

CEDAR SHOPPING CENTERS INC
Form 424B3
September 30, 2010
Filed Pursuant to Rule 424(b)(3)
Registration No. 333-169035

9,738,426 Shares
CEDAR SHOPPING CENTERS, INC.

Common Stock

This prospectus relates solely to the resale of up to an aggregate of 9,738,426 shares of common stock of Cedar Shopping Centers, Inc. (“Cedar” or the “Company”) by the selling stockholders named in this prospectus.

The selling stockholders may offer the shares from time to time as each selling stockholder may determine through public or private transactions or through other means described in the section entitled “Plan of Distribution.” Each selling stockholder may also sell shares under Rule 144 under the Securities Act of 1933, as amended (the “Securities Act”), if available, rather than under this prospectus. The registration of these shares for resale does not necessarily mean that the selling stockholders will sell any of their shares.

The Company will not receive any of the proceeds from the sale of these shares by the selling stockholders.

The shares of the Company’s common stock are listed on the New York Stock Exchange under the symbol “CDR.” On September 22, 2010, the closing price of the Company’s shares was \$6.26 per share.

Investing in our securities involves certain risks. See “Risk Factors” at page 3 of this Prospectus for a description of certain factors that you should consider prior to purchasing the securities.

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

The date of this Prospectus is September 30, 2010.

ABOUT THIS PROSPECTUS

This prospectus is part of a registration statement on Form S-3 that we filed with the Securities and Exchange Commission, or SEC, using a “shelf” registration, or continuous offering, process. Pursuant to this shelf process, the selling stockholders named under the heading “Selling Stockholders” may sell the securities described in this prospectus from time to time in one or more offerings. We may also file a prospectus supplement to add, update or change information contained in this prospectus. This prospectus, any applicable prospectus supplement and the documents incorporated by reference herein include important information about us, the securities being offered and other information you should know before investing. You should read this prospectus and any applicable prospectus supplement together with the additional information about us described in the sections below entitled “Where You Can Find More Information” and “Incorporation of Certain Documents by Reference.”

The information in this prospectus and any prospectus supplement is accurate as of the date on the front cover. Information incorporated by reference into this prospectus and any prospectus supplement is accurate as of the

date of the document from which the information is incorporated. You should not assume that the information contained in this prospectus or any prospectus supplement is accurate as of any other date.

Unless the context otherwise requires, all references in this prospectus to “Cedar,” “us,” “our,” “we,” the “Company” or other similar terms are to Cedar Shopping Centers, Inc.

INCORPORATION OF CERTAIN DOCUMENTS BY REFERENCE

The SEC allows us to “incorporate by reference” the information that we file with them, which means that we can disclose important information to you by referring you to those documents. The information incorporated by reference is an important part of this prospectus, and the information that we file later with the SEC will automatically update and supersede this information. We incorporate by reference the documents listed below, any filings we make with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, or Exchange Act, after the date of the initial registration statement and prior to the effectiveness of the registration statement and any future filings we make with the SEC after the effectiveness of the registration statement under Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act:

1. Cedar’s Annual Report on Form 10-K for the year ended December 31, 2009, as amended by Form 10-K/A.
2. Cedar’s Quarterly Reports on Form 10-Q for the quarters ended March 31, 2010 and June 30, 2010.
3. Cedar’s definitive proxy statement dated April 26, 2010.
4. Cedar’s Current Reports on Form 8-K filed February 9, 2010, June 3, 2010, June 16, 2010 and September 14, 2010.
5. The description of Cedar’s common stock which is contained in Item 1 of our registration statement on Form 8-A, as amended, filed October 1, 2003 pursuant to Section 12 of the Exchange Act.
6. The information contained in the section “Investment Policies and Policies With Respect to Certain Activities” contained in the Registration Statement on Form S-11 filed on August 20, 2003, as amended, SEC File Number: 333-108091.

You may request a copy of these filings, at no cost, by writing or telephoning us at our principal executive offices at the following address:

Investor Relations
Cedar Shopping Centers, Inc.
44 South Bayles Avenue
Port Washington, NY 11050-3765
(516) 767-6492
<http://www.cedarshoppingcenters.com>

You should rely only on the information incorporated by reference or provided in this prospectus or any prospectus supplement. We have not authorized anyone else to provide you with different information. We are not making an offer of these securities in any state where the offer is not permitted. Do not assume that the information in this prospectus or any prospectus supplement is accurate as of any date other than the date on the front of these documents.

THE COMPANY

We were organized in 1984 and elected to be taxed as a real estate investment trust, or REIT, in 1986. We are a fully integrated, self-administered and self-managed REIT that focuses primarily on the ownership, operation, development

and redevelopment of supermarket-anchored shopping centers predominantly in coastal mid-Atlantic and New England states. As of June 30, 2010, we owned and managed (both wholly-owned and in joint venture) a portfolio of 118 operating properties, aggregating approximately 13.0 million square feet of gross leasable area, or GLA.

We conduct our business through Cedar Shopping Centers Partnership, L.P., or the operating partnership, a Delaware limited partnership. As of June 30, 2010, we owned approximately a 97.1% interest in the operating partnership.

Our principal executive offices are located at 44 South Bayles Avenue, Port Washington, NY 11050-3765. Our telephone number is (516) 767-6492 and our website address is www.cedarshoppingcenters.com. The information contained on our website is not part of this prospectus and is not incorporated in this prospectus by reference.

RISK FACTORS

Investing in our securities involves significant risks. Please see the risk factors under the heading “Risk Factors” in our periodic reports filed with the SEC under the Exchange Act, which are incorporated by reference in this prospectus. Before making an investment decision, you should carefully consider these risks as well as other information we include or incorporate by reference in this prospectus and any prospectus supplement. The risks and uncertainties we have described are not the only ones facing our company. Additional risks and uncertainties not presently known to us or that we currently deem immaterial may also affect our business operations.

FORWARD-LOOKING STATEMENTS

This prospectus contains or incorporates by reference forward-looking statements within the meaning of Section 27A of the Securities Act and Section 21E of the Exchange Act. Such forward-looking statements include, without limitation, statements containing the words “anticipates”, “believes”, “expects”, “intends”, “future”, and words of similar import which express the Company’s beliefs, expectations or intentions regarding future performance or future events or trends. While forward-looking statements reflect good faith beliefs, expectations or intentions, they are not guarantees of future performance and involve known and unknown risks, uncertainties and other factors, which may cause actual results, performance or achievements to differ materially from anticipated future results, performance or achievements expressed or implied by such forward-looking statements as a result of factors outside of the Company’s control. Certain factors that might cause such differences include, but are not limited to, the following: real estate investment considerations, such as the effect of economic and other conditions in general and in the Company’s market areas in particular; the financial viability of the Company’s tenants (including an ability to pay rent, filing for bankruptcy protection, closing stores and/or vacating the premises); the continuing availability of acquisition, development and redevelopment opportunities, on favorable terms; the availability of equity and debt capital (including the availability of construction financing) in the public and private markets; the availability of suitable joint venture partners and potential purchasers of the Company’s properties if offered for sale; the ability of the Company’s joint venture partners to fund their respective shares of property acquisitions, tenant improvements and capital expenditures; changes in interest rates; the fact that returns from acquisition, development and redevelopment activities may not be at expected levels or at expected times; risks inherent in ongoing development and redevelopment projects including, but not limited to, cost overruns resulting from weather delays, changes in the nature and scope of development and redevelopment efforts, changes in governmental regulations related thereto, and market factors involved in the pricing of material and labor; the need to renew leases or re-let space upon the expiration of current leases and incur applicable required replacement costs; and the financial flexibility of ourselves and our joint venture partners to repay or refinance debt obligations when due and to fund tenant improvements and capital expenditures. For a discussion of these and other factors that could cause actual results to differ from those contemplated in the forward-looking statements in this prospectus and in documents incorporated by reference in this prospectus, see the section entitled “Risk Factors” in this prospectus, in any section entitled “Risk Factors” in supplements to this prospectus, and in the documents incorporated by reference into this prospectus. The Company does not intend, and disclaims any duty or obligation, to update or revise any forward-looking statements set forth in this prospectus to reflect any change in expectations, change in information, new information, future events or other

circumstances on which such information may have been based.

USE OF PROCEEDS

The Company will not receive any proceeds from the sale of the common stock offered for sale in this prospectus by the selling stockholders. The selling stockholders will receive all of the net proceeds from these sales.

The selling stockholders will pay any fees and disbursements for their counsel and any underwriting discounts, commissions and reimbursable expenses incurred by the selling stockholders. We will bear all other costs, fees and expenses incurred to effect the registration of the shares covered by this prospectus, including all registration and filing fees, NYSE listing fees and expenses of our counsel and our independent registered public accounting firm.

SELLING STOCKHOLDERS

RioCan Holdings USA Inc.

On October 26, 2009, the Company and the operating partnership entered into a Securities Purchase Agreement, as subsequently amended (the "SPA"), with RioCan Holdings USA Inc. (the "Purchaser") and RioCan Real Estate Investment Trust, providing for, among other matters, the sale by the Company to the Purchaser of 6,666,666 shares of common stock of the Company at a price of \$6.00 per share and the grant of a warrant to purchase 1,428,570 shares of common stock of the Company. The warrant was exercisable for a two year period at a price of \$7.00 per share. The SPA was closed on October 30, 2009.

Pursuant to the SPA, the Company's Board of Directors waived the prohibition contained in the Company's articles of incorporation with respect to any person owning more than 9.9% of the Company's outstanding common stock so as to permit the Purchaser to acquire up to 16% of the Company's outstanding common stock. The Purchaser has agreed that for a period of three years after closing, except as otherwise provided in the SPA, it will not without the prior consent of the Company's Board of Directors (a) acquire, directly or indirectly, any additional securities of the Company, (b) directly or indirectly or through any other person, solicit proxies with respect to securities under any circumstance or become a "participant" in any "election contest" relating to the election of directors of the Company (as such terms are used in Rule 14a-11 of Regulation 14A under the Exchange Act); provided, that Purchaser may vote its shares in any manner it deems appropriate; (c) deposit any securities in a voting trust, or subject any securities to a voting or similar agreement; (d) directly or indirectly or through or in conjunction with any other person, engage in a tender or exchange offer for the Company's securities made by any other person or entity without the prior approval of the Company, or engage in any proxy solicitation or any other activity with any other person or entity relating to the Company without the prior approval of the Company; or (e) take any action alone or in concert with any other person to acquire or change the control of the Company or participate in any group that is seeking to obtain or take control of the Company.

Under the SPA, the Company has agreed with the Purchaser that, subject to certain exceptions, it will not issue any new shares of common stock unless it offers to the Purchaser the right to purchase its pro rata portion of such new securities. This right will end when the Purchaser owns less than 9.9% of the common stock of the Company. In connection with a public offering completed by the Company in February and March 2010, the Purchaser acquired an aggregate of 1,350,000 additional shares of common stock. In April 2010, the Purchaser exercised the warrant and was issued 1,428,570 shares of common stock of the Company.

Pursuant to the SPA, the Purchaser has the right to designate one person to be a director of the Company and has designated Raghunath Davloor, its CFO, to be a director. Mr. Davloor was elected as a director effective October 30, 2009.

The Company has agreed that on or prior to October 30, 2010, it will register for resale under the Securities Act the shares of common stock acquired by the Purchaser under the SPA and any shares of common stock acquired by the Purchaser prior to the filing of this registration statement, together with shares of common stock issued upon exercise of the warrant. A registration rights agreement was entered into between the Company and the Purchaser to effectuate this registration. The Purchaser has agreed that without the prior consent of the Company it will not sell, assign, transfer or otherwise dispose of the shares of common stock or warrant acquired pursuant to the SPA for a period of one year, subject to certain exceptions.

RioCan Real Estate Investment Trust has guaranteed the performance of the Purchaser's obligations under the SPA.

On October 26, 2009, the Company also entered into an agreement with the Purchaser to form a joint venture with respect to seven supermarket-anchored properties then owned and managed by the Company. The Company holds a 20% interest in the joint venture and the Purchaser holds the remaining 80% interest. The properties consist of supermarket-anchored shopping centers in Connecticut, Massachusetts and Pennsylvania. Closings for all the properties occurred between December 2009 and May 2010. The joint venture includes buy/sell provisions with respect to equity ownership interests that can be exercised by either party during the period ending in December 2012 or upon certain change of control events. These provisions allow either party to provide notice that it intends to purchase the non-initiating party's interest at a specific price premised on the value of the entire joint venture. The non-initiating party either may accept the offer or reject the offer and become the purchaser of the initiating party's interest at the price established by the initiating party. In the joint venture, the Company provides property management, leasing, construction management and financial management services at standard rates. The Company is also entitled to certain fees on acquisitions, dispositions, financings and refinancings.

In addition to the above described transactions, the Company and the Purchaser have agreed to acquire in such joint venture primarily supermarket-anchored shopping centers in the northeastern United States during the two years subsequent to entering into the joint venture in amounts anticipated at up to \$500 million. Related to the future acquisitions, each of the Company and the Purchaser has granted to the other a right of first refusal for two years to acquire through such joint venture primarily supermarket-anchored properties and other properties in excess of 50,000 square feet proposed to be acquired by the Company or the Purchaser in the states of New York, New Jersey, Pennsylvania, Massachusetts, Connecticut, Maryland and Virginia.

On January 26, 2010, this joint venture acquired the Town Square Plaza shopping center in Temple, Pennsylvania, an approximately 128,000 square foot supermarket-anchored shopping center which was completed in 2008, and which is anchored by a 73,000 square foot Giant Foods supermarket. The purchase price for the property was approximately \$19 million, excluding closing costs.

On August 3, 2010, this joint venture acquired the Exeter Commons shopping center in Exeter Township, Pennsylvania (approximately 40 miles west of Philadelphia), an approximately 361,000 square foot multi-anchored shopping center completed in 2009. Exeter Commons is anchored by a 171,000 square foot Lowe's Home Improvement Center and an 82,000 square foot Giant Food Stores supermarket, both with leases extending to 2029, exclusive of renewal options. Other tenants include Staples, Petco, Famous Footwear, Five Below and Sleepy's. The property is shadow anchored by a one year old Target store. The purchase price, excluding closing costs and adjustments, was approximately \$53 million. The purchase price was funded in part by a \$30 million loan from New York Life Insurance Company at 5.3% for a term of ten years.

On August 13, 2010, we, on behalf of this joint venture, entered into a definitive agreement to acquire five anchored shopping centers from Pennsylvania Real Estate Investment Trust, or PREIT, for approximately \$134 million. The acquisition of these five properties is subject to the satisfaction of customary closing conditions. The purchase of an additional property is subject to the satisfaction of certain closing conditions, including the terms of an existing partnership between a third-party joint venture partner and PREIT. Upon acquisition, these six properties will be owned by our existing joint venture. We have also agreed to purchase from PREIT a seventh property which will be

owned by us and the Purchaser on a 50-50 basis (through a separate joint venture arrangement), with the expectation that we and the Purchaser will eventually re-develop this property. The closing of the purchase of this property is also subject to reaching agreement with a third-party joint venture partner of PREIT and the satisfaction of certain other closing conditions. The aggregate purchase price for all seven properties would be approximately \$200 million, exclusive of closing costs and adjustments. Certain “earn-out” arrangements for the lease-up of certain vacant premises during the two years after the closing of these acquisitions could potentially result in a further increase of the aggregate purchase price.

The initial five properties consist of the following:

- Monroe Marketplace in Selinsgrove, Pennsylvania, a 335,000 square foot shopping center built in 2008 and anchored by a 76,000 square foot Giant Food Stores supermarket, a 68,000 square foot Kohl’s Department Store and a 51,000 square foot Dick’s Sporting Goods and shadow-anchored by a 127,000 square foot Target.
- Creekview Shopping Center in Warrington, Pennsylvania, a 136,000 square foot shopping center built in 2001 and anchored by a 49,000 square foot Genardi’s Supermarket and a 25,000 square foot Bed, Bath & Beyond, and shadow-anchored by an approximate 163,000 square foot Lowe’s Home Improvement Center and a 126,000 square foot Target.
- Pitney Road Plaza in Lancaster, Pennsylvania, a 46,000 square foot Best Buy store built in 2009 and shadow-anchored by a Costco and a Lowe’s Home Improvement Center.
- Sunrise Plaza in Forked River, New Jersey, a 254,000 square foot shopping center built in 2007 and anchored by a 131,000 square foot Home Depot, a 96,000 square foot Kohl’s Department Store and a 20,000 square foot Staples.
- New River Valley Center in Christiansburg, Virginia, a 165,000 square foot shopping center built in 2007 and anchored by a 30,000 square foot Best Buy, a 30,000 square foot Ross Stores, a 24,000 square foot Bed, Bath & Beyond, a 20,000 square foot Staples, an 18,000 square foot PetsMart and a 15,000 square foot Old Navy.

The two additional properties presently owned by PREIT together with joint venture partners, consist of:

- Red Rose Commons in Lancaster, Pennsylvania, a 263,000 square foot center, built in 1998, shadow-anchored by a 116,000 square foot Home Depot and a 65,000 square foot Weis Supermarket, and anchored by a 43,000 square foot Sports Authority, a 37,000 square foot H.H. Gregg, a 30,000 square foot Office Max, a 29,000 square foot PetsMart, a 26,000 square foot Barnes & Noble, a 19,000 square foot Pep Boys and a 16,000 square foot Old Navy.
- The Whitehall Mall in Allentown, Pennsylvania, a 558,000 square foot shopping center built in 1964 and redeveloped in 1998, anchored by a 213,000 square foot Sears, an 82,000 square foot Kohl’s Department Store and a 23,000 square foot Michael’s Craft Store. The Whitehall Mall includes approximately 50,000 square feet of largely vacant enclosed internal mall area. We and the Purchaser, which will own this property on a 50-50 basis, are acquiring this property in contemplation of its future re-development.

We are expected to place fixed-rate permanent financing at approximately 50-60% loan-to-value on six of these seven properties (the Whitehall Mall is presently subject to a mortgage). The closings, other than the Whitehall Mall, are expected to occur by the end of 2010. However, there can be no assurance that any of these acquisitions will be consummated. PREIT will continue to provide certain property management and leasing services for the properties for a three-year period, terminable by the parties after twelve months. We will retain overall asset and financial management responsibilities.

On August 5, 2010, an agreement by us, on behalf of this joint venture, to acquire an approximately 120,000 square foot supermarket-anchored shopping center located in eastern Connecticut that was completed in 2006 and which will

be unencumbered at closing, became non-cancelable. The purchase price for the property is expected to be approximately \$19.2 million, excluding costs and adjustments.

On September 16, 2010, we, on behalf of this joint venture, announced that we had entered into a definitive agreement to acquire a portfolio of five primarily supermarket-anchored properties for approximately \$92 million, exclusive of closing costs and adjustments. Four of the properties are anchored by Giant Food Stores supermarkets. Three of the properties are located in Pennsylvania, one in Maryland and one in Virginia. The gross leasable area of the portfolio is approximately 678,000 sq. ft. The properties, which presently feature overall occupancy of approximately 96%, include the following:

- Gettysburg Marketplace, Gettysburg, PA (approximately 38 miles southwest of Harrisburg, PA), an 85,500 sq. ft. center, built in 1998, and anchored by a 67,000 sq. ft. Giant Food Stores supermarket.
- York Marketplace, York, PA (approximately 20 miles south of Harrisburg), a 305,000 sq. ft. center renovated in 2004, with a 125,000 sq. ft. Lowe's, a 75,000 sq. ft. Giant Food Stores supermarket, a 23,500 sq. ft. Office Max, and a 20,000 sq. ft. Super Shoes as its anchors.
- Northland Center, State College, PA (approximately 90 miles northeast of Harrisburg), a 108,000 sq. ft. center, built in 1988, and anchored by a 65,000 sq. ft. Giant Food Stores supermarket.
- Marlboro Crossroads, Upper Marlboro, MD (approximately 20 miles southeast of Washington, DC), a 68,000 sq. ft. center, built in 1993, and anchored by a 61,000 sq. ft. Giant Food Stores supermarket.
- Towne Crossings, Midlothian, VA (approximately 12 miles west of Richmond, VA), a 111,000 sq. ft. center, built in 1980, and anchored by a 40,000 sq. ft. Bed, Bath & Beyond and a 20,000 sq. ft. Michael's store.

The joint venture is expected to fund the purchase price of \$92 million, plus closing costs and adjustments presently estimated at \$1.75 million, with a first mortgage loan estimated at approximately \$52 million (approximately 55% of the purchase price) plus additional cash equity of approximately \$41 million. The acquisition of these properties is subject to the satisfaction of customary closing conditions.

Selling Stockholders

The table below sets forth information with respect to the selling stockholders and the shares of the Company's common stock beneficially owned by the selling stockholders as of July 31, 2010 that may from time to time be offered or sold pursuant to this prospectus. The percentage of shares owned before the offering is based on the number of shares of our common stock outstanding as of July 31, 2010. The information regarding shares beneficially owned after the offering assumes the sale of all shares offered by the selling stockholders and that the selling stockholders do not acquire any additional shares. Information in the table below with respect to beneficial ownership has been furnished by each of the selling stockholders.

Except as described herein and in the documents incorporated by reference herein, the selling stockholders have not held any position or office, or have otherwise had a material relationship, with us or any of our subsidiaries within the past three years other than as a result of the ownership of our securities.

Information concerning the selling stockholders may change from time to time and any changed information will be set forth in supplements to this prospectus, if and when necessary. The selling stockholders may offer all, some or none of their shares of common stock. We cannot advise you as to whether the selling stockholders will in fact sell any or all of such shares of common stock. In addition, the selling stockholders listed in the table below may have sold, transferred or otherwise disposed of, or may sell, transfer or otherwise dispose of, at any time and from time to time, shares of our common stock in transactions exempt from the registration requirements of the Securities Act after

the date on which they provided the information set forth on the table below.

Name of Selling Stockholder	Shares Beneficially Owned Before the Offering		Number of Shares Being Offered	Shares Beneficially Owned After the Offering	
	Number	Percent		Number	Percent
RioCan Holdings USA Inc.	9,445,236	14.37%	9,445,236	—	—
Marvin L. Slomowitz(1) (2)	281,190	*	273,190	8,000	*
David M. Thomas(1)	82,423	*	20,000	62,423	*

*Less than 1%

(1) Includes 273,190 and 20,000 shares of common stock owned by Messrs. Slomowitz and Thomas, respectively, that may be issued upon conversion of limited partnership interests in the operating partnership.

(2) All the shares and limited partnership interests are pledged as collateral security for a loan.

UNITED STATES FEDERAL INCOME TAX CONSIDERATIONS

The following is a general summary of certain material United States federal income tax considerations regarding our company and the ownership of our common stock. This summary is for general information only and is not tax advice. The information in this summary is based on:

- The Internal Revenue Code of 1986, as amended (the “Code”);
- current, temporary and proposed Treasury Regulations promulgated under the Code;
- the legislative history of the Code;
- current administrative interpretations of the Internal Revenue Service (the “IRS”); and
- court decisions;

in each case, as of the date of this Registration Statement. The administrative interpretations of the IRS include its practices and policies as expressed in private letter rulings that are not binding on the IRS except with respect to the particular taxpayers who requested and received those rulings. Future legislation, Treasury Regulations, administrative interpretations and practices and/or court decisions may adversely affect the tax considerations contained in this discussion. Any such change could apply retroactively to transactions preceding the date of the change. We have not requested and do not intend to request a ruling from the IRS that we qualify as a REIT, and the statements in this prospectus are not binding on the IRS or any court. Thus, we can provide no assurance that the tax considerations contained in this discussion will not be challenged by the IRS or will be sustained by a court if challenged by the IRS. This summary does not discuss any state, local or foreign tax consequences associated with the acquisition, ownership, sale or other disposition of our common stock or our election to be taxed as a REIT.

You are urged to consult your tax advisors regarding the tax consequences to you of:

- the acquisition, ownership and sale or other disposition of our common stock, including the federal, state, local, foreign and other tax consequences;
- our election to be taxed as a REIT for federal income tax purposes; and
- potential changes in applicable tax laws.

Taxation of Our Company

General. We have elected to be taxed as a REIT under Sections 856 through 860 of the Code, commencing with our taxable year ended December 31, 1986. We believe that we have been organized and have operated in a manner which has allowed us to qualify for taxation as a REIT under the Code commencing with our taxable year ended December 31, 1986, and we intend to continue to be organized and operate in this manner. However, qualification and taxation as a REIT depend upon our ability to meet the various qualification tests imposed under the Code, including through actual annual operating results, asset composition, distribution levels and diversity of stock ownership. Accordingly, no assurance can be given that we have been organized and have operated, or will continue to be organized and operate, in a manner so as to qualify or remain qualified as a REIT. See “—Failure to Qualify.”

The sections of the Code and the corresponding Treasury Regulations that relate to qualification and taxation as a REIT are highly technical and complex. The following sets forth certain material aspects of the sections of the Code that govern the federal income tax treatment of a REIT and its stockholders. This is a summary and is qualified in its entirety by the applicable Code provisions, relevant rules and regulations promulgated under the Code, and administrative and judicial interpretations of the Code and these rules and regulations.

The law firm of Stroock & Stroock & Lavan LLP is acting as our tax counsel in connection with this Registration Statement. We expect to receive an opinion from Stroock & Stroock & Lavan LLP to the effect that, commencing with our taxable year ended December 31, 1998, we have been organized and have operated in conformity with the requirements for qualification and taxation as a REIT under the Code, and our proposed method of operation will enable us to continue to meet the requirements for qualification and taxation as a REIT under the Code. It must be emphasized that this opinion is based on various assumptions and representations as to factual matters, including factual representations set forth in this Registration Statement. Moreover, our qualification and taxation as a REIT depend upon our ability to meet the various qualification tests imposed under the Code, which are discussed below, including through actual annual operating results, asset composition, distribution levels and diversity of stock ownership, the results of which have not been and will not be reviewed by Stroock & Stroock & Lavan LLP. Accordingly, no assurance can be given that our actual results of operation for any particular taxable year will satisfy those requirements. Further, the anticipated income tax treatment described in this prospectus may be changed, perhaps retroactively, by legislative, administrative or judicial action at any time. Stroock & Stroock & Lavan LLP has no obligation to update its opinion subsequent to its date.

Provided we qualify for taxation as a REIT, we generally will not be required to pay federal corporate income taxes on our net income that is currently distributed to our stockholders. We will, however, be required to pay federal income tax as follows:

- We will be required to pay tax at regular corporate rates on any undistributed REIT taxable income, including undistributed net capital gains.
- We may be required to pay the “alternative minimum tax” on our items of tax preference under some circumstances.

- If we have (1) net income from the sale or other disposition of “foreclosure property” which is held primarily for sale to customers in the ordinary course of business or (2) other nonqualifying income from foreclosure property, we will be required to pay tax at the highest corporate rate on this income. Foreclosure property generally is defined as property we acquired through foreclosure or after a default on a loan secured by the property or a lease of the property.
- We will be required to pay a 100% tax on any net income from prohibited transactions. Prohibited transactions are, in general, sales or other taxable dispositions of property, other than foreclosure property, held primarily for sale to customers in the ordinary course of business.
- If we fail to satisfy the 75% gross income test or the 95% gross income test, as discussed below, but have otherwise maintained our qualification as a REIT because certain other requirements are met, we will be required to pay a tax equal to (1) the greater of (A) the amount by which 75% of our gross income exceeds the amount qualifying under the 75% gross income test and (B) the amount by which 95% of our gross income exceeds the amount qualifying under the 95% gross income test, multiplied by (2) a fraction intended to reflect our profitability.
- If we fail to satisfy any of the REIT asset tests (other than a de minimis failure of the 5% or 10% asset test), as described below, due to reasonable cause and not due to willful neglect, and we nonetheless maintain our REIT qualification because of specified cure provisions, we will be required to pay a tax equal to the greater of \$50,000 or the highest corporate tax rate multiplied by the net income generated by the nonqualifying assets that caused us to fail such test.
- If we fail to satisfy any provision of the Code that would result in our failure to qualify as a REIT (other than a violation of the REIT gross income tests or certain violations of the asset tests described below) and the violation is due to reasonable cause and not due to willful neglect, we may retain our REIT qualification but we will be required to pay a penalty of \$50,000 for each such failure.
- We will be required to pay a 4% excise tax to the extent we fail to distribute during each calendar year at least the sum of (1) 85% of our REIT ordinary income for the year, (2) 95% of our REIT capital gain net income for the year, and (3) any undistributed taxable income from prior periods.
- If we acquire any asset from a corporation which is or has been 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 in the hands of the C corporation, and we subsequently recognize gain on the disposition of the asset during the ten-year period (temporarily shortened to a 7-year period for any taxable year beginning in 2009 or 2010 if the seventh year preceded such taxable year) beginning on the date on which we acquired the asset, then we will be required to pay tax at the highest regular corporate tax rate on this gain to the extent of the excess of (1) the fair market value of the asset over (2) our adjusted basis in the asset, in each case determined as of the date on which we acquired the asset. The results described in this paragraph with respect to the recognition of gain assume that the C corporation will refrain from making an election to receive different treatment under existing Treasury Regulations on its tax return for the year in which we acquire the asset from the C corporation.
- We will be required to pay a 100% tax on any “redetermined rents,” “redetermined deductions” or “excess interest.” See “— Penalty Tax.” In general, redetermined rents are rents from real property that are overstated as a result of services furnished to any of our tenants by a “taxable REIT subsidiary” of ours. Redetermined deductions and excess interest generally represent amounts that are deducted by a taxable REIT subsidiary of ours for amounts paid to us that are in excess of the amounts that would have been deducted based on arm’s length negotiations.
- We may be required to pay monetary penalties to the IRS in certain circumstances, including if we fail to meet record-keeping requirements intended to monitor our compliance with rules relating to the composition of our stockholders, as described below in “— Requirements for Qualification as a REIT.”

In addition, we and our subsidiaries may be subject to a variety of taxes other than federal income taxes, including payroll taxes and state, local and foreign income, property or other taxes on assets and operations.

Requirements for Qualification as a REIT. The Code defines a REIT as a corporation, trust or association:

- (1) that is managed by one or more trustees or directors;
- (2) that issues transferable shares or transferable certificates to evidence its beneficial ownership;
- (3) that would be taxable as a domestic corporation, but for Sections 856 through 860 of the Code;
- (4) that is not a financial institution or an insurance company within the meaning of certain provisions of the Code;
- (5) that is beneficially owned by 100 or more persons;
- (6) not more than 50% in value of the outstanding stock of which is owned, actually or constructively, by five or fewer individuals, including, for this purpose, specified entities, during the last half of each taxable year; and
- (7) that meets other tests, described below, regarding the nature of its income and assets and the amount of its distributions.

The Code provides that conditions (1) to (4), inclusive, must be met during the entire taxable year and that condition (5) must be met during at least 335 days of a taxable year of 12 months, or during a proportionate part of a taxable year of less than 12 months. Conditions (5) and (6) do not apply until after the first taxable year for which an election is made to be taxed as a REIT. For purposes of condition (6), specified tax-exempt entities generally are treated as individuals and a “look-through” rule applies with respect to pension funds.

We believe that we have been organized, have operated and have issued sufficient shares of capital stock with sufficient diversity of ownership to allow us to satisfy conditions (1) through (7) inclusive, during the relevant time periods. In addition, our charter provides for restrictions regarding ownership and transfer of our shares which are intended to assist us in continuing to satisfy the share ownership requirements described in (5) and (6) above. A description of the transfer restrictions relating to our outstanding common and preferred stock is contained in or incorporated by reference in the relevant prospectuses pursuant to which we have offered such securities from time to time. These restrictions, however, may not ensure that we will, in all cases, be able to satisfy the share ownership requirements described in (5) and (6) above. If we fail to satisfy these share ownership requirements, except as provided in the next sentence, our status as a REIT will terminate. If, however, we comply with the rules contained in applicable Treasury Regulations that require us to ascertain the actual ownership of our shares and we do not know, or would not have known through the exercise of reasonable diligence, that we failed to meet the requirement described in condition (6) above, we will be treated as having met this requirement. To comply with these rules, we must demand written statements each year from the record holders of significant percentages of our capital stock in which the record holders are to disclose the actual owners of the shares, i.e., the persons required to include in gross income the dividends paid by us. A list of those persons failing or refusing to comply with this demand must be maintained as part of our records. Failure by us to comply with these record keeping requirements could subject us to monetary penalties. A stockholder that fails or refuses to comply with the demand is required by Treasury Regulations to submit a statement with its tax return disclosing the actual ownership of the shares and other information.

In addition, we may not maintain our status as a REIT unless our taxable year is the calendar year. We have and will continue to have a calendar taxable year.

Ownership of Interests in Partnerships, Limited Liability Companies and Qualified REIT Subsidiaries. In the case of a REIT which is a partner in a partnership or a member in a limited liability company treated as a partnership for federal income tax purposes, Treasury Regulations provide that the REIT will be deemed to own its proportionate share of the assets of the partnership or limited liability company treated as a partnership, as the case may be, based on its interest in partnership capital, subject to special rules relating to the 10% REIT asset test described below. Also, the REIT will be deemed to be entitled to its proportionate share of the income of that entity. The assets and gross income of the partnership or limited liability company retain the same character in the hands of the REIT as in the partnership for purposes of Section 856 of the Code, including satisfying the gross income tests and the asset tests. Thus, our pro rata share of the assets and items of income of our operating partnership, including our operating partnership's share of these items of any entity treated as a partnership or disregarded entity for federal income tax purposes in which it owns an interest, is treated as our assets and items of income for purposes of applying the requirements described in this discussion, including the income and asset tests described below. A brief summary of the rules governing the federal income taxation of partnerships and limited liability companies is set forth below in "—Tax Aspects of Our Operating Partnership, the Subsidiary Partnerships and the Limited Liability Companies."

We have control of our operating partnership and generally control our subsidiary partnerships and limited liability companies and intend to operate them in a manner consistent with the requirements for our qualification as a REIT. We may from time to time be a non-managing member in some of our partnerships and limited liability companies. If a partnership or limited liability company in which we own an interest takes or expects to take actions that could jeopardize our status as a REIT or require us to pay tax, we may be forced to dispose of our interest in such entity. In addition, it is possible that a partnership or limited liability company could take an action which could cause us to fail a REIT income or asset test, and that we would not become aware of such action in time to dispose of our interest in the partnership or limited liability company or take other corrective action on a timely basis. In that case, we could fail to qualify as a REIT unless we were entitled to relief, as described below.

We may from time to time own and operate certain properties through wholly-owned subsidiaries that we intend to be treated as "qualified REIT subsidiaries" under the Code. A corporation will qualify as our qualified REIT subsidiary if we own 100% of the corporation's outstanding stock, and if we do not elect with the subsidiary to treat it as a "taxable REIT subsidiary," as described below. A corporation that is a qualified REIT subsidiary is not treated as a separate corporation, and all assets, liabilities and items of income, gain, loss, deduction and credit of a qualified REIT subsidiary are treated as assets, liabilities and items of income, gain, loss, deduction and credit (as the case may be) of the parent REIT for all purposes under the Code (including all REIT qualification tests). Thus, in applying the federal tax requirements described in this discussion, any corporations in which we own a 100% interest (other than any taxable REIT subsidiaries) are ignored, and all assets, liabilities and items of income, gain, loss, deduction and credit of such corporations are treated as our assets, liabilities and items of income, gain, loss, deduction and credit. A qualified REIT subsidiary is not required to pay federal income tax, and our ownership of the stock of a qualified REIT subsidiary does not violate the restrictions on ownership of securities, as described below under "—Asset Tests."

Ownership of Interests in Taxable REIT Subsidiaries. A taxable REIT subsidiary is a corporation other than a REIT in which a REIT directly or indirectly holds stock, and that has made a joint election with such REIT to be treated as a taxable REIT subsidiary. A taxable REIT subsidiary also includes any corporation other than a REIT with respect to which a taxable REIT subsidiary owns securities possessing more than 35% of the total voting power or value of the outstanding securities of such corporation. Other than some activities relating to lodging and health care facilities, a taxable REIT subsidiary may generally engage in any business, including the provision of customary or non-customary services to tenants of its parent REIT. A taxable REIT subsidiary is subject to income tax as a regular C corporation. In addition, a taxable REIT subsidiary may be prevented from deducting interest on debt funded directly or indirectly by its parent REIT if certain tests regarding the taxable REIT subsidiary's debt to equity ratio and interest expense are not satisfied. A REIT's ownership of securities of taxable REIT subsidiaries will not be subject to the 10% or 5% asset test described below. See "—Asset Tests." We currently own interests in a number of taxable REIT subsidiaries and may acquire securities in additional taxable REIT subsidiaries in the future.

Affiliated REITs. Our operating partnership owns a greater than 10% indirect interest in an entity which will elect to be taxed as a REIT for its first taxable year ended December 31, 2009 (the "Affiliated REIT"). The Affiliated REIT must meet the REIT qualification tests discussed above. A failure by the Affiliated REIT to qualify as a REIT could cause us to fail to qualify as a REIT because we would be treated as owning more than 10% of the voting securities and value of an issuer that was not a REIT, a qualified REIT subsidiary or taxable REIT subsidiary, unless certain mitigation provisions apply. We believe the Affiliated REIT has been organized and operated in a manner that will permit us to qualify as a REIT.

Income Tests. We must satisfy two gross income requirements annually to maintain our qualification as a REIT. First, in each taxable year we must derive directly or indirectly at least 75% of our gross income, excluding gross income from prohibited transactions, certain hedging transactions entered into after July 30, 2008, and certain foreign currency gains recognized after July 30, 2008, from investments relating to real property or mortgages on real property, including "rents from real property," interest derived from mortgage loans secured by real property (including certain qualified mezzanine financings secured by interests in real property), dividends from other REITs, gains from the sale of real estate assets and income from certain types of temporary investments. Second, in each taxable year we must derive at least 95% of our gross income, excluding gross income from prohibited transactions, certain hedging transactions entered into on or after January 1, 2005, and certain foreign currency gains recognized after July 30, 2008, from the real property investments described above or dividends, interest and gain from the sale or disposition of stock or securities, or from any combination of the foregoing. For these purposes, the term "interest" generally does not include any amount received or accrued, directly or indirectly, if the determination of all or some of the amount depends in any way on the income or profits of any person. However, an amount received or accrued generally will not be excluded from the term "interest" solely by reason of being based on a fixed percentage or percentages of receipts or sales.

Rents we receive from a tenant will qualify as "rents from real property" for the purpose of satisfying the gross income requirements for a REIT described above only if all of the following conditions are met:

- The amount of rent must not be based in any way on the income or profits of any person. However, an amount we receive or accrue generally will not be excluded from the term "rents from real property" solely because it is based on a fixed percentage or percentages of receipts or sales;
- We, or an actual or constructive owner of 10% or more of our capital stock, must not actually or constructively own 10% or more of the interests in a tenant, or, if the tenant is a corporation, 10% or more of the voting power or value of all classes of stock of the tenant. Rents received from such a tenant that is a taxable REIT subsidiary, however, will not be excluded from the definition of "rents from real property" as a result of this condition if at least 90% of the space at the property to which the rents relate is leased to third parties, and the rents paid by the taxable REIT subsidiary are substantially comparable to rents paid by our other tenants for comparable space. Whether rents paid by a taxable REIT subsidiary are substantially comparable to rents paid by other tenants is determined at the time the lease with the taxable REIT subsidiary is entered into, extended, and modified, if such modification increases the rents due under such lease. Notwithstanding the foregoing, however, if a lease with a "controlled taxable REIT subsidiary" is modified and such modification results in an increase in the rents payable by such taxable REIT subsidiary, any such increase will not qualify as "rents from real property." For purposes of this rule, a "controlled taxable REIT subsidiary" is a taxable REIT subsidiary in which we own stock possessing more than 50% of the voting power or more than 50% of the total value of the outstanding stock of such taxable REIT subsidiary;
- Rent attributable to personal property leased in connection with a lease of real property is not greater than 15% of the total rent received under the lease. Rent is allocated between real property and personal property based on the relative fair market values of the properties. If this condition is not met, then the portion of the rent attributable to personal property will not qualify as "rents from real property"; and

We generally must not operate or manage the property or furnish or render services to our tenants, subject to a 1% de minimis exception and except as provided below. We may, however, perform services that are “usually or customarily rendered” in connection with the rental of space for occupancy only and are not otherwise considered “rendered to the occupant” of the property. Examples of these services include the provision