operating Partnership fails to pay distributions to us, we generally will not be able to pay dividends to our stockholders for one or more dividend periods.



## RISKS RELATED TO FEDERAL INCOME TAX LAWS

We conduct a portion of our business through taxable REIT subsidiaries, which are subject to certain tax risks.

We have established several taxable REIT subsidiaries including our Management Company. Despite our qualification as a REIT, our taxable REIT subsidiaries must pay income tax on their taxable income. In addition, we must comply with various tests to continue to qualify as a REIT for federal income tax purposes, and our income from and investments in our taxable REIT subsidiaries generally do not constitute permissible income and investments for these tests. While we will attempt to ensure that our dealings with our taxable REIT subsidiaries will not adversely affect our REIT qualification, we cannot provide assurance that we will successfully achieve that result. Furthermore, we may be subject to a 100% penalty tax, or our taxable REIT subsidiaries may be denied deductions, to the extent our dealings with our taxable REIT subsidiaries are not deemed to be arm's length in nature.

If we fail to qualify as a REIT in any taxable year, our funds available for distribution to stockholders will be reduced.

We intend to continue to operate so as to qualify as a REIT under the Internal Revenue Code. Although we believe that we are organized and operate in such a manner, no assurance can be given that we currently qualify and in the future will continue to qualify as a REIT. Such qualification involves the application of highly technical and complex Internal Revenue Code provisions for which there are only limited judicial or administrative interpretations. The determination of various factual matters and circumstances not entirely within our control may affect our ability to qualify. In addition, no assurance can be given that legislation, new regulations, administrative interpretations or court decisions will not significantly change the tax laws with respect to qualification or its corresponding federal income tax consequences. Any such change could have a retroactive effect.

If in any taxable year we were to fail to qualify as a REIT, we would not be allowed a deduction for distributions to stockholders in computing our taxable income and we would be subject to federal income tax on our taxable income at regular corporate rates. Unless entitled to relief under certain statutory provisions, we also would be disqualified from treatment as a REIT for the four taxable years following the year during which qualification was lost. As a result, the funds available for distribution to our stockholders would be reduced for each of the years involved. This would likely have a significant adverse effect on the value of our securities and our ability to raise additional capital. In addition, we would no longer be required to make distributions to our stockholders. We currently intend to operate in a manner designed to qualify as a REIT. However, it is possible that future economic, market, legal, tax or other considerations may cause our Board of Directors, with the consent of a majority of our stockholders, to revoke the REIT election.

Any issuance or transfer of our capital stock to any person in excess of the applicable limits on ownership necessary to maintain our status as a REIT would be deemed void ab initio, and those shares would automatically be transferred to a non-affiliated charitable trust.

To maintain our status as a REIT under the Internal Revenue Code, not more than 50% in value of our outstanding capital stock may be owned, directly or indirectly, by five or fewer individuals (as defined in the Internal Revenue Code to include certain entities) at any time during the last half of a taxable year. Our certificate of incorporation generally prohibits ownership of more than 6% of the outstanding shares of our capital stock by any single stockholder determined by vote, value or number of



shares (other than Charles Lebovitz, Executive Chairman of our board of directors and our former Chief Executive Officer, David Jacobs, Richard Jacobs and their affiliates under the Internal Revenue Code's attribution rules). The affirmative vote of 66 2/3% of our outstanding voting stock is required to amend this provision.

Our board of directors may, subject to certain conditions, waive the applicable ownership limit upon receipt of a ruling from the IRS or an opinion of counsel to the effect that such ownership will not jeopardize our status as a REIT. Absent any such waiver, however, any issuance or transfer of our capital stock to any person in excess of the applicable ownership limit or any issuance or transfer of shares of such stock which would cause us to be beneficially owned by fewer than 100 persons, will be null and void and the intended transferee will acquire no rights to the stock. Instead, such issuance or transfer with respect to that number of shares that would be owned by the transferee in excess of the ownership limit provision would be deemed void ab initio and those shares would automatically be transferred to a trust for the exclusive benefit of a charitable beneficiary to be designated by us, with a trustee designated by us, but who would not be affiliated with us or with the prohibited owner. Any acquisition of our capital stock and continued holding or ownership of our capital stock constitutes, under our certificate of incorporation, a continuous representation of compliance with the applicable ownership limit.

In order to maintain our status as a REIT and avoid the imposition of certain additional taxes under the Internal Revenue Code, we must satisfy minimum requirements for distributions to shareholders, which may limit the amount of cash we might otherwise have been able to retain for use in growing our business.

To maintain our status as a REIT under the Internal Revenue Code, we generally will be required each year to distribute to our stockholders at least 90% of our taxable income after certain adjustments. However, to the extent that we do not distribute all of our net capital gains or distribute at least 90% but less than 100% of our REIT taxable income, as adjusted, we will be subject to tax on the undistributed amount at regular corporate tax rates, as the case may be. In addition, we will be subject to a 4% nondeductible excise tax on the amount, if any, by which certain distributions paid by us during each calendar year are less than the sum of 85% of our ordinary income for such calendar year, 95% of our capital gain net income for the calendar year and any amount of such income that was not distributed in prior years. In the case of property acquisitions, including our initial formation, where individual Properties are contributed to our Operating Partnership for Operating Partnership units, we have assumed the tax basis and depreciation schedules of the entities' contributing Properties. The relatively low tax basis of such contributed Properties may have the effect of increasing the cash amounts we are required to distribute as dividends, thereby potentially limiting the amount of cash we might otherwise have been able to retain for use in growing our business. This low tax basis may also have the effect of reducing or eliminating the portion of distributions made by us that are treated as a non-taxable return of capital.

Complying with REIT requirements might cause us to forego otherwise attractive opportunities.

In order to qualify as a REIT for U.S. federal income tax purposes, we must satisfy tests concerning, among other things, our sources of income, the nature of our assets, the amounts we distribute to our shareholders and the ownership of our stock. We may also be required to make distributions to our shareholders at disadvantageous times or when we do not have funds readily available for distribution. Thus, compliance with REIT requirements may cause us to forego opportunities we would otherwise pursue. In addition, the REIT provisions of the Internal Revenue Code impose a 100% tax on income from "prohibited transactions." "Prohibited transactions" generally include sales of assets that constitute inventory or other property held for sale in the ordinary course of business, other than foreclosure property. This 100% tax could impact our desire to sell assets and other





investments at otherwise opportune times if we believe such sales could be considered “prohibited transactions.”

Our holding company structure makes us dependent on distributions from the Operating Partnership.

Because we conduct our operations through the Operating Partnership, our ability to service our debt obligations and pay dividends to our shareholders is strictly dependent upon the earnings and cash flows of the Operating Partnership and the ability of the Operating Partnership to make distributions to us. Under the Delaware Revised Uniform Limited Partnership Act, the Operating Partnership is prohibited from making any distribution to us to the extent that at the time of the distribution, after giving effect to the distribution, all liabilities of the Operating Partnership (other than some non-recourse liabilities and some liabilities to the partners) exceed the fair value of the assets of the Operating Partnership. Additionally, the terms of some of the debt to which our Operating Partnership is a party may limit its ability to make some types of payments and other distributions to us. This in turn may limit our ability to make some types of payments, including payment of dividends on our outstanding capital stock, unless we meet certain financial tests or such payments or dividends are required to maintain our qualification as a REIT or to avoid the imposition of any federal income or excise tax on undistributed income. Any inability to make cash distributions from the Operating Partnership could jeopardize our ability to pay dividends on our outstanding shares of capital stock and to maintain qualification as a REIT.

#### RISKS RELATED TO OUR ORGANIZATIONAL STRUCTURE

The ownership limit described above, as well as certain provisions in our amended and restated certificate of incorporation and bylaws, and certain provisions of Delaware law, may hinder any attempt to acquire us.

There are certain provisions of Delaware law, our amended and restated certificate of incorporation, our bylaws, and other agreements to which we are a party that may have the effect of delaying, deferring or preventing a third party from making an acquisition proposal for us. These provisions may also inhibit a change in control that some, or a majority, of our stockholders might believe to be in their best interest or that could give our stockholders the opportunity to realize a premium over the then-prevailing market prices for their shares. These provisions and agreements are summarized as follows:

- **The Ownership Limit** – As described above, to maintain our status as a REIT under the Internal Revenue Code, not more than 50% in value of our outstanding capital stock may be owned, directly or indirectly, by five or fewer individuals (as defined in the Internal Revenue Code to include certain entities) during the last half of a taxable year. Our certificate of incorporation generally prohibits ownership of more than 6% of the outstanding shares of our capital stock by any single stockholder determined by value (other than Charles Lebovitz, David Jacobs, Richard Jacobs and their affiliates under the Internal Revenue Code’s attribution rules). In addition to preserving our status as a REIT, the ownership limit may have the effect of precluding an acquisition of control of us without the approval of our board of directors.
- **Classified Board of Directors; Removal for Cause** – Our certificate of incorporation provides for a board of directors divided into three classes, with one class elected each year to serve for a three-year term. As a result, at least two annual meetings of stockholders may be

required for the stockholders to change a majority of our board of directors. In addition, our stockholders can only remove directors for cause and only by a vote of 75% of the outstanding voting stock. Collectively, these provisions make it more difficult to change the composition of our board of directors and may have the effect of encouraging persons considering unsolicited tender offers or other unilateral takeover proposals to negotiate with our board of directors rather than pursue non-negotiated takeover attempts.

- **Advance Notice Requirements for Stockholder Proposals** – Our bylaws establish advance notice procedures with regard to stockholder proposals relating to the nomination of candidates for election as directors or new business to be brought before meetings of our stockholders. These procedures generally require advance written notice of any such proposals, containing prescribed information, to be given to our Secretary at our principal executive offices not less than 60 days or no more than 90 days prior to the meeting.
- **Vote Required to Amend Bylaws** – A vote of 66 2/3% of our outstanding voting stock (in addition to any separate approval that may be required by the holders of any particular class of stock) is necessary for stockholders to amend our bylaws.
- **Delaware Anti-Takeover Statute** – We are a Delaware corporation and are subject to Section 203 of the Delaware General Corporation Law. In general, Section 203 prevents an “interested stockholder” (defined generally as a person owning 15% or more of a company’s outstanding voting stock) from engaging in a “business combination” (as defined in Section 203) with us for three years following the date that person becomes an interested stockholder unless:

(a) before that person became an interested holder, our board of directors approved the transaction in which the interested holder became an interested stockholder or approved the business combination;

(b) upon completion of the transaction that resulted in the interested stockholder becoming an interested stockholder, the interested stockholder owns 85% of our voting stock outstanding at the time the transaction commenced (excluding stock held by directors who are also officers and by employee stock plans that do not provide employees with the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer); or

(c) following the transaction in which that person became an interested stockholder, the business combination is approved by our board of directors and authorized at a meeting of stockholders by the affirmative vote of the holders of at least two-thirds of our outstanding voting stock not owned by the interested stockholder.

Under Section 203, these restrictions also do not apply to certain business combinations proposed by an interested stockholder following the announcement or notification of certain extraordinary transactions involving us and a person who was not an interested stockholder during the previous three years or who became an interested stockholder with the approval of a majority of our directors, if that extraordinary transaction is approved or not opposed by a majority of the directors who were directors before any person became an interested stockholder in the previous three years or who were recommended for election or elected to succeed such directors by a majority of directors then in office.

Certain ownership interests held by members of our senior management may tend to create conflicts of interest between such individuals and the interests of the Company and our Operating Partnership.

- **Tax Consequences of the Sale or Refinancing of Certain Properties** – Since certain of our Properties had unrealized gain attributable to the difference between the fair market value and adjusted tax basis in such Properties immediately prior to their contribution to the Operating Partnership, a taxable sale of any such Properties, or a significant reduction in the debt encumbering such Properties, could cause adverse tax consequences to the members of our senior management who owned interests in our predecessor entities. As a result, members of our senior management might not favor a sale of a Property or a significant reduction in debt even though such a sale or reduction could be beneficial to us and the Operating Partnership. Our bylaws provide that any decision relating to the potential sale of any Property that would result in a disproportionately higher taxable income for members of our senior management than for us and our stockholders, or that would result in a significant reduction in such Property’s debt, must be made by a majority of the independent directors of the board of directors. The Operating Partnership is required, in the case of such a sale, to distribute to its partners, at a minimum, all of the net cash proceeds from such sale up to an amount reasonably believed necessary to enable members of our senior management to pay any income tax liability arising from such sale.
- **Interests in Other Entities; Policies of the Board of Directors** – Certain entities owned in whole or in part by members of our senior management, including the construction company that built or renovated most of our Properties, may continue to perform services for, or transact business with, us and the Operating Partnership. Furthermore, certain Property tenants are affiliated with members of our senior management. Accordingly, although our bylaws provide that any contract or transaction between us or the Operating Partnership and one or more of our directors or officers, or between us or the Operating Partnership and any other entity in which one or more of our directors or officers are directors or officers or have a financial interest, must be approved by our disinterested directors or stockholders after the material facts of the relationship or interest of the contract or transaction are disclosed or are known to them, these affiliations could nevertheless create conflicts between the interests of these members of senior management and the interests of the Company, our shareholders and the Operating Partnership in relation to any transactions between us and any of these entities.

#### USE OF PROCEEDS

We will not receive any proceeds from the sale by the selling stockholders of any of the shares of common stock covered by this Prospectus Supplement.

#### SELLING STOCKHOLDERS

We are registering all 1,355,671 shares covered by this Prospectus Supplement on behalf of the selling stockholders named in the table below and their respective pledgees, donees, transferees or other successors in interest. We are registering the shares in order to permit the selling stockholders to publicly offer these shares for resale from time to time. The selling stockholders may sell all, some or none of the shares covered by this Prospectus Supplement. See “Plan of Distribution” below. None of the selling stockholders has had any material relationship with us within the past three years other than as a result of the acquisition and ownership of these shares or other securities of ours or of our affiliates.



The shares of common stock listed in the table below and covered by this Prospectus Supplement, other than the 125,100 shares being registered on behalf of the Frankel Midland Limited Partnership, constitute 1,230,571 of the 9,807,013 shares of common stock issued by the Company on December 20, 2010 in connection with exchange notices received from seven trusts for the benefit of members of the family of David H. Jacobs pursuant to the terms of the Operating Partnership's Fourth Amended and Restated Agreement of Limited Partnership. The trusts holding the remaining 8,576,442 shares issued in this exchange have also notified the Company that they intend to proceed with an orderly liquidation of such shares as appropriate, based on pricing and availability, either through exercise of their registration rights under a registration rights agreement between us and such holders dated January 31, 2001 or through other available means exempt from the registration requirements of the Securities Act.

The table below, which is based on information that we received from the selling stockholders and/or their counsel, lists the names of the selling stockholders, the aggregate number of shares of common stock beneficially owned by the selling stockholder as of March 30, 2011, and the aggregate number of shares of common stock that the selling stockholders may offer and sell pursuant to this Prospectus Supplement. Because the selling stockholders may offer all or a portion of the shares of common stock offered by this Prospectus Supplement at any time and from time to time after the date hereof, no estimate can be made of the number of shares that the selling stockholders may retain upon completion of this offering. However, assuming all of the shares offered by this Prospectus Supplement are sold by the selling stockholders then, unless otherwise noted below, after completion of this offering, none of the selling stockholders will own more than one percent of the shares of common stock outstanding.

Name of Selling Stockholder	Number of Shares Beneficially Owned (excluding shares offered hereby)	Number of Shares Offered Hereby
Marie D. Bell Revocable Trust dated December 20, 1995	None	846,387
John W. Jacobs, Trustee Under Declaration of Trust dated September 22, 1997	None	384,184
Frankel Midland Limited Partnership	None	125,100
Total Shares Offered		1,355,671

#### PLAN OF DISTRIBUTION

We issued the 1,355,671 shares of common stock covered by this Prospectus Supplement to the selling stockholders in exchange for special common units of limited partnership interest in our Operating Partnership, pursuant to the terms of the Operating Partnership's Fourth Amended and Restated Agreement of Limited Partnership. We are registering such shares on behalf of the selling stockholders pursuant to registration rights agreements dated January 31, 2001 between us and each of the selling stockholders. We have agreed to indemnify the selling stockholders and each person who participates in this offering as an underwriter against certain civil liabilities, including certain liabilities under the Securities Act.

The shares may be offered and sold by the selling stockholders, or by purchasers, transferees, donees, pledgees or other successors in interest, directly or through brokers, dealers, agents or underwriters who may receive compensation in the form of discounts, commissions or similar selling expenses paid by the selling stockholders or by a purchaser of the shares on whose behalf such broker-dealer may act as agent. Sales and transfers of the shares may be effected from time to time in one or more transactions, in private or public transactions, on the NYSE, in the over-the-counter market, in negotiated transactions or otherwise, at a fixed price or prices that may be changed, at market prices prevailing at the time of sale, at negotiated prices, without consideration or by any other legally available means. Any or all of the shares may be sold from time to time by means of:

- (a) a block trade, in which a broker or dealer attempts to sell the shares as agent but may position and resell a portion of the shares as principal to facilitate the transaction;
- (b) purchases by a broker or dealer as principal and the subsequent sale by such broker or dealer for its account pursuant to this Prospectus;
- (c) ordinary brokerage transactions (which may include long or short sales) and transactions in which the broker solicits purchasers;
- (d) the writing (sale) of put or call options on the shares;
- (e) the pledging of the shares as collateral to secure loans, credit or other financing arrangements and subsequent foreclosure, the disposition of the shares by the Lender thereunder; and
- (f) any other legally available means.

To the extent required with respect to a particular offer or sale of the shares, we will file another prospectus supplement pursuant to Section 424(b)(3) of the Securities Act of 1933, as amended, which will supplement the accompanying Prospectus, to disclose:

- (a) the number of shares to be sold;
- (b) the purchase price;
- (c) the name of any broker, dealer or agent effecting the sale or transfer and the amount of any applicable discounts, commissions or similar selling expenses; and
- (d) any other relevant information.

The selling stockholders may transfer the shares by means of gifts, donations and contributions. Subject to certain limitations under rules promulgated under the Securities Act, this Prospectus may be used by the recipients of such gifts, donations and contributions to offer and sell the shares received by them, directly or through brokers, dealers or agents and in private or public transactions.

In connection with distributions of the shares or otherwise, the selling stockholders may enter into hedging transactions with brokers, dealers or other financial institutions. In connection with such transactions, brokers, dealers or other financial institutions may engage in short sales of our common stock in the course of hedging the positions they assume with the selling stockholders. To the extent permitted by applicable law, the selling stockholders also may sell the shares short and redeliver the shares to close out such short positions.

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The selling stockholders and any broker-dealers who participate in the distribution of the shares may be deemed to be “underwriters” within the meaning of Section 2(11) of the Securities Act and any discounts, commissions or similar selling expenses they receive and any profit on the resale of the shares purchased by them may be deemed to be underwriting commissions or discounts under the Securities Act. As a result, we have informed the selling stockholders that Regulation M, promulgated under the Exchange Act, may apply to sales by the selling stockholders in the market. The selling stockholders may agree to indemnify any broker, dealer or agent that participates in transactions involving the sale of the shares against certain liabilities, including liabilities arising under the Securities Act.

The aggregate net proceeds to the selling stockholders from the sale of the shares will be the purchase price of such shares less any discounts, concessions or commissions. We will not receive any proceeds from the sale of any shares by the selling stockholders. We will pay all expenses reasonably related to the registration of the shares for sale by the selling stockholders in connection with this offering, but we will not pay any expenses incurred by the selling stockholders in connection with brokerage fees or underwriting commissions, fees and expenses of attorneys, accountants or other advisors, or income or transfer taxes.

The selling stockholders are acting independently of us in making decisions with respect to the timing, price, manner and size of each sale. We have not engaged any broker, dealer or agent in connection with the sale of the shares, and there is no assurance that the selling stockholders will sell any or all of the shares. In connection with the offer and sale of the shares, we have agreed to make available to the selling stockholders copies of this Prospectus Supplement and the accompanying Prospectus, as well as any other applicable prospectus supplement, and have informed the selling stockholders of the need to deliver copies of this Prospectus Supplement and the accompanying Prospectus, as well as any other applicable prospectus supplement, to purchasers prior to any sale to them.

The shares covered by this Prospectus Supplement and the accompanying Prospectus may become qualified for sale under Section 4(1) of the Securities Act or Rule 144 promulgated thereunder, whereupon they may be sold pursuant to such provisions rather than pursuant to this Prospectus Supplement and the accompanying Prospectus.

#### CERTAIN U.S. FEDERAL INCOME TAX CONSIDERATIONS

As described more fully in the accompanying Prospectus, we have elected to be taxed as a REIT under Sections 856 through 860 of the Internal Revenue Code and applicable Treasury Regulations, which set forth the requirements for qualification as a REIT. We believe that, commencing with our taxable year ended December 31, 1993, we have been organized and have operated, and are operating, in a manner qualifying us for taxation as a REIT under the Internal Revenue Code. We intend to continue to operate in such a manner, but no assurances can be given that we will operate in a manner necessary to qualify or remain qualified.

In connection with this offering, Husch Blackwell LLP (f/k/a Husch Blackwell Sanders LLP) rendered an opinion to us that (i) we have been organized and have operated in conformity with the requirements for qualification and taxation as a REIT under the Internal Revenue Code for each of our taxable years ended December 31, 2005 through December 31, 2010, and (ii) if we continue to be organized and operated after December 31, 2010 in the same manner, we will continue to qualify as a REIT. This opinion is conditioned upon certain assumptions and representations made by us to Husch Blackwell LLP as to factual matters relating to our organization, operation and income, and upon certain representations made by our general counsel to Husch Blackwell LLP as to factual and real estate leasing legal matters relating to our income. Husch Blackwell LLP’s opinion also is based upon assumptions and



our representations as to future conduct, income and assets. In addition, the opinion is based upon our factual representations concerning our business and properties as described in the reports filed by us under the federal securities laws. The opinion of Husch Blackwell LLP is limited to this discussion under the heading "Certain U.S. Federal Income Tax Considerations" and to the discussion under such heading in the accompanying Prospectus, and it is filed as an exhibit to the registration statement of which this Prospectus Supplement and the accompanying Prospectus constitute parts.

Moreover, our qualification and taxation as a REIT depend on our ability to meet, through actual annual operating results, certain distribution levels, a specified diversity of stock ownership, and the various other qualification tests imposed under the Internal Revenue Code as discussed further in the accompanying Prospectus. Our annual operating results will not be reviewed by Husch Blackwell LLP. Accordingly, the actual results of our operations for any particular taxable year may not satisfy these requirements. Further, the anticipated income tax treatment described in this Prospectus Supplement and in the accompanying Prospectus may be changed, perhaps retroactively, by legislative, administrative or judicial action at any time.

The following discussion supplements and should be read in conjunction with the general description of material federal income tax considerations contained in the accompanying Prospectus.

#### Earnings and Profits

For purposes of determining whether distributions to our stockholders are out of current or accumulated earnings and profits, our earnings and profits are allocated first to our outstanding preferred stock and then to our outstanding common stock.

#### Back-Up Withholding

We will report to our stockholders and to the Internal Revenue Service the amount of distributions paid during each calendar year, and the amount of tax withheld, if any, with respect to the paid distributions. Under the back-up withholding rules, a stockholder may be subject to back-up withholding at applicable rates on distributions paid unless the stockholder is a corporation or is otherwise specifically exempt from back-up withholding and, when required, demonstrates this fact or provides a taxpayer identification number, certifies as to no loss of exemption from back-up withholding, and complies with the applicable requirements of the back-up withholding rules. A stockholder that does not provide us with his correct taxpayer identification number may also be subject to penalties imposed by the Internal Revenue Service. Any amount paid as back-up withholding will be credited against the stockholder's income tax liability. Currently, the back-up withholding rate is 28%. The rate is scheduled to increase to 31% for taxable years 2013 and thereafter. In addition, we may be required to withhold a portion of any capital gain distributions made to any stockholders who fail to certify their non-foreign status to us.

#### Recent Tax Law Changes

Distributions in Stock. In the accompanying Prospectus, we noted we may declare taxable dividends payable in cash or stock at the election of each stockholder. For our 2008 and 2009 taxable years, IRS Revenue Procedure 2009-15 provided that a distribution of our stock pursuant to such an election would be considered a taxable distribution of property in an amount equal to the amount of cash that could have been received if, among other things, 10% or more of the distribution was payable in cash. IRS Revenue Procedure 2010-12 extends this guidance to our 2010 and 2011 taxable years.



**Mortgage Loan Modifications.** IRS Revenue Procedure 2011-16 sets forth safe harbors for the treatment of modified mortgage loans as real estate assets. The IRS will not challenge a REIT's treatment of a mortgage loan modification if (i) the modification was occasioned by default or (ii) the REIT reasonably believes that there is a significant risk of default of the pre-modified loan and the modified loan presents a substantially reduced risk of default. Any modification of a mortgage loan which meets these tests will not be treated as a prohibited transaction.

**Recent Legislation.** Recently enacted health care legislation, effective for taxable years beginning after December 31, 2012, imposes a new 3.8% Medicare tax on certain U.S. holders who are individuals, estates or trusts and whose income exceeds certain thresholds. This new tax will apply to dividends on and gain from the disposition of our shares.

In addition, recently enacted legislation regarding foreign account tax compliance, effective for payments made after December 31, 2012, imposes a withholding tax of 30% on dividends and gross proceeds from the disposition of our stock paid to certain foreign financial institutions, investment funds and other non-U.S. persons unless various information reporting and certain other requirements are satisfied. This legislation also imposes new U.S. return disclosure obligations (and related penalties for failure to disclose) on persons required to file U.S. federal income tax returns that hold certain specified foreign financial assets (which include financial accounts in foreign financial institutions).

Recently enacted legislation has also temporarily shortened the recognition period during which the disposition of any asset we acquire from a "C" corporation in a transaction in which the basis of the asset in our hands is determined by reference to the basis of the asset (or any other property) in the hands of the C corporation will cause gain to be taxed at the highest regular corporate rate to the extent of any built-in, unrealized capital gain at the time of the acquisition. For the 2011 taxable year, the recognition period is shortened from 10 years to 5 years if the fifth taxable year of the recognition period preceded such taxable year.

Prospective investors are encouraged to consult their own tax advisors regarding the possible implications of this recently enacted legislation on their investment in our stock.

**Possible Sunset of Reduced Tax Rate Provisions.** Because they were adopted with sunset provisions, unless Congress passes additional legislation, several of the U.S. federal income tax rates described in the accompanying Prospectus under the caption "Taxation of U.S. Stockholders" including, in the case of individuals, the 15% maximum tax rate for long-term capital gains and qualified dividend income, will revert to prior higher rates for taxable years beginning after December 31, 2012. For such years, the capital gains tax rate is scheduled to increase to 20% and the rate applicable to dividends is scheduled to increase to the tax rate then applicable to ordinary income.

Please refer to the accompanying Prospectus for a discussion of other aspects of our qualification and taxation as a REIT and the tax consequences to you of an investment in the common stock.

## LEGAL MATTERS

The validity of the issuance of the shares of common stock covered by this Prospectus Supplement will be passed upon for us by Husch Blackwell LLP, Chattanooga, Tennessee. Certain members of Husch Blackwell LLP serve as our assistant secretaries, and certain attorneys who are shareholders and/or employees of Husch Blackwell LLP may be deemed to beneficially own (directly or indirectly) an aggregate of 30,057 shares of the Company's Common Stock and 6,450 currently outstanding depositary shares, each representing 1/10th of a share of our Series D preferred stock.



## EXPERTS

The consolidated financial statements, and the related consolidated financial statement schedules, incorporated in this Prospectus Supplement and the accompanying Prospectus by reference from the Company's Annual Report on Form 10-K for the year ended December 31, 2010, as amended by Amendment No. 1 thereto on Form 10-K/A filed on March 3, 2011, and the effectiveness of CBL & Associates Properties, Inc.'s internal control over financial reporting have been audited by Deloitte & Touche LLP, an independent registered public accounting firm, as stated in their report (which report expresses an unqualified opinion) which is incorporated herein by reference. Such consolidated financial statements and consolidated financial statement schedules have been so incorporated in reliance upon the report of such firm given upon their authority as experts in accounting and auditing.

## INDEMNIFICATION

The Company is a Delaware corporation. In its Certificate of Incorporation, the Company has adopted the provisions of Section 102(b)(7) of the Delaware General Corporation Law (the "Delaware Law"), which enables a corporation in its original certificate of incorporation or an amendment thereto to eliminate or limit the personal liability of a director for monetary damages for breach of the director's fiduciary duty, except (i) for any breach of the director's duty of loyalty to the corporation or its shareholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) pursuant to Section 174 of the Delaware Law (providing for liability of directors for unlawful payment of dividends or unlawful stock purchases or redemptions) or (iv) for any transaction from which a director derived an improper personal benefit.

The Company has also adopted indemnification provisions pursuant to Section 145 of the Delaware Law, which provides that a corporation may indemnify any persons, including officers and directors, who are, or are threatened to be made, parties to any threatened, pending or completed legal action, suit or proceedings, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation), by reason of the fact that such person was an officer, director, employee or agent of the corporation, or is or was serving at the request of such corporation as a director, officer, employee or agent of another corporation or enterprise. The indemnity may include expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding, provided such officer, director, employee or agent acted in good faith and in a manner he reasonably believed to be in or not opposed to the corporation's best interests and, with respect to criminal proceedings, had no reasonable cause to believe that his conduct was unlawful. A Delaware corporation may indemnify officers or directors in an action by or in the right of the corporation under the same conditions, except that no indemnification is permitted without judicial approval if the officer or director is adjudged to be liable to the corporation. Where an officer or director is successful on the merits or otherwise in the defense of any action referred to above, the corporation must indemnify him against expenses (including attorneys' fees) that such officer or director actually and reasonably incurred.

The Company has entered into indemnification agreements with each of the Company's officers and directors. The indemnification agreements require, among other things, that the Company indemnify its officers and directors to the fullest extent permitted by law, and advance to the officers and directors all related expenses, subject to reimbursement if it is subsequently determined that indemnification is not permitted. The Company is also required to indemnify and advance all expenses incurred by officers and directors seeking to enforce their rights under the indemnification agreements, and to cover officers and

directors under the Company's directors' and officers' liability insurance, provided that such insurance is commercially available at reasonable expense. Although the indemnification agreements offer substantially the same scope of coverage afforded by provisions in the Certificate of Incorporation and the Bylaws, they provide greater assurance to directors and officers that indemnification will be available, because as a contract, they cannot be modified unilaterally in the future by the Board of Directors or by the shareholders to eliminate the rights they provide.

Insofar as indemnification for liabilities arising under the Securities Act of 1933, as amended, may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been informed that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable.

#### HOW TO OBTAIN MORE INFORMATION

We are subject to the informational requirements of the Exchange Act and, in accordance therewith, we file annual, quarterly and current reports, proxy statements and other information with the SEC. You may read and copy any reports, statements or other information we file with the SEC at the SEC's Public Reference Room located at 100 F Street, N.E., Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information on the operation of the Public Reference Room. The SEC maintains an Internet website (<http://www.sec.gov>) that contains reports, proxy statements and information statements, and other information regarding issuers that file electronically through the SEC's Electronic Data Gathering, Analysis and Retrieval (EDGAR) system. Our SEC filings are also available on our Internet website ([cblproperties.com](http://cblproperties.com)). The information contained on or connected to our website is not, and you must not consider the information to be, a part of this Prospectus Supplement or the accompanying Prospectus. Our securities are listed on the NYSE and all such material filed by us with the NYSE also can be inspected at the offices of the New York Stock Exchange, 20 Broad Street, New York, New York 10005.

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PROSPECTUS

CBL & Associates Properties, Inc.

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PREFERRED STOCK, COMMON STOCK, DEPOSITARY SHARES,  
WARRANTS, DEBT SECURITIES, RIGHTS, UNITS

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CBL & Associates Properties, Inc. may from time to time offer and sell, in one or more offerings and in one or more series:

- shares of our preferred stock, par value \$.01 per share;
- shares of our common stock, par value \$.01 per share;
- fractional interests in shares of our preferred stock represented by depositary shares;
  - senior and/or subordinated debt securities;
- warrants for the purchase of shares of our common stock, shares of our preferred stock (or depositary shares representing a fractional interest therein) and/or debt securities;
- rights to purchase shares of our common stock, shares of our preferred stock (or depositary shares representing a fractional interest therein) and/or debt securities; and
  - units consisting of two or more of these classes or series of securities.

This prospectus may also be used to offer securities to be issued to limited partners of CBL & Associates Limited Partnership in exchange for partnership interests, or to cover the resale of any of the securities described herein by one or more selling security holders.

We, or any selling security holders to be identified in the future, may offer these securities in amounts, at prices and on terms determined at the time or times of offering. We may offer any of such securities separately or together, in separate classes or series, in amounts, at prices and on terms to be set forth in a supplement to this prospectus. The specific terms of any securities to be offered, as well as the specific plan of distribution for any securities to be offered, will be described in a supplement to this prospectus. We may offer and sell the offered securities directly to you, through agents that we select, or to or through underwriters or dealers that we select. If we use agents, underwriters or dealers to sell these securities, a prospectus supplement will name them and describe their compensation, as well as the net proceeds we expect to receive from such sales.

The following equity securities are currently listed on the New York Stock Exchange: (i) our common stock is listed under the symbol "CBL"; (ii) our depositary shares, each representing 1/10th of a share of our 7.75% Series C cumulative redeemable preferred stock, are listed under the symbol "CBLprC"; and (iii) our depositary shares, each representing 1/10th of a share of our 7.375% Series D cumulative redeemable preferred stock, are listed under the symbol "CBLprD." Any common stock offered pursuant to a prospectus supplement will be listed on the New York

Stock Exchange, subject to official notice of issuance.

You should read this prospectus and any prospectus supplement carefully before you purchase any of our securities. Our securities may not be sold without delivery of both this prospectus and the applicable prospectus supplement describing the method and terms of the offering of such offered securities.

Investing in our securities involves risks. You should carefully consider the information under the heading “Risk Factors” on page 4 of this prospectus before you make an investment in any of our offered 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.

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The date of this prospectus is August 7, 2009.

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## ABOUT THIS PROSPECTUS

This prospectus is part of an “automatic shelf” registration statement that we filed with the United States Securities and Exchange Commission, or SEC, as a “well-known seasoned issuer” as defined in Rule 405 under the Securities Act of 1933, as amended (the “Securities Act”), using a “shelf” registration process. Under the shelf registration process, using this prospectus, together with a prospectus supplement, we may sell, from time to time, in one or more offerings, any of the offered securities described in this prospectus. This prospectus provides you with a general description of each type of security we may offer. Each time we offer one or more of such securities, a prospectus supplement will be provided that will contain specific information about the terms of that offering. The prospectus supplement may also add to, update or change information contained in this prospectus and, accordingly, to the extent inconsistent, information included or incorporated by reference in this prospectus will be superseded by the information contained in the applicable prospectus supplement related to such securities. You should read this prospectus, the applicable prospectus supplement and the information incorporated by reference in this prospectus or a prospectus supplement before making an investment in any of our offered securities. See “How to Obtain More Information” and “Incorporation of Information Filed with the SEC” for more information.

You should rely only on the information contained in, or incorporated by reference into, this prospectus or a prospectus supplement. We have not authorized anyone to provide you with different information. This document may be used only in jurisdictions where offers and sales of the offered securities are permitted. You should not assume that information contained in this prospectus, any prospectus supplement, or any document incorporated by reference into this prospectus or any prospectus supplement, is accurate as of any date other than the date on the front page of the document that contains the information, regardless of when this prospectus or any prospectus supplement is delivered or when any sale of offered securities occurs.

In this prospectus, we use the terms “the Company,” “we,” “our” and “us” to refer to CBL & Associates Properties, Inc. and all entities owned or controlled by us, except where it is made clear that the term means only the parent company. The term “you” refers to a prospective investor.

## HOW TO OBTAIN MORE INFORMATION

We are subject to the informational requirements of the Securities Exchange Act of 1934, as amended (the “Exchange Act”). In accordance with those requirements we file annual, quarterly and interim reports, proxy and information statements and other information with the SEC. The reports and other information can be inspected and copied at the SEC’s Public Reference Room at 100 F Street, N.E., Washington, D.C. 20549. Copies of this material can be obtained by mail from the Public Reference Room of the SEC at 100 F Street, N.E., Washington, D.C. 20549 at prescribed rates. The public may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. The SEC maintains an Internet website (<http://www.sec.gov>) that contains reports, proxy and information statements and other materials that are filed through the SEC’s Electronic Data Gathering, Analysis and Retrieval (EDGAR) system. Our website address is [cblproperties.com](http://cblproperties.com). The reference to our website address does not constitute incorporation by reference of the information contained on the website, which is not part of this prospectus.

We have filed with the SEC a registration statement on Form S-3 under the Securities Act with respect to the securities offered by this prospectus. This prospectus does not contain all of the information contained or incorporated by reference in that registration statement. We have omitted certain parts of the registration statement, as permitted by the rules and regulations of the SEC. You may inspect and copy the registration statement, including exhibits, schedules, reports and other information that we have filed with the SEC, as described in the preceding paragraph. Forms of the indenture and other documents establishing the terms of the offered securities are filed as exhibits to the registration statement or will be filed through an amendment to our registration statement on Form S-3 or under cover of a Current Report on Form 8-K and incorporated in this prospectus by reference. Statements

contained in this prospectus concerning the contents of any document to which we may refer you are not necessarily complete and in each instance we refer you to the applicable document filed with the SEC for more complete information.

#### INCORPORATION OF INFORMATION FILED WITH THE SEC

The SEC allows us to “incorporate by reference” the information contained in documents that we have filed or will file with them, which means that we can disclose important information to you by referring to those documents. The information incorporated by reference is considered to be part of this prospectus. Information in this prospectus supersedes information incorporated by reference that we filed with the SEC prior to the date of this

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prospectus. Information that we file later with the SEC, which is considered part of this prospectus from the date that we file each such document, will automatically update and supersede this information. We incorporate by reference the documents listed below and any filings we will make with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act after the date of this prospectus and prior to the termination of the offering of securities hereby (other than, in each case, documents or information deemed to have been furnished and not filed in accordance with SEC rules).

- Annual Report on Form 10-K for the year ended December 31, 2008 (excluding Items 6, 7, 8 and 15 thereof, which were replaced in our Current Report on Form 8-K dated July 27, 2009), as filed on March 2, 2009 (our “2008 Annual Report”).
- Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2009 (as filed on May 11, 2009) (our “March 2009 Quarterly Report”).
- Current Reports on Form 8-K or 8-K/A dated and filed on the following dates:

Dated	Filed
February 4, 2009	February 10, 2009
February 27, 2009	February 27, 2009
May 5, 2009	May 11, 2009
May 14, 2009	May 14, 2009
June 8, 2009*	June 8, 2009*
June 8, 2009	June 10, 2009
July 27, 2009	July 28, 2009

\*Other than information that has been furnished to, and not filed with, the SEC, which information is not incorporated into this prospectus.

- The description of our common stock contained in our Registration Statement on Form 8-A dated October 25, 1993, and any amendment or report filed for the purpose of updating such description.
- The description of the Depositary Shares, each representing 1/10th of a share of our Series C Preferred Stock contained in our Registration Statement on Form 8-A, filed on August 21, 2003, and any amendment or report filed for the purpose of updating such description.
- The description of the Depositary Shares, each representing 1/10th of a share of our Series D Preferred Stock contained in our Registration Statement on Form 8-A, filed on December 10, 2004, and any amendment or report filed for the purpose of updating such description.

We will provide to you without charge, upon your written or oral request, a copy of any or all documents incorporated by reference in this prospectus (other than exhibits to such documents, unless such exhibits are specifically incorporated by reference into such documents or into this prospectus). Such requests should be directed to our Investor Relations Department, CBL Center, 2030 Hamilton Place Blvd., Suite 500, Chattanooga, Tennessee 37421-6000 (telephone number (423) 855-0001).

FORWARD-LOOKING STATEMENTS

This prospectus, any prospectus supplement, and the documents incorporated by reference herein and therein may include forward-looking statements within the meaning of Section 27A of the Securities Act and Section 21E of the Exchange Act. Forward-looking statements are made pursuant to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995, as amended. All statements other than statements of historical fact should be considered to be forward-looking statements.

Forward-looking statements can often be identified by the use of forward-looking terminology, such as “expects,” “anticipates,” “intends,” “plans,” “believes,” “seeks,” “estimates,” “may,” “will be” and variations of these words and similar expressions. Any forward-looking statement speaks only as of the date on which it is made and is qualified in its entirety by reference to the factors discussed throughout this prospectus, any prospectus

supplement, and in documents incorporated by reference. We do not undertake to update or revise any forward-looking statement to reflect events or circumstances after the date on which it is made.

Although we believe the expectations reflected in any forward-looking statements are based on reasonable assumptions, forward-looking statements are not guarantees of future performance or results and we can give no assurance that these expectations will be attained. It is possible that actual results may differ materially from those indicated by these forward-looking statements due to a variety of known and unknown risks and uncertainties. Some of the factors that could cause actual results to differ include, without limitation:

- general industry, economic and business conditions;
  - interest rate fluctuations;
- costs and availability of capital, and capital requirements;
  - availability of real estate properties;
  - inability to consummate acquisition opportunities;
- competition from other companies and retail formats;
  - changes in retail rental rates in our markets;
    - shifts in customer demands;
    - tenant bankruptcies or store closings;
    - changes in vacancy rates at our properties;
      - changes in operating expenses;
  - changes in applicable laws, rules and regulations;
- the ability to obtain suitable equity and/or debt financing and the continued availability of financing in the amounts and on the terms necessary to support our future business; and
- other risks referenced from time to time in filings with the SEC and those factors listed or incorporated by reference into this prospectus under the heading “Risk Factors.”

Additional factors that could cause actual results to differ materially from those expressed in the forward-looking statements are discussed in the reports we file with the SEC and which are incorporated by reference herein. See “Incorporation of Information Filed with the SEC.” In addition, other factors not identified could also have such an effect. We cannot give you any assurance that the forward-looking statements included or incorporated by reference in this prospectus or any prospectus supplement will prove to be accurate. In light of the significant uncertainties inherent in the forward-looking statements included or incorporated by reference in this prospectus or any prospectus supplement, you should not regard the inclusion of this information as a representation by us or any other person that the results or conditions described in those statements or objectives and plans will be achieved.

RATIO OF EARNINGS TO FIXED CHARGES AND RATIO OF EARNINGS TO COMBINED FIXED CHARGES  
AND PREFERRED STOCK DIVIDENDS

Ratio of Earnings to Fixed Charges

The table below presents our consolidated ratios of earnings to fixed charges for each of the periods indicated. We compute the ratio of earnings to fixed charges by dividing earnings by fixed charges. For this purpose, earnings is the sum of net income before discontinued operations, equity in earnings of unconsolidated affiliates, noncontrolling interests' share of earnings (excluding those that have not incurred fixed charges) and fixed charges (excluding capitalized interest), plus distributed income from unconsolidated affiliates. In this context, fixed charges consist of

interest expense (including interest cost capitalized), amortization of debt issuance costs, the portion of rent expense representing an interest factor, and preferred dividend requirements of consolidated subsidiaries, if any.

Three Months Ended		Year Ended December 31,			
March 31, 2009	2008	2007	2006	2005	2004
1.11x	1.17x	1.40x	1.63x	2.17x	2.08x

#### Ratio of Earnings to Combined Fixed Charges and Preferred Stock Dividends

The table below presents our consolidated ratios of earnings to combined fixed charges and preferred stock dividends for each of the periods indicated. We computed these ratios by dividing earnings by combined fixed charges and preferred stock dividends. The terms “earnings” and “fixed charges” have the meanings assigned above. The ratios are based solely on historical financial information and no pro forma adjustments have been made.

Three Months Ended		Year Ended December 31,			
March 31, 2009	2008	2007	2006	2005	2004
1.04x	1.07x	1.28x	1.46x	1.91x	1.89x

## RISK FACTORS

Investing in our securities involves certain risks. As we have previously disclosed, we expect that the current economic downturn will continue to create pressure on the fundamentals of our business, including our ability to collect rental revenues from tenants in a timely manner, maintain current occupancy levels and achieve positive growth in rents from renewals of existing tenant leases or from leases with new tenants. Additionally, the deteriorating economic conditions have resulted in increased volatility and uncertainty in the financial markets. As a result, there has been a reduction in the availability of refinancing as lenders have become more conservative when granting credit, and credit that is extended generally results in lower loan-to-value ratios, higher interest rates and other restrictive provisions.

In deciding whether to invest in our securities, you should carefully consider the following supplemental risk factors, as well as the risks described under “Risk Factors” in our 2008 Annual Report and March 2009 Quarterly Report, in addition to the other information contained in this prospectus and any accompanying prospectus supplement and the information incorporated by reference herein and therein:

Our indebtedness is substantial and could impair our ability to obtain additional financing.

We received approximately \$381.6 million in net proceeds from the sale of additional shares of our common stock in our recent offering which closed on June 15, 2009, after payment of the underwriting discount and our other offering expenses. These proceeds were used to reduce amounts outstanding under our current credit facilities.

On a pro forma basis as of March 31, 2009, assuming the application of the net proceeds from our recent common stock offering as described above, our total share of consolidated and unconsolidated debt would have been approximately \$6,264.0 million. As of such date, and giving effect to the foregoing assumptions, our total share of consolidated and unconsolidated debt maturing in 2009, 2010 and 2011, giving effect to all maturity extensions received to date, would have been approximately \$164.9 million, \$1,061.7 million and \$679.0 million, respectively. Our existing consolidated and unconsolidated debt obligations generally contain maturity extension options which are available to us only if we are in compliance with all of the terms of the related indebtedness and we



pay an extension fee to the lender. No assurance can be given that we will meet all of the conditions necessary to exercise any maturity extension option at the relevant time.

At March 31, 2009, our total share of consolidated and unconsolidated debt outstanding was approximately \$6,645.6 million, which represents approximately 92.1% of our total market capitalization at that time. Giving effect to all maturity extensions available at our option (which requires continued compliance with the terms of the indebtedness and payment of a fee), as of March 31, 2009, the balance at maturity of our share of total consolidated and unconsolidated debt (after giving effect to amortization through maturity) was approximately \$6,200.1 million, including \$163.2 million, \$1,073.3 million, \$1,017.2 million, \$911.9 million and \$3,034.5 million currently

scheduled to mature in 2009, 2010, 2011, 2012 and thereafter, respectively. Our substantial leverage could have important consequences. For example, it could:

- result in the acceleration of a significant amount of debt for non-compliance with the terms of such debt or, if such debt contains cross-default or cross-acceleration provisions, other debt;
- result in the loss of assets due to foreclosure or sale on unfavorable terms, which could create taxable income without accompanying cash proceeds;
- materially impair our ability to borrow unused amounts under existing financing arrangements or to obtain additional financing or refinancing on favorable terms or at all;
- require us to dedicate a substantial portion of our cash flow to paying principal and interest on our indebtedness, reducing the cash flow available to fund our business, to pay dividends, including those necessary to maintain our REIT qualification, or to use for other purposes;
  - increase our vulnerability to the ongoing economic downturn;
  - limit our ability to withstand competitive pressures; or
- reduce our flexibility to respond to changing business and economic conditions.

If any of the foregoing occurs, our business, financial condition, liquidity, results of operations and prospects could be materially and adversely affected, and the trading price of our common stock or other securities could decline significantly. For additional information regarding risks associated with our indebtedness, see “Risk Factors” in our 2008 Annual Report and March 2009 Quarterly Report.

We may change the dividend policy for our common stock in the future.

Our Board of Directors has determined to reduce our annual common stock dividend to the minimum amount required for us to distribute approximately 100% of our taxable income for 2009. We previously paid dividends during 2009 aggregating \$0.74 per share of common stock. On June 1, 2009, our Board of Directors declared a quarterly common stock dividend of \$0.11 per share of common stock, which was paid entirely in cash on July 15, 2009 to holders of record of our common stock on June 30, 2009.

We currently expect that we will pay two additional quarterly dividends for the remainder of 2009, and that these dividends will be paid entirely in cash. However, depending upon our liquidity needs, we reserve the right to pay any or all of these dividends in a combination of cash and shares of common stock, in accordance with applicable revenue procedures of the IRS. A recent IRS revenue procedure allows us to satisfy our 2009 REIT distribution requirement by distributing up to 90% of each 2009 common stock dividend in shares of our common stock in lieu of cash provided certain other criteria are met. In the event that we pay a portion of our dividends in shares of our common stock pursuant to such procedure, taxable U.S. stockholders would be required to pay tax on the entire amount of the dividend, including the portion paid in shares of common stock, in which case such stockholders may have to use cash from other sources to pay such tax. If a U.S. stockholder sells the common stock it receives as a dividend in order to pay its taxes, the sales proceeds may be less than the amount included in income with respect to the dividend, depending on the market price of our common stock at the time of the sale. Furthermore, with respect to non-U.S. stockholders, we may be required to withhold federal tax with respect to our dividends, including dividends that are paid in common stock. In addition, if a significant number of our stockholders sell shares of our common stock in order to pay taxes owed on dividends, such sales would put downward pressure on the market price of our common

stock.

The decision to declare and pay dividends on our common stock in the future, as well as the timing, amount and composition of any such future dividends, will be at the sole discretion of our Board of Directors and will depend on our earnings, taxable income, funds from operations, liquidity, financial condition, capital requirements, contractual prohibitions or other limitations under our indebtedness and preferred stock, the annual distribution requirements under the REIT provisions of the Internal Revenue Code of 1986, as amended (the "Internal Revenue Code"), Delaware law and such other factors as our Board of Directors deems relevant. While the statements above concerning dividend payments for 2009 reflect our current intentions, any actual dividends payable will be determined by our Board of Directors based upon the circumstances at the time of declaration, and the actual dividends payable may vary from such intended amounts. To the extent our Board of Directors determines to pay a portion of any dividend in shares of our common stock, our ability to do so may be limited by the amount of common stock then authorized, which presently is subject to the contingency discussed below under "—We have a limited number of authorized shares of common stock available for issuance, and if our stockholders do not approve

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an increase in the authorized number of shares of our common stock we may be unable to raise significant additional common equity capital beyond our recent common stock offering.” Any change in our dividend policy could have a material adverse effect on the market price of our common stock.

Our recent common stock offering was dilutive, and there may be future dilution of our common stock.

After giving effect to the issuance of common stock in our recent offering, the receipt of the net proceeds and the use of such proceeds as described above, the offering may be expected to have a dilutive effect on our previously announced estimated earnings per share and funds from operations per share for the year ending December 31, 2009. The actual amount of dilution cannot be determined at this time and will be based on numerous factors.

Additionally, subject to the discussion below under “—We have a limited number of authorized shares of common stock available for issuance, and if our stockholders do not approve an increase in the authorized number of shares of our common stock we may be unable to raise significant additional common equity capital beyond our recent common stock offering,” we are not restricted by our organizational documents, contractual arrangements or otherwise from issuing additional common stock or preferred shares, including any securities that are convertible into or exchangeable or exercisable for, or that represent the right to receive, common stock or preferred stock or any substantially similar securities in the future. The market price of our common stock could decline as a result of sales of a large number of shares of our common stock in the market after our recent common stock offering or the perception that such sales could occur. Additionally, future sales or issuances of substantial amounts of our common stock may be at prices below the \$6.00 per share offering price applicable to our recent common stock offering and may adversely impact the market price of our common stock.

We have a limited number of authorized shares of common stock available for issuance, and if our stockholders do not approve an increase in the authorized number of shares of our common stock we may be unable to raise significant additional common equity capital beyond our recent common stock offering.

As of July 24, 2009, following our recent common stock offering, we had 180,000,000 authorized shares of common stock, of which 137,859,925 shares of common stock were issued and outstanding and, after giving effect to the Forbearance and Waiver Agreement described below, an additional 14,948,692 were reserved for issuance upon exchanges of units in CBL & Associates Limited Partnership (our “Operating Partnership”) and in connection with certain equity compensation plans and dividend reinvestment plans. Thus, we have a limited number of shares of common stock available for future issuance. The limited availability of shares of common stock may hinder our ability to raise capital through the issuance of common stock or securities convertible into or exchangeable or exercisable for common stock, if the need should so arise.

Moreover, in connection with our recent common stock offering, certain holders of units in our Operating Partnership, including certain of our executive officers and their affiliates as well as certain affiliates of Jacobs Realty Investors Limited Partnership, a Delaware limited partnership (collectively, the “Deferring Holders”), entered into a Forbearance and Waiver Agreement with the Company, in which they agreed to defer their right to exchange an aggregate of 37,000,000 of their Operating Partnership units for shares of our common stock or cash (at our election), until the earlier of (A) the close of business on the date upon which we effectively amend our Certificate of Incorporation to increase our authorized share capital to include at least 217,000,000 shares of Common Stock (the “Replenishment Date”) or (B) December 31, 2009. The Deferring Holders also agreed to waive our obligation under the Operating Partnership Agreement to reserve a sufficient number of shares of common stock to satisfy their Operating Partnership exchange rights with respect to such units until the Replenishment Date, regardless of when such date occurs. As a result, we have not reserved shares of our authorized common stock for issuance upon an exchange of such units. If, following such deferral, the Deferring Holders were to exercise their exchange rights before we had available a sufficient number of authorized shares of our common stock to deliver in satisfaction of such exchange rights, we

would be compelled to satisfy such rights with cash payments.

We plan to convene a special meeting of stockholders during the third quarter of 2009 for the purpose of seeking stockholder approval to increase the number of our authorized shares of common stock from 180,000,000 shares to 1,000,000,000 shares. Under applicable Delaware law and the provisions of our Certificate of Incorporation such an increase will require th

e approval of the holders of a majority of our issued and outstanding shares of common stock. No assurance can be provided that we will be able to obtain the requisite vote to increase the number of our authorized shares of common stock. A failure to increase our authorized share capital would adversely affect our ability to raise additional capital and to satisfy the exchange rights of the Deferring Holders for

other than cash payments and therefore could materially and adversely affect our financial condition, liquidity and prospects.

The market price of our common stock or other securities may fluctuate significantly.

The market price of our common stock or other securities may fluctuate significantly in response to many factors, including:

- actual or anticipated variations in our operating results, funds from operations, cash flows or liquidity;
  - changes in our earnings estimates or those of analysts;
  - changes in our dividend policy;
- publication of research reports about us, the retail industry or the real estate industry generally;
- increases in market interest rates that lead purchasers of our securities to seek higher dividend or interest rate yields;
  - changes in market valuations of similar companies;
- adverse market reaction to the amount of our outstanding debt at any time, the amount of our maturing debt in the near and medium term and our ability to refinance such debt and the terms thereof or our plans to incur additional debt in the future;
  - additions or departures of key management personnel;
    - actions by institutional security holders;
    - speculation in the press or investment community;
- the occurrence of any of the other risk factors included in, or incorporated by reference in, this prospectus; and
  - general market and economic conditions.

Many of the factors listed above are beyond our control. Those factors may cause the market price of our common stock or other securities to decline significantly, regardless of our financial performance and condition and prospects. It is impossible to provide any assurance that the market price of our common stock or other securities will not fall in the future, and it may be difficult for holders to sell such securities at prices they find attractive, or at all.

Except as described above, there have been no material changes to the risk factors set forth under “Risk Factors” in our 2008 Annual Report and March 2009 Quarterly Report.

The risks and uncertainties described in this prospectus, our 2008 Annual Report and our March 2009 Quarterly Report are not the only ones we face. Additional risks not currently known to us or that we currently deem immaterial also may impair or harm our financial results and business operations. If any of the events or circumstances described in the risk factors actually occur our business may suffer, the trading price of our common stock or other securities could decline and you could lose all or part of your investment. Statements in or portions of a future document incorporated by reference in this prospectus, including, without limitation, those relating to risk factors, may update and supersede statements in and portions of this prospectus or such incorporated documents.

CBL & ASSOCIATES PROPERTIES, INC.

We are a self-managed, self-administered, fully integrated REIT that is engaged in the ownership, development, acquisition, leasing, management and operation of regional shopping malls, open-air centers, associated centers, community centers and office properties. We currently own interests in a portfolio of properties, consisting of enclosed regional malls, open-air centers, associated centers (each of which is part of a regional shopping mall complex), community centers, a mixed-use center, office buildings (including our corporate office building), and joint venture investments in similar types of properties. We may also own from time to time shopping center properties that are under development or construction, as well as options to acquire certain shopping center development sites. Our shopping center properties are located in 27 domestic states and in Brazil, but are primarily in the southeastern and midwestern United States. We have elected to be taxed as a REIT for federal income tax purposes.

We conduct substantially all of our business through CBL & Associates Limited Partnership, our “Operating Partnership.” We currently own an indirect majority interest in the Operating Partnership, and one of our wholly owned subsidiaries, CBL Holdings I, Inc., a Delaware corporation, is its sole general partner. To comply with certain technical requirements of the Internal Revenue Code applicable to REITs, our property management and development activities, sales of peripheral land and maintenance operations are carried out through CBL & Associates Management, Inc., our “Management Company.” Our Operating Partnership owns 100% of the stock of the Management Company.

In order for us to maintain our qualification as a REIT for federal income tax purposes, our Certificate of Incorporation provides for an ownership limit which generally prohibits, with certain exceptions, direct or constructive ownership by one person, as defined in our Certificate of Incorporation, of equity securities representing more than 6% of the combined total value of our outstanding equity securities. Additionally, in order to maintain our qualification as a REIT for U.S. federal income tax purposes, we must distribute each year at least 90% of our taxable income, computed without regard to net capital gains or the dividends-paid deduction, and subject to certain other adjustments. See “Certain U.S. Federal Income Tax Considerations” herein for additional information concerning these requirements.

We were organized on July 13, 1993 as a Delaware corporation to acquire substantially all of the real estate properties owned by our predecessor company, CBL & Associates, Inc., and its affiliates.

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Our principal executive offices are located at CBL Center, 2030 Hamilton Place Blvd., Suite 500, Chattanooga, Tennessee 37421-6000, and our telephone number is (423) 855-0001. Our website address is: [cblproperties.com](http://cblproperties.com). The reference to our website address does not constitute incorporation by reference of the information contained on the website, which should not be considered part of this prospectus.

#### USE OF PROCEEDS

We intend to use the net proceeds from the sale of the offered securities as set forth in the applicable prospectus supplement. We may invest any funds not required immediately for such purposes in short-term investment grade securities. We will not receive proceeds from any sales of securities by persons other than the Company, except as may otherwise be stated in any applicable prospectus supplement.

#### DESCRIPTION OF CAPITAL STOCK

The following is a summary of the material rights of our capital stock and related provisions of our amended and restated certificate of incorporation, amended and restated bylaws and the provisions of applicable law. The following description of our capital stock does not purport to be complete and is subject to, and qualified in its entirety by reference to, our amended and restated certificate of incorporation, as amended (the “Certificate of Incorporation”), and amended and restated bylaws, as amended (the “Bylaws”), which we have included as exhibits to our Annual Report on Form 10-K, as supplemented by our Form 8-K dated July 27, 2009, that is incorporated by reference into this prospectus.

Under our Certificate of Incorporation, we have authority to issue 195,000,000 shares of all classes of capital stock, consisting of 180,000,000 shares of common stock, par value \$.01 per share, and 15,000,000 shares of preferred stock, par value \$.01 per share. As of July 24, 2009, we had 137,859,925 shares of common stock outstanding, 460,000



shares of our 7.75% Series C cumulative redeemable preferred stock, par value \$.01 per share (“Series C Preferred Stock”) outstanding and 700,000 shares of our 7.375% Series D cumulative redeemable preferred stock, par value \$.01 per share (“Series D Preferred Stock”) outstanding.

Our common stock is listed on the New York Stock Exchange under the symbol “CBL.” Our depositary shares representing 1/10th of a share of our Series C Preferred Stock are listed on the New York Stock Exchange under the symbol “CBLprC.” Our depositary shares representing 1/10th of a share of our Series D Preferred Stock are listed on the New York Stock Exchange under the symbol “CBLprD.”

Pursuant to rights granted to us and the other limited partners in the partnership agreement of the Operating Partnership, each of the limited partners may, subject to certain conditions, exchange its limited partnership interests in the Operating Partnership for shares of our common stock.

#### Description of Preferred Stock

Subject to the limitations prescribed by our Certificate of Incorporation, our Board of Directors is authorized to fix the number of shares constituting each series of preferred stock and to fix the designations, powers, preferences and rights of each series and the qualifications, limitations and restrictions thereof, all without any further vote or action by our stockholders. In particular, the Board of Directors may determine for each such series any dividend rate, the date, if any, on which dividends will accumulate, the dates, if any, on which dividends will be payable, any redemption rights, if any, of such series, any sinking fund provisions, liquidation rights and preferences, and any conversion rights and voting rights. The preferred stock could have voting or conversion rights that could adversely affect the voting power or other rights of holders of our common stock. Also, the issuance of preferred stock could decrease the amount of earnings and assets available for distribution to holders of our common stock.

The preferred stock will, when issued, be fully paid and non-assessable and, unless otherwise provided in the preferred stock designations, will have no preemptive rights. Under Delaware law, holders of our preferred stock generally are not responsible for our debts or obligations. Both our preferred stock and our common stock are subject to certain ownership restrictions designed to help us maintain our qualification as a REIT under the Internal Revenue Code, which are described below under “Description of Common Stock – Restrictions on Transfer.”

On August 22, 2003, we issued 4,600,000 depositary shares in a public offering, each representing one-tenth of a share of our Series C Preferred Stock. The Series C Preferred Stock has a liquidation preference of \$250.00 per share (\$25.00 per depositary share). Dividends on the Series C Preferred Stock are cumulative, accrue from the date of issuance and are payable quarterly in arrears at a rate of \$19.375 per share (\$1.9375 per depositary share) per annum. We generally must be current in our dividend payments on the Series C Preferred Stock in order to pay dividends on our common stock. The Series C Preferred Stock has no voting rights, other than limited voting rights concerning the election of additional directors in the event of certain preferred dividend arrearages. The Series C Preferred Stock has no stated maturity, is not subject to any sinking fund or mandatory redemption, and is not convertible into any other securities of the Company. The Series C Preferred Stock could not be redeemed by the Company prior to August 22, 2008. Since that date, the Company has had the right to redeem the shares, in whole or in part, at any time for a cash redemption price of \$250.00 per share (\$25.00 per depositary share) plus accrued and unpaid dividends.

On December 13, 2004, we issued 7,000,000 depositary shares in a public offering, each representing one-tenth of a share of our Series D Preferred Stock. The Series D Preferred Stock has a liquidation preference of \$250.00 per share (\$25.00 per depositary share). Dividends on the Series D Preferred Stock are cumulative, accrue from the date of issuance and are payable quarterly in arrears at a rate of \$18.4375 per share (\$1.84375 per depositary share) per annum. We generally must be current in our dividend payments on the Series D Preferred Stock in order to pay dividends on our common stock. The Series D Preferred Stock has no voting rights, other than limited voting rights concerning the election of additional directors in the event of certain preferred dividend arrearages. The Series D Preferred Stock has no stated maturity, is not subject to any sinking fund or mandatory redemption, and is not convertible into any other securities of the Company. The Series D Preferred Stock cannot be redeemed by the Company prior to December 13, 2009. After that date, the Company may redeem the shares, in whole or in part, at any time for a cash redemption price of \$250.00 per share (\$25.00 per depositary share) plus accrued and unpaid dividends.

The rights, preferences, privileges and restrictions of any additional series of our preferred stock will be fixed by the certificate of designations relating to the series. A prospectus supplement relating to each series will describe the terms of any offered preferred stock, including:

- the title and stated value of such preferred stock;
- the number of shares of that preferred stock offered, the liquidation preference per share and the offering price of such preferred stock;
- the dividend rates, periods and/or payment dates or methods of calculation thereof applicable to such preferred stock;

- whether dividends will be cumulative or non-cumulative and, if cumulative, the date from which dividends on such preferred stock will accumulate;
  - any voting rights applicable to such preferred stock;
- the procedures for any auction and remarketing, if any, for such preferred stock;
  - the sinking fund provisions, if any, applicable to such preferred stock;
  - the provisions for redemption, if any, applicable to such preferred stock;
    - any listing of such preferred stock on any securities exchange;
- the terms and conditions, if any, upon which such preferred stock will be convertible into shares of common stock, including the conversion price (or manner of calculation of the conversion price) and conversion period;
  - a discussion of certain U.S. federal income tax considerations applicable to such preferred stock;
- any limitations on issuance of any series of preferred stock ranking senior to or on a parity with such series of preferred stock as to dividend rights and rights upon our liquidation, dissolution or winding up;
- in addition to those limitations described elsewhere in this prospectus and any prospectus supplement, any other limitations on actual and constructive ownership and restrictions on transfer of such preferred stock, in each case as may be appropriate to preserve our status as a REIT; and
  - any other specific terms, preferences, rights, limitations or restrictions of such preferred stock.

Unless otherwise specified in the applicable prospectus supplement, any offered series of preferred stock will, with respect to dividend rights and rights upon our liquidation, dissolution or winding up, rank:

- senior to all classes or series of common stock and to all equity securities issued by us the terms of which expressly provide that those equity securities rank junior to such preferred stock;
  - on a parity with all equity securities issued by us the terms of which so provide or which do not expressly provide that those equity securities rank junior or senior to such preferred stock; and
- junior to all equity securities issued by us the terms of which expressly provide that those equity securities rank senior to such preferred stock.

The term “equity securities” in the preceding discussion does not include convertible debt securities.

#### Description of Common Stock

The following summary description sets forth certain general terms and provisions of the common stock to which any prospectus supplement may relate.

#### Voting Rights

Holders of our common stock are entitled to one vote per share on all matters voted on by stockholders, including elections of directors, and, except as otherwise required by law or as provided in our Certificate of Incorporation, the holders of those shares exclusively possess all voting power. Under our Certificate of Incorporation, directors are elected by the affirmative vote of the holders of a plurality of the shares of the common stock present or represented at the annual meeting of stockholders. Our Certificate of Incorporation does not provide for cumulative voting in the election of directors.

#### Dividend and Liquidation Rights

Subject to any preferential rights of any outstanding series of preferred stock, the holders of common stock are entitled to distributions which may be declared from time to time by our Board of Directors from funds which are legally available, and upon liquidation are entitled to receive pro rata all of our assets available for distribution to such holders. Holders of common stock are not entitled to any preemptive rights. All of the outstanding shares of our common stock are fully paid and non-assessable. Under Delaware law, holders of our common stock generally are not responsible for our debts or obligations.

## Restrictions on Transfer

For us to qualify as a REIT under the Internal Revenue Code, not more than 50% in value of our outstanding capital stock may be owned, directly or indirectly, by five or fewer individuals (as defined in the Internal Revenue Code to include certain entities) during the last half of any taxable year. In addition, our capital stock must be beneficially owned by 100 or more persons during at least 335 days of a taxable year of 12 months or during a proportionate part of a shorter taxable year and certain percentages of our gross income must be from particular activities.

To ensure that we remain a qualified REIT, our Certificate of Incorporation contains provisions, collectively referred to as the ownership limit provision, restricting the acquisition of shares of our capital stock. The affirmative vote of 66 2/3% of our outstanding voting stock is required to amend this provision.

The ownership limit provision provides that, subject to certain exceptions specified in our Certificate of Incorporation:

- No person (other than Charles Lebovitz, members of the Richard Jacobs Group (as defined), members of the David Jacobs Group (as defined) and their respective affiliates under the applicable attribution rules of the Internal Revenue Code) may own, or be deemed to own by virtue of the attribution provisions of the Internal Revenue Code, more than 6% of the value of our outstanding capital stock.
- Subject to certain restrictions, Charles Lebovitz and his respective affiliates (as defined under the applicable attribution rules of the Internal Revenue Code) may own beneficially or constructively in the aggregate up to 25.4% of the value of the outstanding shares of our capital stock.
- Subject to certain restrictions, of the group comprised of Richard Jacobs and his respective affiliates and David Jacobs and his respective affiliates (in each case, as defined under the applicable attribution rules of the Internal Revenue Code), any individual person (that is, any person who is treated as an individual for purposes of Section 542(a)(2) of the Internal Revenue Code) may own beneficially or constructively in the aggregate up to 13.9% of the value of the outstanding shares of our capital stock.
- Subject to certain restrictions, any two individuals of the group comprised of Richard Jacobs and his respective affiliates or of the group comprised of David Jacobs and his respective affiliates may own beneficially or constructively in the aggregate up to 19.9% of the value of the outstanding shares of our capital stock. The group comprised of Richard Jacobs and his respective affiliates and the group comprised of David Jacobs and his respective affiliates, in the aggregate, is also limited to owning, in the aggregate, up to 19.9% of the value of the outstanding shares of our capital stock.
- Subject to certain restrictions, the overall group composed of Charles Lebovitz and his respective affiliates, Richard Jacobs and his respective affiliates and David Jacobs and his respective affiliates, may own beneficially or constructively in the aggregate up to 37.99% of the value of the outstanding shares of our capital stock.

The ownership limit is the percentage limitation on ownership applicable to any given person or group pursuant to the ownership limit provisions described above.

Our Board of Directors may, subject to certain conditions, waive the applicable ownership limit upon receipt of a ruling from the IRS or an opinion of counsel to the effect that such ownership will not jeopardize our status as a REIT. The ownership limit provision will cease to apply only if both our Board of Directors and the holders of a majority of our outstanding voting stock vote to approve the termination of our status as a REIT.

Any issuance or transfer of capital stock to any person (A) in excess of the applicable ownership limit or (B) which would cause us to be beneficially owned by fewer than 100 persons, will be null and void and the intended transferee will acquire no rights to the stock. Our Certificate of Incorporation provides that any acquisition and continued holding or ownership of our capital stock constitutes a continuous representation of compliance with the applicable ownership limit by the beneficial or constructive owner of such stock.

Any purported transfer or other event that would, if effective, violate the ownership limit will be deemed void ab initio with respect to that number of shares of our capital stock that would be owned by the transferee in excess of the applicable ownership limit provision. Such shares would automatically be transferred to a trust, the

trustee of which would be designated by us but would not be affiliated with us or with the party prohibited from owning such shares by the ownership limit provision. The trust would be for the exclusive benefit of a charitable beneficiary to be designated by us.

Any shares so held in trust will be issued and outstanding shares of our capital stock, entitled to the same rights and privileges as all other issued and outstanding shares of capital stock of the same class and series. All dividends and other distributions paid by us with respect to the shares held in trust will be held by the trustee for the benefit of the designated charitable beneficiary. The trustee will have the power to vote all shares held in trust from and after the date the shares are deemed to be transferred into trust. The prohibited owner will be required to repay any dividends or other distributions received by it which are attributable to the shares held in trust if the record date for such dividends or distributions was on or after the date those shares were transferred to the trust. We can take all measures we deem necessary in order to recover such amounts.

The trustee will have the exclusive right to designate a permitted transferee to acquire the shares held in trust without violating the applicable ownership limitations for an amount equal to the fair market value (determined at the time of transfer to this permitted transferee) of those shares. The trustee will pay to the aforementioned prohibited owner the lesser of: (a) the value of the shares at the time they were transferred to the trust and (b) the price received by the trustee from the sale of such shares to the permitted transferee. The excess (if any) of (x) the sale proceeds from the transfer to the permitted transferee over (y) the amount paid to the prohibited owner, will be distributed to the charitable beneficiary.

We or our designee will have the right to purchase any shares-in-trust, within a limited period of time, at a price per share equal to the lesser of (i) the price per share in the transaction that created such shares-in-trust and (ii) the market price per share on the date we, or our designee, exercise such right to purchase such shares-in-trust.

The ownership limit provision will not be automatically removed even if the REIT provisions of the Internal Revenue Code are changed so as to no longer contain any ownership concentration limitation or if the ownership concentration limitation is increased. Except as otherwise described above, any change in the ownership limit would require an amendment to our Certificate of Incorporation. Such an amendment would require a 66 2/3% vote of the outstanding voting stock. In addition to preserving our status as a REIT, the ownership limit may have the effect of precluding an acquisition of control of the Company without the approval of our Board of Directors.

All certificates representing shares of any class of 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 Internal Revenue Code, more than 5% (or such other percentage as may be required by the Treasury Regulations) of the value of our outstanding shares of capital stock must file an affidavit with us containing the information specified in our Certificate of Incorporation before January 30 of each year. In addition, each stockholder will, upon demand, be required to disclose to us in writing such information with respect to the direct, indirect and constructive ownership of shares of capital stock as our Board of Directors deems necessary to comply with the provisions of the Internal Revenue Code applicable to a REIT or to comply with the requirements of any taxing authority or governmental agency.

#### Limitation of Liability of Directors

Our Certificate of Incorporation provides that a director will not be personally liable for monetary damages to us or our stockholders for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to us or our stockholders; (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; (iii) pursuant to Section 174 of the Delaware General Corporation Law



(regarding certain unlawful distributions); or (iv) for any transaction from which the director derived an improper personal benefit.

While our Certificate of Incorporation provides directors with protection from awards for monetary damages for breaches of their duty of care, it does not eliminate such duty. Accordingly, our Certificate of Incorporation will have no effect on the availability of equitable remedies such as an injunction or rescission based on a director's breach of his or her duty of care. The provisions of our Certificate of Incorporation described above apply to our officers only if the respective officer is also one of our directors and is acting in his or her capacity as director, and do not apply to our officers who are not directors.

## Indemnification Agreements

We have entered into indemnification agreements with each of our officers and directors. The indemnification agreements require, among other things, that we indemnify our officers and directors to the fullest extent permitted by law, and advance to our officers and directors all related expenses, subject to reimbursement if it is subsequently determined that indemnification is not permitted. We must also indemnify and advance all expenses incurred by officers and directors who are successful in seeking to enforce their rights under the indemnification agreements, and cover officers and directors under our directors' and officers' liability insurance, provided that such insurance is commercially available at reasonable expense. Although the form of indemnification agreement offers substantially the same scope of coverage afforded by provisions in our Certificate of Incorporation and Bylaws, it provides greater assurance to directors and officers that indemnification will be available because, as a contract, it cannot be modified unilaterally in the future by our Board of Directors or by the stockholders to eliminate the rights it provides.

## Other Provisions of Our Certificate of Incorporation and Bylaws

Our Certificate of Incorporation and Bylaws include a number of provisions that may have the effect of encouraging persons considering unsolicited tender offers or other unilateral takeover proposals to negotiate with our Board of Directors rather than pursue non-negotiated takeover attempts. These provisions include:

**Classified Board of Directors.** Our Certificate of Incorporation provides for a Board of Directors divided into three classes, with one class to be elected each year to serve for a three-year term. As a result, at least two annual meetings of stockholders may be required for the stockholders to change a majority of our Board of Directors. In addition, our stockholders can only remove directors for cause and only by a vote of 75% of the outstanding voting stock. The classification of directors and the inability of stockholders to remove directors without cause make it more difficult to change the composition of our Board of Directors. The provisions of our Certificate of Incorporation relating to the classification of our Board of Directors may only be amended by a 66 2/3% vote of the outstanding voting stock and the provision relating to the removal for cause may only be amended by a 75% vote of the outstanding voting stock.

**Advance Notice Requirements.** Our Bylaws establish advance notice procedures with regard to stockholder proposals relating to the nomination of candidates for election as directors or new business to be brought before meetings of our stockholders. These procedures provide that notice of such stockholder proposals must be timely given in writing to our Secretary prior to the meeting at which the action is to be taken. Generally, to be timely, notice must be received at our principal executive offices not less than 60 days nor more than 90 days prior to the meeting. The notice must contain certain information specified in the Bylaws.

**Written Consent of Stockholders.** Our Certificate of Incorporation requires all stockholder actions to be taken by a vote of the stockholders at an annual or special meeting and does not permit action by stockholder consent. These provisions of our Certificate of Incorporation may be amended only by a vote of 80% of the outstanding voting stock.

**Bylaw Amendments.** Amending our Bylaws requires either the approval of our Board of Directors or the vote of 66 2/3% of our outstanding voting stock.

## Delaware Anti-Takeover Statute

We are a Delaware corporation subject to Section 203 of the Delaware General Corporation Law. In general, Section 203 prevents an "interested stockholder" (defined generally as a person owning 15% or more of a company's outstanding voting stock) from engaging in a "business combination" (as defined in Section 203) with us for three years following the date that person becomes an interested stockholder unless:

- (a) before that person became an interested holder, our Board of Directors approved the transaction in which the interested holder became an interested stockholder or approved the business combination,
- (b) upon completion of the transaction that resulted in the interested stockholder becoming an interested stockholder, the interested stockholder owns 85% of our voting stock outstanding at the time the transaction commenced (excluding stock held by directors who are also officers and by employee stock plans that do not provide employees with the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer), or

(c) following the transaction in which that person became an interested stockholder, the business combination is approved by our Board of Directors and authorized at a meeting of stockholders by the affirmative vote of the holders of at least two-thirds of our outstanding voting stock not owned by the interested stockholder.

Under Section 203, these restrictions also do not apply to certain business combinations proposed by an interested stockholder following the announcement or notification of certain extraordinary transactions involving us and a person who was not an interested stockholder during the previous three years or who became an interested stockholder with the approval of a majority of our directors, if that extraordinary transaction is approved or not opposed by a majority of the directors who were directors before any person became an interested stockholder in the previous three years or who were recommended for election or elected to succeed such directors by a majority of directors then in office.

### DESCRIPTION OF DEPOSITARY SHARES

We may issue depositary shares, each of which will represent a fractional interest of a share of a particular class or series of our preferred stock, as specified in the applicable prospectus supplement. Shares of a class or series of preferred stock represented by depositary shares will be deposited under a separate deposit agreement among us, the depositary named therein and the holders from time to time of the depositary receipts issued by the preferred stock depositary which will evidence the depositary shares. Subject to the terms of the applicable deposit agreement, each owner of a depositary receipt will be entitled, in proportion to the fractional interest of a share of a particular class or series of preferred stock represented by the depositary shares evidenced by that depositary receipt, to all the rights and preferences of the class or series of preferred stock represented by those depositary shares (including dividend, voting, conversion, redemption and liquidation rights).

The depositary shares will be evidenced by depositary receipts issued pursuant to the applicable deposit agreement. Immediately following the issuance and delivery of a class or series of preferred stock by us to the preferred stock depositary, we will cause the preferred stock depositary to issue, on our behalf, the depositary receipts.

The particular terms of any deposit agreement will be described in an applicable prospectus supplement, together with a description of the terms of the related depositary shares and underlying class or series of preferred stock offered thereby. Such description will include, to the extent applicable to the underlying series of preferred stock, each of the matters specified above in the section captioned "Description of Capital Stock – Description of Preferred Stock."

### DESCRIPTION OF DEBT SECURITIES

The following description, together with the additional information we include in any applicable prospectus supplements, summarizes the material terms and provisions of the debt securities that we may offer under this prospectus. While the terms we have summarized below will generally apply to any future debt securities we may offer under this prospectus, we will describe the particular terms of any debt securities that we may offer in more detail in the applicable prospectus supplement. The terms of any debt securities we offer under a prospectus supplement may differ from the terms we describe below.

We will issue any senior notes under the senior indenture which we will enter into with the trustee named in the senior indenture. We will issue any subordinated notes under the subordinated indenture which we will enter into with the trustee named in the subordinated indenture. We have filed forms of these documents as exhibits to the registration statement of which this prospectus is a part. We use the term "indentures" to refer to both the senior indenture and the subordinated indenture.

The indentures will be qualified under the Trust Indenture Act of 1939. We use the term “trustee” to refer to either the senior trustee or the subordinated trustee, as applicable.

The following summaries of material provisions of the senior notes, the subordinated notes and the indentures are subject to, and qualified in their entirety by reference to, all the provisions of the indenture, including any supplemental indenture, applicable to a particular series of debt securities. We urge you to read the applicable prospectus supplements related to the debt securities that we sell under this prospectus, as well as the complete indentures, including any supplemental indentures, that contain the terms of the debt securities. Except as we may otherwise indicate, the terms of the senior indenture and the subordinated indenture are identical.

## General

The indentures do not limit the aggregate principal amount of debt securities that may be issued thereunder. The debt securities may be issued from time to time in one or more series. We will describe in the applicable prospectus supplement the terms relating to a series of debt securities, including without limitation:

- the title of such debt securities;
- the principal amount being offered, and, if a series, the total amount authorized and the total amount outstanding;
  - any limit on the amount of such debt securities that may be issued;
- whether or not we will issue the series of debt securities in global form and, if so, the terms and who the depository will be;
  - the maturity date(s) of such debt securities;
- the principal amount due at maturity, and whether such debt securities will be issued with any original issue discount;
- whether and under what circumstances, if any, we will pay additional amounts on any debt securities held by a person who is not a United States person for tax purposes, and whether we can redeem the debt securities if we have to pay such additional amounts;
- the interest rate(s) applicable to such debt securities, which may be fixed or variable, or the method for determining the rate, the date interest will begin to accrue, the dates interest will be payable and the regular record dates for interest payment dates or the method for determining such dates;
  - whether such debt securities will be secured or unsecured, and the terms of any secured debt;
    - the terms of the subordination applicable to any series of subordinated debt securities;
    - the place where payments on such debt securities will be payable;
    - any applicable restrictions on the transfer, sale or other assignment of such debt securities;
- our right, if any, to defer payment of interest on such debt securities, and the maximum length of any such deferral period;
- the date, if any, after which, the conditions upon which, and the price at which we may, at our option, redeem the series of debt securities pursuant to any optional or provisional redemption provisions, and any other applicable terms of those redemption provisions;
  - any provisions for a sinking fund, purchase or other analogous fund applicable to such debt securities;
- the date, if any, on which, and the price at which we are obligated, pursuant to any mandatory sinking fund or analogous fund provisions or otherwise, to redeem, or at the holder's option to purchase, such series of debt securities;

- a discussion of certain United States federal income tax considerations applicable to such debt securities;
  - information describing any book-entry features for such series of debt securities;
  - if applicable, the procedures for any auction and remarketing of such debt securities;
- the denominations in which we will issue the series of debt securities, if other than denominations of \$1,000 and any integral multiple thereof;