

CBL & ASSOCIATES PROPERTIES INC
Form 424B2
December 09, 2004

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PROSPECTUS SUPPLEMENT

Filed pursuant to Rule 424(b)(2)
Registration No. 333-104882

(To Prospectus dated June 10, 2003)

7,000,000 Depositary Shares

CBL & Associates Properties, Inc. **Each Representing 1/10th of a Share of** **7.375% Series D Cumulative Redeemable Preferred Stock** **(Liquidation Preference \$25.00 per Depositary Share)**

We are offering and selling 7,000,000 depositary shares, each representing a 1/10th fractional interest of a share of our 7.375% Series D cumulative redeemable preferred stock, par value \$.01 per share. 700,000 shares of Series D preferred stock underlying the depositary shares will be deposited with SunTrust Bank, as depositary. As a record holder of depositary shares, you will be entitled to all proportional rights, preferences and privileges of the Series D preferred stock underlying the depositary shares. We will receive all of the net proceeds from the sale of the depositary shares.

We will pay cumulative dividends on the shares of Series D preferred stock underlying the depositary shares, from and including the date of original issuance, in the amount of \$1.84375 per depositary share each year, which is equivalent to 7.375% of the \$25.00 liquidation preference per depositary share. Dividends will be payable quarterly in arrears, beginning on March 30, 2005.

We may not redeem the shares of Series D preferred stock underlying the depositary shares before December 13, 2009, except to preserve our status as a real estate investment trust. On or after December 13, 2009, we may, at our option, redeem the shares of Series D preferred stock, in whole or in part, by paying \$250.00 per share (\$25.00 per depositary share), plus any accrued and unpaid dividends up to and including the date of redemption. The shares of Series D preferred stock have no stated maturity, will not be subject to any sinking fund or mandatory redemption and will not be convertible into any of our other securities. Owners of the depositary shares will generally have no voting rights but will have limited voting rights if we fail to pay dividends for six or more quarters (whether or not consecutive) and under certain other circumstances.

There is currently no public market for the depositary shares. We will submit an application to list the depositary shares on the New York Stock Exchange under the symbol "CBLPrD." If this application is approved, trading in the depositary shares is expected to commence within a 30-day period after the initial delivery of the depositary shares.

Investing in the depositary shares representing interests in our Series D preferred stock involves certain risks. See "Risk Factors" beginning on page S-9 of this prospectus supplement and on page 4 of the accompanying prospectus.

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.

| | Per Depositary Share | Total |
|----------------------------------|---------------------------------|---------------|
| Public offering price | \$25.0000 | \$175,000,000 |
| Underwriting discount | \$ 0.7875 | \$ 5,512,500 |
| Proceeds, before expenses, to us | \$24.2125 | \$169,487,500 |

The underwriters are severally underwriting the shares being offered. The underwriters have an option to purchase up to an additional 1,050,000 depositary shares from us to cover over-allotments, if any.

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The depositary shares are subject to certain restrictions on ownership and transfer designed to preserve our qualification as a real estate investment trust for federal income tax purposes. See "Description of Series D Preferred Stock and Depositary Shares Restrictions on Transfer" beginning on page S-18 of this prospectus supplement and "Description of Capital Stock Description of Common Stock Restrictions on Transfer" beginning on page 15 of the accompanying prospectus for more information about these restrictions.

The underwriters expect that the depositary shares will be ready for delivery in book-entry form through the facilities of The Depository Trust Company on or about December 13, 2004.

Wachovia Securities

Joint Book-Running Manager

Bear, Stearns & Co. Inc.

Joint Book-Running Manager

A.G. Edwards

Co-Lead Manager

Legg Mason Wood Walker

Incorporated

KeyBanc Capital Markets**RBC Capital Markets****J.J.B. Hilliard, W.L. Lyons, Inc.****Stifel, Nicolaus & Company****Wells Fargo Securities, LLC**

Incorporated

The date of this prospectus supplement is December 8, 2004

ABOUT THIS PROSPECTUS SUPPLEMENT

References to "we," "us" or "our" refer to CBL & Associates Properties, Inc. and unless the context otherwise requires, CBL & Associates Limited Partnership, which we refer to as our "operating partnership." We conduct our business and operations through the operating partnership and its subsidiaries. References to "CBL" refer to CBL & Associates Properties, Inc. The term "you" refers to a prospective investor. The sole general partner of the operating partnership is CBL Holdings I, Inc., a Delaware corporation and a wholly owned subsidiary of CBL & Associates Properties, Inc.

**CAUTIONARY STATEMENTS CONCERNING
FORWARD-LOOKING INFORMATION**

Certain information included or incorporated by reference in this prospectus supplement or the accompanying prospectus contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended, and, as such, involves known and unknown risks, uncertainties and other factors which may cause our actual results, performance or achievements to be materially different from future results, performance or achievements expressed or implied by these forward-looking statements. Forward-looking statements, which are based on certain assumptions and describe our future plans, strategies and expectations, are generally identifiable by use of the words "may," "will," "should," "expect," "anticipate," "estimate," "believe," "intend," "project," or the negative of these words, or other similar words or terms. Factors which could materially and adversely affect us include, but are not limited to, changes in economic conditions generally and the real estate market specifically, legislative/regulatory changes including changes to laws governing the taxation of real estate investment trusts, which we call "REITs," availability and costs of debt and equity capital, interest rate fluctuations, competition, supply and demand for properties in our current and proposed market areas, accounting principles, policies and guidelines applicable to REITs, environmental risks, tenant bankruptcies, shifts in customer demands, changes in operating expenses, including employee wages, benefits and training and the other matters described under the heading "Risk Factors" beginning on page S-9 of this prospectus supplement and on page 4 of the accompanying prospectus. All of these factors should be considered in evaluating any forward-looking statements included or incorporated by reference in this prospectus supplement or the accompanying prospectus.

Given these uncertainties, prospective investors are cautioned not to place undue reliance on these forward-looking statements. We undertake no obligation to publicly update or revise any forward-looking statements included or incorporated by reference in this prospectus supplement or the accompanying prospectus, whether as a result of new information, future events or otherwise. In light of the factors referred to above, the future events discussed in or incorporated by reference in this prospectus supplement or the accompanying prospectus may not occur and actual results, performance or achievements could differ materially from that anticipated or implied in the forward-looking statements.

SUMMARY

This summary may not contain all of the information that is important to you. Before making an investment decision, you should carefully read this entire prospectus supplement and the accompanying prospectus, especially the "Risk Factors" section beginning on page S-9 of this prospectus supplement and on page 4 of the accompanying prospectus and the "Available Information" section beginning on page S-37 of this prospectus supplement, as well as the documents incorporated by reference in this prospectus supplement and in the accompanying prospectus. Unless otherwise indicated, financial information included in this prospectus supplement is presented on a historical basis.

CBL & Associates Properties, Inc.

We are a self-managed, self-administered, fully integrated real estate company. We own, operate, market, manage, lease, expand, develop, redevelop, acquire and finance regional malls and community and neighborhood shopping centers. Our shopping center properties are located primarily in the Southeast and Midwest, as well as in select markets in other regions of the United States. We have elected to be taxed as a REIT for federal income tax purposes. We are one of the largest mall REITs in the United States based on our total assets. We currently own controlling interests in a portfolio of properties, consisting of 64 regional malls, one of which is currently being expanded, 25 associated centers, each of which is part of a regional shopping mall complex and three of which are currently being expanded, 13 community centers, and our corporate office building. We also own non-controlling interests in five regional malls, one associated center and 49 community centers. Additionally, we currently have under construction one regional mall, which is owned in a joint venture, one open-air shopping center and two community centers. We also own options to acquire certain shopping center development sites.

We conduct substantially all of our business through our operating partnership, CBL & Associates Limited Partnership, a Delaware limited partnership. We currently own an indirect controlling 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 of 1986, as amended, applicable to REITs, our property management and development activities, sales of peripheral land and maintenance operations are carried out through a separate management company, CBL & Associates Management, Inc. Our operating partnership owns 100% of both the common stock and the preferred stock of the management company.

In order to maintain our qualification as a REIT for 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.

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 Web site can be found at www.cblproperties.com. The information contained in our Web site is not part of this prospectus supplement or the accompanying prospectus.

Recent Developments

On November 22, 2004, we announced that we had closed in escrow the acquisition of two regional malls from affiliates of Enterprise Asset Management. We acquired Mall Del Norte in Laredo, Texas, and Northpark Mall in Joplin, Missouri for a total consideration, including closing costs, of \$249.4 million. The capital components included cash and the assumption of \$41.6 million of non-recourse, fixed-rate debt secured by Northpark Mall at an interest rate of 5.75%. We initially financed the cash portion of the acquisition through borrowings under our lines of credit. On November 30, 2004, we closed a

\$113.4 million ten-year, interest only loan with an interest rate of 5.04%, which is secured by Mall Del Norte, and used the proceeds from this financing to repay a portion of the line of credit borrowings.

Additionally, on November 30, 2004, we closed \$65.0 million in new financings secured by the 1.1 million-square-foot Eastgate Mall in Cincinnati, Ohio. The financing is comprised of a \$57.25 million five-year loan with an interest rate of 4.55% and amortization based on a 30-year schedule and a \$7.75 million interest only, five-year, B-note with an interest rate of 6.75%. We hold the B-note. The loan replaces a \$41.13 million term loan that was set to expire in December 2004 and that had a variable interest rate of 100 basis points over LIBOR.

THE OFFERING

| | |
|-------------------------------|---|
| Issuer | CBL & Associates Properties, Inc. |
| Securities Offered | 7,000,000 depositary shares, each representing a 1/10 th fractional interest of a share of our 7.375% Series D cumulative redeemable preferred stock, par value \$.01 per share (8,050,000 depositary shares if the underwriters' over-allotment option is exercised in full). |
| Dividends | Dividends on the offered shares are cumulative from and including the date of the original issue by us of shares of Series D preferred stock underlying the depositary shares and are payable quarterly in arrears on the 30th day of March, June, September and December of each year, when, as and if declared by our board of directors. We will pay cumulative dividends on the shares of Series D preferred stock underlying the depositary shares, from and including the date of original issuance, in the amount of \$1.84375 per depositary share each year, which is equivalent to 7.375% of the \$25.00 liquidation preference per depositary share. We will pay the first dividend on March 30, 2005. Such first dividend (which will reflect a long dividend period) and any other dividend payable on the shares of Series D preferred stock underlying the depositary shares for any partial dividend period shall be computed on the basis of a 360-day year consisting of twelve 30-day months. Dividends on shares of Series D preferred stock underlying the depositary shares will continue to accrue even if we do not have earnings or funds legally available to pay such dividends or we do not declare the payment of dividends. |
| Liquidation Preference | \$250.00 per share of Series D preferred stock (\$25.00 per depositary share), plus an amount equal to accrued and unpaid dividends, whether or not declared. |
| Optional Redemption | We may not redeem the Series D preferred stock underlying the depositary shares before December 13, 2009, except in order to preserve our status as a real estate investment trust. On or after December 13, 2009, we may, at our option, redeem the shares of Series D preferred stock, in whole or in part, by paying \$250.00 per share (\$25.00 per depositary share), plus any accrued and unpaid dividends up to and including the date of redemption. |
| No Maturity | The depositary shares and the underlying shares of Series D preferred stock have no maturity date and we are not required to redeem such shares at any time. Accordingly, the depositary shares and the underlying shares of Series D preferred stock will remain outstanding indefinitely, unless we decide, at our option on or after December 13, 2009, to exercise our redemption right. We are not required to set aside funds to redeem the depositary shares and the underlying shares of Series D preferred stock. |

Ranking The Series D preferred stock underlying the depositary shares will rank senior to our common shares and on a parity with (i) our 9.0% Series A preferred stock (\$25.00 liquidation preference), which we refer to as our Series A preferred stock, (ii) our 2,000,000 outstanding shares of 8.75% Series B preferred stock (\$50.00 liquidation preference), which we refer to as our Series B preferred stock, (iii) our 460,000 outstanding shares of 7.75% Series C preferred stock, represented by 4,600,000 outstanding depositary shares (\$250.00 liquidation preference, or \$25.00 per depositary share), which we refer to as our Series C preferred stock, and (iv) any other parity securities that we may issue in the future. Such ranking applies to the payment of distributions and amounts upon liquidation, dissolution or winding up.

Voting Rights Record holders of the depositary shares representing interests in our Series D preferred stock will generally have no voting rights. However, if dividends on any outstanding Series D preferred stock are in arrears for six or more quarterly periods (whether or not consecutive), owners of the depositary shares representing interests in the Series D preferred stock, voting together as a class with the holders of all other classes or series of our equity securities ranking on parity with the Series D preferred stock which are entitled to similar voting rights, will be entitled at the next annual meeting of stockholders to elect two additional directors to our board of directors, to serve until all unpaid dividends have been paid or declared and set apart for payment. In addition, the affirmative vote or consent of the holders of at least two-thirds of the outstanding shares of Series D preferred stock and each other class or series of our equity securities ranking on parity with the Series D preferred stock which are entitled to similar voting rights, voting as a single class, is required to authorize, create or increase capital stock ranking senior to the Series D preferred stock or to amend our certificate of incorporation in a manner that materially and adversely affects the rights of the holders of the Series D preferred stock underlying the depositary shares.

Listing We will submit an application to list the depositary shares on the New York Stock Exchange under the symbol "CBLPrD." If this application is approved, we expect that trading on the New York Stock Exchange will commence within a 30-day period after the initial delivery of the depositary shares.

Settlement Date Delivery of the depositary shares will be made against payment therefor on or about December 13, 2004, which will be the third day following the date of pricing of the depositary shares and the underlying shares of Series D preferred stock.

Form The depositary shares will be issued and maintained in book-entry form registered in the name of the nominee of The Depository Trust Company.

Restrictions on Ownership

For us to qualify as a REIT under the Internal Revenue Code, transfer of depositary shares (and shares of our Series D preferred stock) is restricted so that not more than 50% in value of our outstanding capital stock is owned, directly or constructively, by five or fewer individuals, as defined in the Internal Revenue Code to include certain entities, during the last half of any taxable year. See "Description of Series D Preferred Stock and Depositary Shares Restrictions on Transfer" beginning on page S-18 of this prospectus supplement and "Description of Capital Stock Description of Common Stock Restrictions on Transfer" beginning on page 15 of the accompanying prospectus.

Conversion

The depositary shares (and the shares of Series D preferred stock) are not convertible into, or exchangeable for, any other property or securities.

Use of Proceeds

We intend to use the net proceeds from this offering for our general corporate purposes, including funding future developments, expansions, acquisitions and repayment of debt.

Risk Factors

See "Risk Factors" beginning on page S-9 of this prospectus supplement and on page 4 of the accompanying prospectus and other information contained herein for a discussion of factors you should carefully consider before deciding to invest in depositary shares.

For additional information regarding the terms of the depositary shares and the Series D preferred stock underlying the depositary shares, see "Description of Series D Preferred Stock and Depositary Shares" beginning on page S-12 of this prospectus supplement.

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

We compute the ratio of earnings to combined fixed charges and preferred stock dividends by dividing earnings by combined fixed charges and preferred stock dividends. For this purpose, earnings is the sum of net income before discontinued operations, equity in earnings of unconsolidated affiliates, minority interest in 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 costs and the portion of rent expense representing an interest factor.

Ratio of Earnings to Combined Fixed Charges and Preferred Stock Dividends

| Nine Months Ended September 30, | | Years Ended December 31, | | | | |
|------------------------------------|------|--------------------------|------|------|------|------|
| 2004 | 2003 | 2003 | 2002 | 2001 | 2000 | 1999 |
| 1.86 | 1.86 | 2.23 | 1.81 | 1.56 | 1.73 | 1.62 |

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**RATIOS OF EBITDA TO COMBINED FIXED CHARGES
AND PREFERRED STOCK DIVIDENDS AND EBITDA TO INTEREST EXPENSE**

The ratio of EBITDA to combined fixed charges and preferred stock dividends was computed by dividing EBITDA by combined fixed charges and preferred stock dividends. The ratio of EBITDA to interest expense was computed by dividing EBITDA by interest expense. Earnings before Interest, Taxes, Depreciation and Amortization, or EBITDA, is a widely used performance measure. We compute EBITDA as the sum of net income before preferred dividends, equity in earnings of unconsolidated affiliates, minority interest in earnings, interest expense, depreciation and amortization, loss on extinguishment of debt, gains (losses) on discontinued operations and abandoned projects expense. We then add our proportionate share of EBITDA in unconsolidated affiliates and exclude EBITDA attributable to minority investors in consolidated affiliates. This method of computing EBITDA is in accordance with how EBITDA is determined under the applicable financial covenants of our two largest credit facilities. Because continued compliance under these credit facilities has a significant impact on our liquidity, we believe EBITDA determined in accordance with the provisions of these credit facilities provides a meaningful performance measure, particularly as it relates to our ability to meet our fixed charges and preferred stock dividend requirements for the stated period.

EBITDA should not be considered as an alternative measure of operating results or cash flow from operations as determined in accordance with generally accepted accounting principles. EBITDA as presented may not be comparable to other similarly titled measures used by other companies.

For purposes of the ratio of EBITDA to combined fixed charges and preferred stock dividends only, fixed charges consist of interest expense (including interest cost capitalized), amortization of debt costs and the portion of rent expense representing an interest factor. In addition, in this context, fixed charges include our proportionate share of fixed charges in unconsolidated affiliates and exclude fixed charges attributable to minority investors in consolidated affiliates. Preferred stock dividends are added to such fixed charges and, together, constitute the "Company's share of total combined fixed charges and preferred dividends," which is shown in the reconciliation table provided below.

For purposes of the ratio of EBITDA to interest expense only, interest expense includes our proportionate share of interest expenses in unconsolidated affiliates and excludes interest expenses attributable to minority investors in consolidated affiliates and is shown as the "Company's share of total interest expense" in the reconciliation table provided below.

Ratio of EBITDA to Combined Fixed Charges and Preferred Stock Dividends

| Nine Months Ended September 30, | | Years Ended December 31, | | | | |
|------------------------------------|------|--------------------------|------|------|------|------|
| 2004 | 2003 | 2003 | 2002 | 2001 | 2000 | 1999 |
| 2.44 | 2.47 | 2.45 | 2.41 | 2.11 | 2.18 | 2.22 |

Ratio of EBITDA to Interest Expense

| Nine Months Ended September 30, | | Years Ended December 31, | | | | |
|------------------------------------|------|--------------------------|------|------|------|------|
| 2004 | 2003 | 2003 | 2002 | 2001 | 2000 | 1999 |
| 2.75 | 2.82 | 2.85 | 2.66 | 2.27 | 2.47 | 2.57 |

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Reconciliation of EBITDA to Cash Flows from Operating Activities
(in thousands)

| | Nine Months Ended September 30, | | Year Ended December 31, | | | | |
|--|------------------------------------|------------|-------------------------|------------|------------|------------|------------|
| | 2004 | 2003 | 2003 | 2002 | 2001 | 2000 | 1999 |
| Company's share of total EBITDA | \$ 365,174 | \$ 333,699 | \$ 456,283 | \$ 403,805 | \$ 368,792 | \$ 243,496 | \$ 220,788 |
| Minority interest in earnings of shopping center properties | 4,033 | 2,011 | 2,799 | 3,306 | 1,682 | 1,525 | 1,214 |
| Minority investors' share of depreciation, amortization and interest expense of shopping center properties | 1,948 | 1,911 | 2,761 | 2,927 | 2,648 | 2,564 | 2,533 |
| Depreciation, amortization and interest expense from unconsolidated affiliates | (9,339) | (9,231) | (12,870) | (14,619) | (10,793) | (5,644) | (5,922) |
| Amortization of finance costs and non real estate depreciation in operating expense | 5,273 | 3,497 | 6,095 | 4,863 | 4,519 | 4,399 | 2,029 |
| Interest expense | (129,274) | (113,330) | (153,322) | (143,041) | (156,558) | (95,827) | (83,026) |
| Interest expense from discontinued operations | (20) | (39) | (51) | (170) | (600) | (344) | (319) |
| Amortization of debt premiums | (3,601) | | (646) | | | | |
| Income taxes | (1,573) | (1,914) | (2,045) | (992) | (812) | (974) | (697) |
| Gain on sales of outparcels | (2,848) | (4,933) | (5,889) | (2,804) | (2,244) | (5,464) | (9,469) |
| Noncash compensation expense | 2,218 | 2,041 | 2,742 | 4,772 | 1,926 | 1,634 | 1,424 |
| Amortization of above and below market leases | (2,275) | (82) | (311) | (82) | | | |
| Changes in operating assets and liabilities | (474) | (18,410) | (21,197) | 15,958 | 4,515 | (6,247) | 2,002 |
| Cash flow provided by operating activities | \$ 229,242 | \$ 195,220 | \$ 274,349 | \$ 273,923 | \$ 213,075 | \$ 139,118 | \$ 130,557 |

Reconciliation of Interest Expense to Company's Share of Total Interest Expense, Total Fixed Charges and Total Combined Fixed Charges and Preferred Dividends
(in thousands)

| | Nine Months Ended September 30, | | Year Ended December 31, | | | | |
|---|------------------------------------|------------|-------------------------|------------|------------|-----------|-----------|
| | 2004 | 2003 | 2003 | 2002 | 2001 | 2000 | 1999 |
| Interest expense | \$ 129,274 | \$ 113,330 | \$ 153,322 | \$ 143,041 | \$ 156,558 | \$ 95,827 | \$ 83,026 |
| Interest expense from discontinued operations | 20 | 39 | 51 | 170 | 600 | 344 | 319 |
| Interest expense from unconsolidated affiliates | 4,734 | 6,230 | 8,563 | 10,129 | 7,028 | 4,133 | 4,303 |
| Minority investors' share of interest expense in shopping center properties | (1,049) | (1,088) | (1,650) | (1,579) | (1,552) | (1,583) | (1,613) |
| Company's share of total interest expense | 132,979 | 118,511 | 160,286 | 151,761 | 162,634 | 98,721 | 86,035 |
| Capitalized interest | 3,219 | 4,512 | 5,974 | 5,109 | 5,860 | 6,288 | 6,749 |
| | 136,198 | 123,023 | 166,260 | 156,870 | 168,494 | 105,009 | 92,784 |

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| | Nine Months Ended September 30, | | Year Ended December 31, | | | | |
|---|------------------------------------|------------|-------------------------|------------|------------|------------|-----------|
| Company's share of total fixed charges | | | | | | | |
| Preferred dividends | 13,248 | 12,067 | 19,633 | 10,919 | 6,468 | 6,468 | 6,468 |
| Company's share of total combined fixed charges and preferred dividends | \$ 149,446 | \$ 135,090 | \$ 185,893 | \$ 167,789 | \$ 174,962 | \$ 111,477 | \$ 99,252 |

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RISK FACTORS

Before you consider investing in our depositary shares representing shares of our Series D preferred stock, you should be aware that there are risks in making this investment. You should carefully consider these risk factors, as well as "Risk Factors" beginning on page 4 of the accompanying prospectus, together with all of the information included or incorporated by reference in this prospectus supplement and the accompanying prospectus before you decide to invest in our depositary shares representing shares of our Series D preferred stock.

The depositary shares do not have an established trading market, which may negatively affect their market value and your ability to transfer or sell your shares; the Series D preferred stock represented by the depositary shares has no stated maturity date.

The depositary shares representing interests in the Series D preferred stock are a new issue of securities with no established trading market. Because neither the depositary shares nor the underlying shares of Series D preferred stock have a stated maturity date, investors seeking liquidity will be limited to selling them in the secondary market. We will apply to list the depositary shares on the NYSE; however, we cannot assure you that the depositary shares will be approved for listing. If approved, trading of the depositary shares on the NYSE is not expected to begin until a 30-day period after the date of initial delivery of the depositary shares, and, in any event, an active trading market on the NYSE for the shares may not develop or, even if it develops, may not last, in which case the trading price of the shares could be adversely affected. We have been advised by the underwriters that they intend to make a market in the depositary shares, but they are not obligated to do so and may discontinue market-making at any time without notice.

The market value of the depositary shares could be substantially affected by various factors.

As with other publicly traded securities, the trading price of the depositary shares will depend on many factors, which may change from time to time, including:

prevailing interest rates, increases in which may have a negative effect on the trading value of the depositary shares;

the market for similar securities;

additional issuances of other series or classes of preferred stock;

general economic and financial market conditions; and

our financial condition, performance and prospects.

The depositary shares have not been rated and are subordinated to our existing and future debt; no restriction on issuance of parity preferred securities.

Neither the depositary shares nor the Series D preferred stock represented by the depositary shares has been rated by any nationally recognized statistical rating organization. Furthermore, payment of amounts due thereunder will be subordinated to all of our existing and future debt and will be structurally subordinated to the payment to our third-party joint venture partners of distributions from such joint ventures in which we invest. In addition, we may issue additional Series D preferred stock and/or shares of another class or series of preferred stock ranking on a parity with (or, upon the affirmative vote or consent of the holders of two-thirds of the outstanding Series D preferred stock and each other class or series of preferred stock ranking on a parity with the Series D preferred stock which are entitled to similar voting rights, voting as a single class, senior to) the Series D preferred stock with respect to the payment of dividends and the distribution of assets upon liquidation, dissolution or winding up. These factors may affect the trading price of the depositary shares.

Adverse Legislative or Regulatory Tax Changes

The federal income tax laws governing REITs or the administrative interpretations of those laws may be modified, amended or repealed and new laws or interpretations may be enacted. Any of those new laws or interpretations may take effect retroactively and could adversely affect us or you as a shareholder. Recently enacted legislation reduces individual tax rates applicable to certain corporate dividends. REIT dividends generally are not eligible for the reduced rates because a REIT's income generally is not subject to corporate level tax. As a result, investment in non-REIT, dividend-paying corporations may be relatively more attractive than investments in REITs. This could adversely affect the market price of the depositary shares.

Geographic Concentration

Our properties are located principally in the southeastern and midwestern United States. Our properties located in the southeastern United States accounted for approximately 57.0% of our total revenues from all properties for the nine months ended September 30, 2004 and currently include 36 malls, 17 associated centers and 38 community centers. Our properties located in the midwestern United States accounted for approximately 25.1% of our total revenues from all properties for the nine months ended September 30, 2004 and currently include 18 malls, three associated centers and six community centers. Our results of operations and funds available for distribution to stockholders therefore will be subject generally to economic conditions in the southeastern and midwestern United States. 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 demands, competition and economic conditions.

Third-Party Interests in Certain Properties

We own partial, non-controlling interests in five regional malls, one associated center, 49 community centers and one mall that is currently under construction. We manage all of these properties except for Governor's Square Mall, Governor's Plaza and Kentucky Oaks Mall. A property manager affiliated with the managing general partner performs the property management services for these properties.

Where we serve as managing general partner of the partnerships that own our properties, we may have certain fiduciary responsibilities to the other partners in those partnerships. In certain cases, the approval or consent of the other partners 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 Governor's Square Mall, Governor's Plaza and Kentucky Oaks Mall, we do not have day-to-day operational control or control over certain major decisions, including the timing and amount of distributions, which could result in decisions by the managing general partner 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.

We have generally agreed not to sell an acquired property for a number of years if such sale would trigger adverse tax consequences for the seller.

Dependence on Key Tenants

In the nine months ended September 30, 2004, no tenant accounted for 5% or more of revenues except for Limited Brands, Inc., which maintains 206 stores in our malls and accounted for approximately

5.5% of our total revenues. The loss or bankruptcy of this key tenant could negatively affect our financial position and results of operations.

Dependence on Significant Markets

Our properties located in the Nashville, Tennessee area accounted for more than 7.3% of our revenues for the nine months ended September 30, 2004. No other market accounted for more than 4% of our revenues for the nine months ended September 30, 2004. Our financial position and results of operations will therefore be affected by the results experienced at properties located in the Nashville, Tennessee area.

Conflict of Interest: Retained Property Interests

Our predecessor company, CBL & Associates, Inc., owns interests in outparcels at certain of our malls and a minority interest in one mall, the majority interest of which is owned by a third party. Certain members of Charles B. Lebovitz's family (including Stephen Lebovitz) and his father's estate continue to own four community and neighborhood centers and one tract of vacant land. The properties retained by our predecessor company and the properties owned by the Lebovitz family are managed and leased by our management company, CBL & Associates Management, Inc., which receives a fee for its services.

Conflict of Interest: Policies of Board of Directors

Certain entities owned in whole or in part by members of our senior management may continue to perform services for, or transact business with, us and the operating partnership. This includes the construction company which built or renovated most of our properties. Certain of our executive officers collectively have a significant but non-controlling interest in this construction company and Charles B. Lebovitz serves as a director of the construction company. Furthermore, certain property tenants are affiliated with members of our senior management. 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 a majority of our independent directors or stockholders after the material facts of the relationship or interest of the contract or transaction are disclosed or are known to them.

Our Insurance Coverage May Change in the Future and not Include Coverage for Acts of Terrorism

The property and liability insurance policies on our properties currently do not exclude loss resulting from acts of terrorism, whether foreign or domestic. The cost of property and liability insurance policies that do not exclude coverage for acts of terrorism has risen significantly post-September 11, 2001. As a result, many companies within our industry are agreeing to exclude this coverage from their policies where possible. Although we intend to continue our current coverage through 2005, we are unable at this time to assure you that we will continue our policy coverage as currently structured when our policies are up for renewal on December 31, 2005.

USE OF PROCEEDS

The net proceeds to us from the sale of the depositary shares offered by this prospectus supplement and the accompanying prospectus, after deducting estimated fees and expenses related to this offering, will be approximately \$168,902,500 (\$194,325,625 if the underwriters' over-allotment option is exercised in full). We intend to use the net proceeds from this offering for our general corporate purposes, including funding future developments, expansions, acquisitions and repayment of debt.

**DESCRIPTION OF SERIES D PREFERRED STOCK
AND DEPOSITARY SHARES**

The following description of the material terms and provisions of the Series D preferred stock and depositary shares is only a summary and is qualified in its entirety by reference to our certificate of incorporation and the certificate of designations creating the Series D preferred stock, each of which is incorporated by reference in this prospectus supplement and the accompanying prospectus.

Our certificate of incorporation authorizes our board of directors to issue up to 15,000,000 shares of our preferred stock, par value \$.01 per share. We currently have outstanding 2,000,000 shares of Series B preferred stock and 460,000 shares of Series C preferred stock.

Subject to the limitations prescribed by the certificate of incorporation, the board of directors is authorized to establish the number of shares constituting each series of preferred stock and to fix the designations, powers, preferences and rights of the shares of each of those series and the qualifications, limitations and restrictions of each of those series, all without any further vote or action by our stockholders. The Series D preferred stock is a series of preferred stock. When issued, the shares of Series D preferred stock will be validly issued, fully paid and non-assessable.

Each depositary share represents a $\frac{1}{10^{\text{th}}}$ fractional interest of a share of Series D preferred stock. The Series D preferred stock underlying the depositary shares will be deposited with SunTrust Bank, as depositary, under a deposit agreement among us, the depositary and the holders from time to time of the depositary receipts issued by the depositary under the deposit agreement. The depositary shares will be evidenced by depositary receipts issued pursuant to the deposit agreement. Subject to the terms of the deposit agreement, each record holder of depositary receipts evidencing depositary shares will be entitled, proportionately, to all the rights and preferences of, and subject to all of the limitations of, the interest in the Series D preferred stock underlying the depositary shares (including dividend, voting, redemption and liquidation rights and preferences). See "Description of Depositary Shares" on page 19 of the accompanying prospectus.

We will apply to list the depositary shares on the NYSE. If this application is approved, we expect trading in the depositary shares to commence within a 30-day period after the initial delivery of the depositary shares. The Series D preferred stock underlying the depositary shares will not be listed and we do not expect that there will be any trading market for the Series D preferred stock except as represented by the depositary shares.

Rank

The Series D preferred stock represented by the depositary shares will, with respect to dividend rights and rights upon our liquidation, dissolution or winding-up, rank (a) senior to our common stock and to all equity securities ranking junior to the Series D preferred stock; (b) on a parity with our Series A preferred stock and our outstanding Series B preferred stock and Series C preferred stock and other classes or series of our equity securities that we issue, the terms of which specifically provide that these equity securities rank on a parity with the Series D preferred stock; and (c) junior to all equity securities that we issue in accordance with the certificate of designations, the terms of which specifically provide that those equity securities rank senior to the Series D preferred stock. The term "equity securities" does not include convertible debt securities for this purpose.

Dividends

The depositary will distribute to the record holders of the depositary shares cumulative preferential cash dividends of \$1.84375 per depositary share each year, which is equivalent to 7.375% of the \$25.00 liquidation preference per depositary share. Dividends will be distributed when, as and if declared by the board of directors and will be payable out of the assets legally available therefor. Dividends will be

cumulative from and including the date of original issue by us of the shares of Series D preferred stock underlying the depositary shares and will be payable quarterly in arrears on the 30th day of March, June, September and December of each year or, if not a business day, the next succeeding business day. We will pay the first dividend on March 30, 2005. Such first dividend (which will reflect a long dividend period) and any other dividend payable on the shares of Series D preferred stock underlying the depositary shares for any partial dividend period shall be computed on the basis of a 360-day year consisting of twelve 30-day months. Dividends will be payable to record holders of depositary shares as they appear in the depositary's records at the close of business on the applicable record date, which will be the 15th day of the calendar month in which the applicable due date for the dividend payment falls or on such other date designated by the board of directors for the payment of dividends that is not more than 30 nor less than 10 days before the due date for the dividend payment.

We will not declare dividends on the Series D preferred stock, or pay or set apart for payment dividends on the Series D preferred stock at any time if the terms and provisions of any agreement, including any agreement relating to our indebtedness, prohibits the declaration, payment or setting apart for payment or provides that the declaration, payment or setting apart for payment would constitute a breach of the agreement or a default under the agreement, or if the declaration or payment is restricted or prohibited by law.

Notwithstanding the foregoing, dividends on the Series D preferred stock underlying the depositary shares will accrue whether or not we have earnings, whether or not there are funds legally available for the payment of those dividends, and whether or not those dividends are declared. Accrued but unpaid dividends on the Series D preferred stock will accumulate as of the due date on which each such dividend payment first becomes payable. Except as described in the next sentence, we will not declare or pay or set apart for payment dividends on any shares of common stock or shares of any other series of preferred stock ranking, as to dividends, on a parity with or junior to the Series D preferred stock (other than a dividend paid in shares of common stock or in shares of any other class of capital stock ranking junior to the Series D preferred stock as to dividends and upon liquidation) for any period unless full cumulative dividends on the Series D preferred stock for all past dividend periods and the then current dividend period have been or contemporaneously are (a) declared and paid in cash or (b) declared and a sum sufficient to pay them in cash is set apart for payment. When we do not pay dividends in full (or we do not set apart a sum sufficient to pay them in full) upon the Series D preferred stock and the shares of any other series of preferred stock ranking on a parity as to dividends with the Series D preferred stock, we will declare any dividends upon the Series D preferred stock and any other series of preferred stock ranking on a parity as to dividends with the Series D preferred stock proportionately so that the dividends declared per share of Series D preferred stock and those other series of preferred stock will in all cases bear to each other the same ratio that accrued dividends per share on the Series D preferred stock and those other series of preferred stock (which will not include any accrual in respect of unpaid dividends on such other series of preferred stock for prior dividend periods if those other series of preferred stock do not have cumulative dividends) bear to each other. No interest, or sum of money in lieu of interest, will be payable in respect of any dividend payment or payments on the Series D preferred stock which may be in arrears.

Except as provided in the immediately preceding paragraph, unless we have declared and paid or are contemporaneously declaring and paying full cumulative dividends in cash on the Series D preferred stock or we have declared full cumulative dividends and we have set apart for payment a sum sufficient for the payment of the declared dividends for all past dividend periods and the then current dividend period, we will not declare or pay or set aside for payment dividends (other than in common stock or other capital stock ranking junior to the Series D preferred stock as to dividends and upon liquidation), nor will we declare or pay any other dividend on our common stock or any other capital stock ranking junior to or on a parity with the Series D preferred stock as to dividends or amounts upon liquidation, nor will we redeem, purchase or otherwise acquire for consideration, or pay or make available any monies for a

sinking fund for the redemption of any common stock, or on any other capital stock ranking junior to or on a parity with the Series D preferred stock as to dividends or upon liquidation (except by conversion into or exchange for other shares of capital stock ranking junior to the Series D preferred stock as to dividends and upon liquidation and except for the acquisition of shares that have been designated as shares-in-trust). See "Description of Capital Stock Description of Common Stock Restrictions on Transfer" in the accompanying prospectus for information about the designation of shares as shares-in-trust. Record holders of depositary receipts representing interests in shares of our Series D preferred stock are not entitled to any dividend, whether payable in cash, property or shares of capital stock, in excess of full cumulative dividends on the Series D preferred stock as provided above. Any dividend payment made on the Series D preferred stock will first be credited against the earliest accrued but unpaid dividends due with respect to those shares which remain payable.

Dividends on the Series D preferred stock underlying the depositary shares included in this offering will accrue from and including their original date of issuance and will be paid to the record holders of the depositary shares on each dividend payment date, with the first dividend to be paid on March 30, 2005. All such payments will be made in accordance with our certificate of designations relating to the Series D preferred stock and the deposit agreement relating to the depositary shares.

If, for any taxable year, we elect to designate any portion of the dividends, within the meaning of the Internal Revenue Code, paid or made available for the year to holders of all classes of our shares of capital stock as "capital gain dividends", as defined in Section 857 of the Internal Revenue Code, then the portion of the dividends designated as capital gain dividends that will be allocable to the record holders of depositary shares will be the portion of the dividends designated as capital gain dividends multiplied by a fraction, the numerator of which will be the total dividends paid or made available to such record holders of the depositary receipts for the year and the denominator of which will be the total dividends paid or made available for the year to holders of all classes of our shares of capital stock.

Liquidation Preference

Upon any voluntary or involuntary liquidation, dissolution or winding-up of our affairs, the record holders of the depositary shares that represent interests in our Series D preferred stock will be entitled to be paid out of our assets legally available for distribution to our stockholders a liquidation preference of \$25.00 per depositary share, plus an amount equal to any accrued and unpaid dividends to the date of payment (whether or not declared), before any distribution or payment may be made to holders of shares of common stock or any other class or series of our capital stock ranking junior to the Series D preferred stock as to liquidation rights. If, upon our voluntary or involuntary liquidation, dissolution or winding up, our available assets are insufficient to pay the amount of the liquidating distributions on all outstanding shares of Series D preferred stock and the corresponding amounts payable on all shares of other classes or series of capital stock ranking on a parity with the Series D preferred stock in the distribution of assets, then the record holders of the depositary shares representing interests in our Series D preferred stock and all other classes or series of shares of capital stock of that kind will share proportionately in any such distribution of assets in proportion to the full liquidating distributions to which they would otherwise be respectively entitled. The record holders of depositary shares will be entitled to written notice of any liquidation. After payment of the full amount of the liquidating distributions to which they are entitled, such record holders will have no right or claim to any of our remaining assets. Our consolidation or merger with or into any other corporation, trust or other entity, the consolidation or merger of any other corporation, trust or other entity with or into us or the sale, lease or conveyance of all or substantially all of our property or business will not be deemed to constitute our liquidation, dissolution or winding-up.

Redemption

Whenever we redeem shares of our Series D preferred stock held by the depositary, the depositary will redeem as of the same redemption date a number of depositary shares representing the shares so redeemed and the depositary receipts evidencing such depositary shares.

Shares of Series D preferred stock underlying the depositary shares are not redeemable before December 13, 2009. However, in order to ensure that we remain qualified as a REIT for federal income tax purposes, the Series D preferred stock will be subject to provisions of the certificate of incorporation, under which Series D preferred stock owned by a stockholder in excess of the ownership limit, as defined in the accompanying prospectus, will automatically be designated shares-in-trust and transferred to a trust for the exclusive benefit of a charitable beneficiary which we will designate, and we may purchase the excess shares after that transfer in accordance with the terms of the certificate of incorporation. See "Description of Capital Stock Description of Common Stock Restrictions on Transfer" in the accompanying prospectus for more information about these transfer restrictions.

On or after December 13, 2009, we may, at our option upon not less than 30 nor more than 60 days' written notice, redeem the Series D preferred stock underlying the depositary shares, in whole or in part, at any time or from time to time, for cash at a redemption price of \$250.00 per share (\$25.00 per depositary share), plus any accrued and unpaid dividends up to and including the date fixed for redemption (except as provided below), without interest. If we redeem fewer than all of the outstanding shares of Series D preferred stock, the related depositary shares will be redeemed proportionately (as nearly as may be practicable without creating fractional shares) or by lot or by any other equitable method as we may determine. Record holders of depositary receipts evidencing the depositary shares to be redeemed will surrender such depositary receipts at the place designated in the notice and will be entitled to the redemption price and any accrued and unpaid dividends payable upon the redemption following surrender of the depositary receipts. If notice of redemption of any Series D preferred stock and depositary shares has been given and if we have set aside in trust the funds necessary for the redemption for the benefit of the record holders of depositary receipts evidencing depositary shares relating to shares of our Series D preferred stock so called for redemption, then from and after the redemption date dividends will cease to accrue on the depositary shares and underlying Series D preferred stock and such depositary shares and underlying Series D preferred stock will no longer be deemed outstanding and all rights of the holders of the depositary receipts evidencing such depositary shares will terminate, except for the right to receive the redemption price plus any accrued and unpaid dividends payable upon the redemption.

The redemption provisions of the depositary shares and underlying Series D preferred stock do not in any way limit our right or ability to purchase, from time to time either at a public or a private sale, depositary shares and shares of the Series D preferred stock at such price or prices as we may determine, subject to the provisions of applicable law.

Unless we have declared and paid or we are contemporaneously declaring and paying full cumulative dividends on all depositary shares related to the Series D preferred stock and we have set aside a sum sufficient for the payment of full cumulative dividends on all such shares for all past dividend periods and the then current dividend period, we may not redeem such depositary shares unless we simultaneously redeem all outstanding depositary shares, and we will not purchase or otherwise acquire directly or indirectly any depositary shares and shares of Series D preferred stock except by exchange for shares of capital stock (or related depositary receipts) ranking junior to the Series D preferred stock as to dividends and amounts upon liquidation; except that that we may purchase, in accordance with the terms of our certificate of incorporation, our shares designated as shares-in-trust or shares of Series D preferred stock in accordance with a purchase or exchange offer made on the same terms to holders of all depositary receipts evidencing such depositary shares.

The depositary will mail a notice of redemption, furnished by us, postage prepaid, not less than 30 nor more than 60 days prior to the redemption date, addressed to the record holders of the depositary shares to be so redeemed, at the addresses of such holders as the same appear on the records of the depositary. No failure to give the notice or any defect in the notice or in the mailing of the notice will affect the validity of the proceedings for the redemption of any depositary shares or shares of our Series D preferred stock except as to a holder to whom notice was defective or not given. Each notice will state (a) the redemption date; (b) the redemption price; (c) the number of depositary shares (and applicable number of Series D preferred stock) to be redeemed; (d) the place or places where depositary receipts evidencing the depositary shares to be redeemed are to be surrendered for payment of the redemption price payable on the redemption date; and (e) that dividends on the depositary shares to be redeemed will cease to accrue on the redemption date. If we will redeem fewer than all of the depositary shares held by any record holder, the notice mailed to that record holder will also specify the number of depositary shares held by such holder to be redeemed.

Immediately before any redemption of the depositary shares and underlying shares of Series D preferred stock, we will pay, in cash, any accrued and unpaid dividends through the redemption date, unless a redemption date falls after a dividend record date and before the corresponding dividend payment date, in which case each holder of depositary receipts at the close of business on the dividend record date will be entitled to the dividend payable on the depositary shares on the corresponding dividend payment date notwithstanding the redemption of those shares before that dividend payment date. Except as provided above, we will make no payment or allowance for unpaid dividends, whether or not in arrears, on Series D preferred stock for which a notice of redemption has been given.

The Series D preferred stock will have no stated maturity and will not be subject to any sinking fund or mandatory redemption. However, in order to ensure that we remain qualified as a REIT for federal income tax purposes, depositary shares owned by a stockholder in excess of the ownership limit will be designated as shares-in-trust and will automatically be transferred to a trust for the exclusive benefit of a charitable beneficiary which we will designate, and we may purchase the excess shares after that transfer in accordance with the terms of the certificate of incorporation. See "Description of Capital Stock Description of Common Stock Restrictions on Transfer" in the accompanying prospectus for more information about these transfer restrictions.

Voting Rights

Holders of depositary shares will generally have no voting rights, except as provided by applicable law and as described below.

Upon receipt of notice of any meeting at which the holders of Series D preferred stock are entitled to vote, the depositary will mail the information contained in such notice of meeting to the record holders of the depositary shares relating to such Series D preferred stock. Each record holder of such depositary shares on the record date (which will be the same date as the record date for the underlying Series D preferred stock) will be entitled to instruct the depositary as to the exercise of the voting rights pertaining to the shares of Series D preferred stock underlying such holder's depositary shares. The depositary will endeavor, insofar as practicable, to vote the number of shares of Series D preferred stock underlying such depositary shares in accordance with such instructions, and we will agree to take all action which the depositary deems necessary in order to enable the depositary to do so. The depositary will abstain from voting the underlying shares of Series D preferred stock to the extent it does not receive specific instructions from the holders of depositary shares. The depositary will not be responsible for any failure to carry out any instruction to vote, or for the manner or effect of any such vote, as long as such action or inaction is in good faith and does not result from gross negligence or willful misconduct.

If no dividends are paid on the Series D preferred stock for six or more quarterly periods (whether or not consecutive), a preferred dividend default will exist, and holders of the depositary shares representing

interests in the Series D preferred stock, voting together as a class with the holders of all other classes or series of our equity securities ranking on parity with the Series D preferred stock which are entitled to similar voting rights, will be entitled at the next annual meeting of stockholders to elect two additional directors to our board of directors. Notwithstanding the foregoing, if, prior to the election of any additional directors in the manner described in this paragraph, all accumulated dividends are paid on the Series D preferred stock and all other classes or series of parity preferred stock upon which like voting rights have been conferred and are exercisable, no such additional directors will be so elected. Any such additional directors so elected will serve until all unpaid cumulative dividends have been paid or declared and set aside for payment. Upon such election, the size of our board of directors will be increased by two directors. If and when all such accumulated dividends shall have been paid on the Series D preferred stock and all other classes or series of parity preferred stock upon which like voting rights have been conferred and are exercisable, the term of office of each of the additional directors so elected will terminate and the size of our board of directors will be reduced accordingly. So long as a preferred dividend default continues, any vacancy in the office of additional directors elected under this paragraph may be filled by written consent of the other additional director who remains in office, or if no additional director remains in office, by a vote of the holders of a majority of the outstanding Series D preferred stock when they have the voting rights described above (voting as a single class with all other classes or series of parity preferred stock upon which like voting rights have been conferred and are exercisable). Each of the directors elected as described in this paragraph will be entitled to one vote on any matter.

The affirmative vote or consent of the holders of two-thirds of the outstanding Series D preferred stock and each other class or series of preferred stock ranking on a parity with respect to the payment of dividends or the distribution of assets upon our liquidation, dissolution or winding up, voting as a single class, will be required to (i) authorize or create, or increase the authorized or issued amount of, any class or series of capital stock ranking senior to the Series D preferred stock with respect to payment of dividends or the distribution of assets upon our liquidation, dissolution or winding-up or reclassify any of our authorized shares into capital stock of that kind, or create, authorize or issue any obligation or security convertible into or evidencing the right to purchase any such capital stock; or (ii) amend, alter or repeal the provisions of the certificate of incorporation or the certificate of designations, whether by merger, consolidation, transfer or conveyance of substantially all of its assets or otherwise, so as to mat