

Education Realty Trust, Inc.  
 Form 424B2  
 September 07, 2012

**Filed Pursuant to Rule 424(b)(2)**  
**File No. 333-183790**

## CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Amount to be Registered <sup>(1)</sup>	Proposed Maximum Offering Price Per Security	Proposed maximum aggregate offering price	Amount of registration fee
Common Stock, \$0.01 par value per share Pursuant to Rule 416 under the Securities Act of 1933, as amended, or the Securities Act, this Registration Statement shall include any additional shares that may become issuable as a result of any stock split, stock dividend, recapitalization or other similar transaction effected without the receipt of consideration that results in an increase in the number of Education Realty Trust, Inc. s outstanding shares of common stock. (1) As discussed below, pursuant to Rule 415(a)(6) under the Securities Act, this prospectus supplement only includes (2) unsold securities that have been previously registered. Accordingly, there is no registration fee due in connection with this prospectus supplement. In accordance with Rules 456(b) and 457(r) of the Securities Act, the registrant initially deferred payment of the registration fee for Registration Statement No. 333-183790. The registrant previously paid a registration fee of \$3,990 with respect to 4,000,000 unsold shares of common stock previously registered under its registration statement on Form S-3, Registration Statement No. 333-161497, initially filed on August 21, 2009 and subsequently declared effective on September 10, 2009, a portion of which shares were carried forward from a prior registration statement on Form S-3, Registration Statement No. 333-136148 (collectively, the DRIP Registration Statements ), pursuant to Rule 415(a)(6). Pursuant to Rule 415(a)(6) under the Securities Act, the securities registered pursuant to this prospectus supplement include such 4,000,000 unsold shares of common stock that were initially registered under the DRIP Registration Statements, and this prospectus supplement relates only to such unsold securities. The registration fee of \$3,990 with respect to the unsold shares of common stock on the DRIP Registration Statements will continue to be applied to such unsold securities. Accordingly, there is no registration fee due in connection with this prospectus supplement.	4,000,000	( 2 )	( 2 )	( 2 )

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**PROSPECTUS SUPPLEMENT**  
(To prospectus dated September 7, 2012)

**AMENDED AND RESTATED  
DIVIDEND REINVESTMENT AND DIRECT STOCK  
PURCHASE PLAN**

We are pleased to offer you the opportunity to participate in the Education Realty Trust Inc. Amended and Restated Dividend Reinvestment and Direct Stock Purchase Plan, or the Plan. The Plan has two components: a dividend reinvestment component and a direct stock purchase component. The dividend reinvestment component provides our stockholders and holders of limited partnership interests, or units, in Education Realty Operating Partnership, LP, or the Operating Partnership, and University Towers Operating Partnership, LP, or the University Towers Partnership, with an easy and economical way to designate all or any portion of the cash dividends paid on their shares of common stock or distributions on units for reinvestment in additional shares of our common stock. The direct stock purchase component permits our stockholders, unitholders and new investors to purchase shares of common stock in an inexpensive and convenient manner.

Our common stock is listed on the New York Stock Exchange, or NYSE, under the symbol EDR. On September 6, 2012, the closing price of our common stock was \$11.56 per share.

Key features of the Plan allow you to:

- Enroll in the Plan even if you are not a current stockholder;
  - Purchase shares of common stock through the Plan without a personal broker and, when shares are purchased by the Plan Administrator on the open market, without paying a commission;
  - Automatically reinvest all or any portion of your cash dividends in additional shares of our common stock;
  - Purchase additional shares of common stock through optional cash investments of as little as \$300 per month or as much as \$7,500 per month, and in some instances, in excess of \$7,500;
  - Receive a discount from the market price that may range from 0% to 5% at our sole discretion for all shares of common stock purchased directly from us by the Plan; and
  - Authorize automatic monthly investments in shares of our common stock from a checking or savings account.
- To ensure that we maintain our qualification as a real estate investment trust, or REIT, for federal income tax purposes, no person may own more than 9.8% (in value, number of shares or voting power, whichever is the most restrictive) of either our issued and outstanding capital stock or our issued and outstanding common stock, unless our board of directors waives these limitations.

Please read this prospectus supplement and the accompanying prospectus carefully and keep it and any future investment statements for your reference. If you have any questions about the Plan, please call American Stock Transfer & Trust Company, LLC or the Plan Administrator, toll free at (866) 659-2645. Customer service representatives are available between the hours of 8:00 a.m. and 7:00 p.m. Eastern time Monday through Friday.

**Investing in our securities involves substantial risks. See Risk Factors on page S-1 of this prospectus supplement, as well as the Risk Factors incorporated by reference herein from our most recent Annual Report on Form 10-K, our Quarterly Reports on Form 10-Q and other information that we file with the Securities and Exchange Commission.**

**Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved 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.**

**The date of this prospectus supplement is September 7, 2012.**

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**No dealer, salesperson or other person is authorized to give any information or to represent anything not contained or incorporated by reference in this prospectus supplement or the accompanying prospectus. You must not rely on any unauthorized information or representations not contained or incorporated by reference in this prospectus supplement or the accompanying prospectus. This prospectus supplement does not constitute an offer to sell or the solicitation of an offer to buy any securities other than the registered securities to which they relate, nor does it constitute an offer to sell or the solicitation of an offer to buy securities in any jurisdiction to any person to whom it is unlawful to make such offer or solicitation in such jurisdiction. The information contained in this prospectus supplement and the documents incorporated by reference herein are accurate only as of the date of such document. Our business, financial condition, liquidity, results of operations, funds from operations, or FFO, and prospects may have changed since those dates.**



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## About this Prospectus Supplement

This document is in two parts. The first is this prospectus supplement, which describes the specific terms of the Plan and this offering. The second part, the accompanying prospectus, gives more general information, some of which may not apply to this offering. This prospectus supplement also adds to, updates and changes information contained in the accompanying prospectus. If the description of the offering varies between this prospectus supplement and the accompanying prospectus, you should rely on the information in this prospectus supplement. The accompanying prospectus is part of a registration statement that we filed with the Securities and Exchange Commission, or SEC, using a shelf registration statement. Under the shelf registration process, from time to time, we may offer and sell common stock, preferred stock, debt securities, depositary shares, subscription rights, or any combination thereof, in one or more offerings. It is important that you read and consider all of the information contained in this prospectus supplement and the accompanying prospectus in making your investment decision. You should also read and consider the information in the documents to which we have referred you in *Where You Can Find More Information* of the accompanying prospectus.

All references in this prospectus supplement to EdR, the Company, we, us or our mean Education Realty Trust and its consolidated subsidiaries, except where it is clear from the context that the term means only the issuer, EdR. Unless otherwise stated, currency amounts in this prospectus supplement are stated in United States, or U.S., dollars.

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## **THE COMPANY**

We are a self-managed and self-advised real estate investment trust, or REIT, organized in July 2004 to develop, acquire, own and manage collegiate housing communities located on or near university campuses. We were formed to continue and expand upon the collegiate housing business of Allen & O Hara, Inc., a company with over 40 years of experience as an owner, manager and developer of collegiate housing. We own and operate collegiate housing communities, provide third-party management services for collegiate housing communities, selectively develop collegiate housing communities for our own account and provide third-party development consulting services on collegiate housing development projects for universities and other third parties.

All of our assets are held by, and we conduct substantially all of our activities through, the Operating Partnership and its wholly owned subsidiaries. We are the sole general partner of the Operating Partnership, and, as a result, our board of directors effectively directs all of the Operating Partnership's affairs. As of June 30, 2012, we owned 99.1% of the outstanding partnership units of the Operating Partnership. In addition, the University Towers Partnership, which is our affiliate, owns and operates our University Towers property located in Raleigh, North Carolina. As of June 30, 2012, we owned 72.7% of the units in the University Towers Partnership.

Our executive offices are located at 999 South Shady Grove Road, Suite 600, Memphis, Tennessee 38120, and our telephone number is (901) 259-2500. Our website address is *www.edrtrust.com*. However, the information located on, or accessible from, our website is not, and shall not be deemed to be, a part of this prospectus supplement or the accompanying prospectus, or incorporated into any other filings that we make with the Securities and Exchange Commission, or the SEC.

## **RISK FACTORS**

Investment in our common stock involves substantial risk. Before choosing to participate in the Plan and acquiring shares of common stock pursuant to this prospectus supplement and the accompanying prospectus, you should carefully consider the risk factors incorporated by reference to our most recent Annual Report on Form 10-K, our subsequent Quarterly Reports on Form 10-Q and other information contained in this prospectus supplement and the accompanying base prospectus, as updated by our subsequent filings under the Securities Exchange Act of 1934, as amended, or the Exchange Act. The occurrence of any of these risks might cause you to lose all or part of your investment in our common stock. Please also refer to the section below entitled Forward-Looking Statements.

In addition, the following factors identify several of the most important risks and uncertainties that you may face by virtue of your participation in the Plan.

### **There is no price protection for your shares of common stock purchased through the Plan.**

Your investment in shares of common stock purchased through the Plan will be exposed to changes in market conditions and changes in the market value of such shares. Your ability to liquidate or otherwise dispose of your shares of common stock acquired through the Plan is subject to the terms of the Plan and the withdrawal procedures thereunder. You may not be able to withdraw or sell your shares acquired through the Plan in time to react to market conditions.

**The Purchase Price for shares of common stock purchased or sold through the Plan will vary.**

The Purchase Price (as described in Question 15 under Information About the Plan ) for any shares of common stock that you purchase or sell through the Plan will vary and cannot be predicted. You may purchase or sell shares at a Purchase Price that is more or less than the market price you would pay if you acquired or sold shares on the open market on the related dividend payment date or Purchase Date or sale date, as the case may be. See Question 14 under Information About the Plan.

**We may change our determination as to whether the Plan purchases shares of common stock directly from us which could increase the fees you pay in connection with initial and optional cash investments under the Plan.**

Although shares of common stock may be purchased directly from us in the form of newly-issued shares, we may, without providing you with prior written notice, instruct the Plan Administrator to purchase shares of

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our common stock directly from third parties through open market transactions. Such purchases, with respect to initial and optional cash investments, will be subject to processing fees, currently \$0.10 per share, which include any brokerage commission that the Plan Administrator is required to pay.

**No discount may be available.**

While we, at our sole discretion, may establish from time to time a discount from market prices of up to 5%, the discount afforded in one month will not ensure the availability of a discount or the same discount in future months. Each month, we may change or eliminate the discount without giving you prior notice.

**You will not earn any interest on your dividends or cash pending investment.**

No interest will be paid on dividends, cash or other funds held by the Plan Administrator pending investment or disbursement.

**Future sales or issuances of our common stock may cause the market price of our common stock to decline.**

The sale of substantial amounts of our common stock, whether directly by us or in the secondary market, the perception that such sales or other issuances of common stock could occur or the availability for future sale or issuance of shares of our common stock or securities convertible into or exchangeable or exercisable for our common stock could materially and adversely affect the market price of our common stock and our ability to raise capital through future offerings of equity or equity-related securities. In addition, we may issue capital stock or other equity securities senior to our common stock in the future for a number of reasons, including to finance our operations and business plan, to adjust our ratio of debt to equity, to satisfy obligations upon the exchange of partnership units in the Operating Partnership and the University Towers Partnership or for other reasons.

**The market price of our common stock may fluctuate significantly.**

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

- actual or anticipated variations in our operating results, FFO, cash flows or liquidity;
- changes in our earnings or FFO estimates or those of analysts and any failure to meet such estimates;
- changes in our dividend policy;
- publication of research reports about us, the collegiate housing industry or the real estate industry generally;
- increases in market interest rates that lead purchasers of our common stock to demand a higher dividend yield;
- changes in market valuations of similar companies;
- adverse market reaction to the amount of our outstanding debt at any time, the amount of our maturing debt in the near and medium term and our ability to refinance such debt and the terms thereof or our plans to incur additional debt in the future;
- additions or departures of key management personnel, including our ability to find attractive replacements;
- actions by institutional stockholders;
- speculation in the press or investment community;
- the realization of any of the other risk factors included in, or incorporated by reference in, this prospectus supplement and the accompanying prospectus; and
- general market and economic conditions.

We may change our determination as to whether the Plan purchases shares of common stock directly from us which

Many of the factors listed above are beyond our control. Those factors may cause the market price of our common stock to decline, regardless of our financial performance, condition and prospects. It is impossible to

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provide any assurance that the market price of our common stock will not decline in the future, and it may be difficult for our stockholders to resell their shares of our common stock in the amount or at prices or times that they find attractive, or at all.

## **FORWARD-LOOKING STATEMENTS**

This prospectus supplement, the accompanying prospectus and the documents that are incorporated by reference herein and therein contain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, or the Securities Act, and Section 21E of the Exchange Act. Forward-looking statements provide our current expectations or forecasts of future events and are not statements of historical fact. These forward-looking statements include information about possible or assumed future events, including, among other things, discussion and analysis of our future financial condition, results of operations and FFO, our strategic plans and objectives, including future or pending acquisitions and dispositions, cost management, occupancy and leasing rates and trends, liquidity and ability to refinance our indebtedness as it matures, anticipated capital expenditures (and access to capital) required to complete projects, amounts of anticipated cash distributions to our stockholders in the future and other matters. Words such as anticipates, expects, intends, plans, believes, seeks, estimates and variations of these words and expressions are intended to identify forward-looking statements. These statements are not guarantees of future performance and are subject to risks, uncertainties and other factors, some of which are beyond our control, are difficult to predict and/or could cause actual results to differ materially from those expressed in or implied by the forward-looking statements.

Forward-looking statements involve inherent uncertainty and may ultimately prove to be incorrect or false. You are cautioned not to place undue reliance on forward-looking statements. Except as otherwise may be required by law, we undertake no obligation to update or revise forward-looking statements to reflect changed assumptions, the occurrence of unanticipated events or actual results. Our actual results could differ materially from those expressed in or implied by these forward-looking statements as a result of various factors, including, but not limited to:

risks and uncertainties related to the recent recession, the national and local economies, and the real estate industry in general and in our specific markets (including university enrollment conditions and admission policies and our relationship with these universities);

volatility in the capital markets;  
rising interest and insurance rates;

competition from university-owned or other private collegiate housing and our inability to obtain new tenants on favorable terms, or at all, upon the expiration of existing leases;

availability and terms of capital and financing, both to fund our operations and to refinance our indebtedness as it matures;

legislative or regulatory changes, including changes to laws governing collegiate housing, construction and REITs;

our possible failure to qualify as a REIT and the risk of changes in laws affecting REITs;

our dependence upon key personnel whose continued service is not guaranteed;

our ability to identify, hire and retain highly-qualified executives in the future;

availability of appropriate acquisition and development targets;

failure to make acquisitions on attractive terms or integrate acquisitions successfully;

the financial condition and liquidity of, or disputes with, our joint venture and development partners;

impact of ad valorem, property and income taxes;

changes in generally accepted accounting principles;

construction delays, increasing construction costs or construction costs that exceed estimates;



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potential liability for uninsured losses and environmental liabilities;  
lease-up risks; and

the potential need to fund improvements or other capital expenditures out of operating cash flow.

This list of risks and uncertainties, however, is only a summary of some of the most important factors and is not intended to be exhaustive. You should carefully review the risks that are described under **Risk Factors** in this prospectus supplement and in our most recent Annual Report on Form 10-K, our quarterly reports on Form 10-Q, and the other information that we file from time to time with the SEC that is incorporated by reference in this prospectus supplement and the accompanying prospectus. New factors that are not currently known to us or of which we are currently unaware may also emerge from time to time that could materially and adversely affect us.

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## INFORMATION ABOUT THE PLAN

Our board of directors adopted the Plan on May 24, 2006 and approved amendments to the Plan on June 11, 2008.

The following questions and answers explain and constitute the Plan. Stockholders and unitholders who do not participate in the Plan will receive cash dividends, when, as and if authorized by our board of directors and declared and paid by us out of funds legally available for dividends.

### Purpose

#### 1. What is the purpose of the Plan?

The Plan is a convenient and economical stock purchase program available for existing investors to increase their holdings and for new investors to make an initial investment in our common stock. Participants in the Plan may have all or any portion of their dividends automatically reinvested in our common stock. Participants may also elect to make optional cash investments through the Plan Administrator.

Participation in the Plan is voluntary, and we give no advice regarding your decision to join the Plan. However, if you decide to participate, an enrollment form and reply envelope are enclosed for your convenience. In addition, enrollment forms are also available, and may be completed, online. You can access these services by going to the Stock Information tab and clicking on DRIP/Stock Purchase in the Investor Relations section of our website, [www.edrtrust.com](http://www.edrtrust.com), or the Plan Administrator's website, [www.amstock.com](http://www.amstock.com).

### Options Available to Participants

#### 2. What options are available to enrolled Participants?

If you are a stockholder or unitholder and elect to participate in the Plan, you may have the cash dividends paid on all or any portion of your shares of our common stock and the cash distributions paid on all or any portion of your units automatically reinvested in additional shares of our common stock. If you are a new investor, you may make an initial investment through the Plan, subject to a minimum investment of \$300 and a maximum investment of \$7,500. As a participant in the Plan, you may also make optional cash investments through the Plan, subject to a minimum investment of \$300 per month and a maximum investment of \$7,500 per month. Optional cash investments in excess of \$7,500 per month may be made pursuant to a written request and are not subject to a predetermined maximum limit on the amount of the investment. (See Question 10 below).

The discount from market prices, if any, on all shares of common stock purchased directly from us will range from 0% to 5% and will be established at our sole discretion, along with any other terms, after a review of current market conditions, the level of participation in the Plan and our current and projected capital needs.

### Administration

#### 3. Who administers the Plan?

We have retained American Stock Transfer & Trust Company, LLC to act as the agent for Plan participants, to administer the Plan, keep records, send statements of account activity to each participant and perform other duties

relating to the Plan. All costs of administering the Plan are paid by us. Shares of common stock purchased through the Plan and held by the Plan Administrator will be registered in the Plan Administrator's name for the benefit of the participants. As record holder of the shares of common stock and other securities held in Plan participants' accounts under the Plan, the Plan Administrator will receive distributions on all shares and units held by it on the distribution record date, will credit such distributions to the participants' accounts on the basis of whole and fractional shares held in these accounts and will automatically reinvest such distributions in additional shares of common stock, pursuant to the reinvestment option selected by the participant. The Plan Administrator makes all purchases of common stock under the Plan. In the event that the Plan Administrator resigns or otherwise ceases to act as plan administrator, we will appoint a new plan administrator to administer the Plan. The Plan Administrator also acts as distribution disbursing agent, transfer agent and registrar for our common stock.

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The following address, telephone number and website may be used to obtain information about the Plan:

Internet:

*www.amstock.com*

Telephone:

(866) 659-2645

Mail:

*For Inquiries:*

American Stock Transfer & Trust Company, LLC

Attention: Education Realty Trust, Inc. Dividend Reinvestment and Direct Stock Purchase Plan

6201 15<sup>th</sup> Avenue

Brooklyn, New York 11219

*For Transaction Processing:*

American Stock Transfer & Trust Company, LLC

Attention: Education Realty Trust, Inc. Dividend Reinvestment and Direct Stock Purchase Plan

P.O. Box 922

Wall Street Station

New York, New York 10269-0563

If you have any questions about the Plan, please call the Plan Administrator toll free at (866) 659-2645. Customer service representatives are available between the hours of 8:00 a.m. and 7:00 p.m. Eastern time Monday through Friday.

If you are already a participant, be sure to include your account number(s) and include a reference to Education Realty Trust, Inc. in any correspondence.

## **Eligibility**

### **4. Who is eligible to become a Plan participant?**

The Plan is open to all U.S. residents, whether or not they currently own shares of our common stock or units in the Operating Partnership and/or the University Towers Partnership.

If you are not a U.S. citizen, you can participate in the Plan, provided there are no laws or governmental regulations that would prohibit you from participating or that would affect the terms of the Plan. We reserve the right to terminate the participation of any stockholder if we deem it advisable pursuant to any foreign laws or regulations.

### **5. Are there any limitations on who is eligible to become a Plan participant other than those described above?**

#### **Foreign Law Restrictions**

If you are a citizen or resident of a country other than the United States, its territories and possessions, you should make certain that your participation does not violate local laws governing such things as taxes, currency and exchange

controls, stock registration and foreign investments.

### **REIT Qualification Restrictions**

In order to maintain our qualification as a REIT, not more than 50% in value of our outstanding stock may be owned, directly or indirectly, by five or fewer individuals (as defined in the Internal Revenue Code of 1986, as amended, or the Code, to include certain entities). Our charter restricts beneficial and constructive ownership of more than 9.8% in value, number of shares or voting power, whichever is the most restrictive, of either our issued and outstanding capital stock or our issued and outstanding common stock by any single stockholder or by certain groups of stockholders. Our board of directors may waive the capital stock ownership limit and the common stock ownership limit for a stockholder if it is satisfied, based upon the receipt of a ruling from the Internal Revenue Service, or the IRS, opinion of tax counsel or other evidence satisfactory to our board of directors, that ownership in excess of these limits will not jeopardize our qualification as a REIT. We may terminate, by written notice at any time, any participant's individual participation in the Plan if such participation would be in violation of the restrictions contained in our charter.

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A purported transfer of shares of our common stock or other classes of stock we may issue in the future to a person that, as a result of the transfer, would result in the violation of the capital stock ownership limit or the common stock ownership limit will be void or such shares will be automatically transferred to, and held by, a trust for the exclusive benefit of one or more charitable organizations selected by us. Shares of common stock acquired in violation of the capital stock ownership limit or the common stock ownership limit may be redeemed by us for the lesser of the price paid in the transaction resulting in the violation or the most recent closing price of the shares preceding the redemption. We reserve the right to invalidate any purchases made under the Plan that we determine, in our sole discretion, may violate the capital stock ownership limit or the common stock ownership limit.

### **Exclusion from Plan for Short-Term Trading or Other Practices**

You should not use the Plan to engage in short-term trading activities that could change the normal trading volume of shares of our common stock. If you do engage in short-term trading activities, we may prevent you from participating in the Plan. We reserve the right to modify, suspend or terminate participation in the Plan by otherwise eligible stockholders and/or unitholders, in order to eliminate practices which we determine, in our sole discretion, are not consistent with the purposes or operation of the Plan or which may adversely affect the market price of shares of our common stock.

### **Restrictions at Our Discretion**

In addition to the restrictions described above, we reserve the right to prevent you from participating in the Plan for any other reason. We have the sole discretion to exclude you from, or terminate your participation in, the Plan.

## **Participating in the Plan**

### **6. What steps must one take to participate in the Plan?**

#### **Stockholders of Record and Unitholders**

If you are already a stockholder or unitholder of record (that is, if you own shares of common stock or units that are registered in your name), you may join the Plan by:

accessing and completing an enrollment form online at [www.amstock.com](http://www.amstock.com);  
calling the Plan Administrator directly at (866) 659-2645; or  
completing and returning the enclosed enrollment form.

See Question 3 for further information regarding how to contact the Plan Administrator.

#### **Stockholders in Street Name**

If your shares of common stock are registered in the name of a bank, broker or other nominee, you must arrange for that bank, broker or nominee to register at least one share directly in your name in order to be eligible to participate. Once shares are registered in your name, you can enroll in the Plan above. Please note that enrollment will only apply to the number of shares of common stock registered in your name. You may also enroll in the Plan in the same manner as someone who is not currently a stockholder, as described below.

**U.S. Residents who are not Current Stockholders**

If you do not currently own any shares of our common stock or units and you wish to become a stockholder and a participant in the Plan, you may join the Plan by using one of the following methods.

*Internet.* Go to [www.amstock.com](http://www.amstock.com) and follow the instructions provided for opening an Education Realty Trust, Inc. stockholder account. You will be asked to complete an online enrollment form and submit an initial investment. To make your initial investment, you may (i) authorize a one-time deduction from your U.S. bank account for a minimum of \$300 up to a maximum of \$7,500, or (ii) establish an automatic monthly deduction from your U.S. bank account for a minimum of \$300 and a maximum of \$7,500 per month.

*Mail.* Complete the enclosed enrollment form and return it, along with your initial investment, to the address provided in Question 3. To make your initial investment, you may (i) enclose a check for a minimum of \$300 up to a maximum of \$7,500, made payable to American Stock Transfer & Trust Company,

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LLC Education Realty Trust, Inc., (ii) authorize an automatic one-time deduction from your U.S. bank account for a minimum of \$300 up to a maximum of \$7,500 or (iii) authorize an automatic monthly deduction from your U.S. bank account for a minimum of \$300 and a maximum of \$7,500 per month.

All money must be in U.S. funds and drawn on a U.S. bank. Cash, money orders, traveler's checks and third-party checks will not be accepted.

Additional enrollment materials can be obtained by calling the Plan Administrator at (866) 659-2645.

### **7. What does the Enrollment Form provide?**

By signing an Enrollment Form, a stockholder, unitholder or other person who meets the qualifications set forth in Question 6 above may become a Plan participant and, by checking the appropriate boxes on the Enrollment Form, may choose among the investment options discussed below.

An Enrollment Form is enclosed with this prospectus supplement. Additional Enrollment Forms may be obtained at any time by writing or calling the Plan Administrator at (866) 659-2645. The Enrollment Form is also available on our website, [www.edrtrust.com](http://www.edrtrust.com), under the Stock Information page under the DRIP/Stock Purchase tab of our Investor Relations webpage. However, the information located on, or accessible from, our website is not, and shall not be deemed to be, a part of this prospectus supplement or incorporated into any other filings that we make with the SEC.

## **Optional Cash Investments**

### **8. How can a participant make an additional cash investment?**

You may make optional cash investments by choosing any of the following three options:

*Check Investment.* You may make optional cash investments in our common stock by sending to the Plan Administrator a check for the purchase of additional shares. The check must be made payable to American Stock Transfer & Trust Company, LLC Education Realty Trust, Inc., drawn on a U.S. bank and payable in U.S. dollars.

If you are not in the United States, contact your bank to verify that they can provide you with a check that clears through a U.S. bank and can print the dollar amount in U.S. funds. Due to the longer clearance period, the Plan Administrator is unable to accept checks clearing through non-U.S. banks. All checks should be sent to the Plan Administrator at the address listed on the tear-off form attached to each statement you receive, or, if making an investment when enrolling, with the enrollment form to the address provided in Question 3. The Plan Administrator will not accept cash, money orders, traveler's checks or third-party checks. Optional cash investments made by check must be received by the Plan Administrator on or before the second business day prior to the next Purchase Date. **No interest will be paid on payments received and held pending investment by the Plan Administrator.**

*Online Investments.* You may make optional cash investments online through the Plan Administrator's website, [www.amstock.com](http://www.amstock.com). In order to purchase shares of common stock online, you must authorize the withdrawal of funds from your U.S. bank account.

*Automatic Investment from a Bank Account.* An Automatic Monthly Electronic Deduction feature is available to make repetitive optional cash investments more convenient. You may make optional cash investments in amounts permitted under the Plan from a pre-designated U.S. account. Automatic Monthly Electronic Deductions may be made from an account at any bank, savings association or credit union that is a member of the National Automated Clearing House Association. To begin Automatic Monthly Electronic Deductions, you must complete and sign a Direct Debit

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Authorization Form designating, among other things, the amount to be withdrawn each month (a minimum of \$300 and a maximum of \$7,500) and the account from which funds are to be withdrawn, and return the form to the Plan Administrator. You must also provide a voided blank check. Your election to use the Automatic Monthly Electronic Deduction feature will become effective as soon as practicable after the Direct Debit Authorization Form is processed. Once you begin Automatic Monthly Electronic Deductions, the Plan Administrator will withdraw funds from

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your designated account on the 9th day of each month, or the next banking business day if the 9th is not a banking business day. Those funds will be invested in shares of our common stock on the next Purchase Date for optional cash investments. You may change the amounts of your future Automatic Monthly Electronic Deductions by completing and sending to the Plan Administrator a new Direct Debit Authorization Form. You may terminate Automatic Monthly Electronic Deductions by notifying the Plan Administrator in writing. Your request will be processed and will become effective as promptly as is practicable.

You may also choose the Electronic Deposit of Dividends feature. If you do, the Plan Administrator will deposit any cash dividends on any shares of our common stock directly into the bank account you indicate.

### **9. What are the minimum and maximum amounts for optional cash investments?**

If you are a current stockholder, or if you wish to become a stockholder, you may make optional cash investments by check or automatic deduction from a U.S. bank account subject to a minimum investment of \$300 per month and up to a maximum of \$7,500 per month (except pursuant to a request for approval to make an optional cash investment in excess of \$7,500 as described below).

We may adjust all minimum and maximum plan investment amounts at our discretion from time to time after notification to all Plan participants.

### **10. How do I make optional cash investments in excess of \$7,500 per month?**

Investments in excess of \$7,500 per month may be made only pursuant to our acceptance of a request to make an optional cash investment in excess of \$7,500 which shall be made on a Request for Waiver. We expect to approve requests from financial intermediaries, including brokers and dealers, and other participants from time to time.

Participants may ascertain whether we are accepting requests to make an optional cash investment in excess of \$7,500 in any given month, and certain other important information, by calling our Chief Financial Officer on the first business day of each month at (901) 259-2500 or such other number as we may establish from time to time. When Plan participants call this number, we will inform such participants of one of the three following options:

that we will not be accepting requests to make an optional cash investment in excess of \$7,500 that month; that we will be accepting requests that month. If this is the case, we will provide relevant information such as the date on which the Pricing Period will begin; the number of days in the Pricing Period (See Question 14); the date by which Requests for Waivers must be received; the Minimum Price (as described below), if any; the waiver discount, if any; and whether or not the Pricing Period extension feature will be activated; or

that we have not yet determined whether we will be accepting requests to make an optional cash investment in excess of \$7,500. If this is the case, we will inform Plan participants of a date later in the month when they can call to inquire as to whether we will be accepting requests for waiver.

We have the sole discretion to approve or reject any request to make an optional cash investment in excess of the \$7,500 maximum allowable amount during any month. We may grant such requests in order of receipt, by price offered or by any other method that we determine to be appropriate. We also may adjust the amount that you may invest on a pro rata basis. In deciding whether to approve your request, we may consider, among other things, the following factors:

whether, at the time of such request, the Plan Administrator is acquiring shares of our common stock for the Plan directly from us or through open market transactions;

our need for additional funds;

our desire to obtain such additional funds through the sale of our common stock as compared to other sources of funds;

the purchase price likely to apply to any sale of our common stock;

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the extent and nature of your prior participation in the Plan;  
the number of shares of common stock that you hold of record; and  
the total amount of optional cash investments in excess of \$7,500 for which requests have been submitted.  
Completed Requests for Waiver should be faxed directly to our Chief Financial Officer at (901) 259-2594, or such other number as we may establish from time to time, and must be received no later than 5:00 p.m. Eastern time three business days prior to the Pricing Period (defined in Question 14 below). We will notify all investors whose Requests for Waiver have been approved by 5:00 p.m. Eastern time two business days prior to the Pricing Period. If you do not receive a response from us in connection with your request, you should assume that we have denied your request. The Plan Administrator must receive funds relating to such Request for Waiver by wire transfer at least one business day prior to the Pricing Period. To obtain a Request for Waiver or additional information, a participant may call (901) 259-2500 or visit the Investor Relations section of our website, *www.edrtrust.com* under the section Stock Information and the DRIP / Stock Purchase tab.

### **11. How are payments with insufficient funds handled?**

In the event that any check or other deposit is returned unpaid for any reason or your pre-designated bank account does not have sufficient funds for an Automatic Monthly Electronic Deduction, the Plan Administrator will consider the request for investment of that purchase null and void. The Plan Administrator will immediately remove from your account any shares of common stock already purchased in anticipation of receiving those funds and will sell such shares. If the net proceeds from the sale of those shares are insufficient to satisfy the balance of the uncollected amounts, the Plan Administrator may sell additional shares from your account as necessary to satisfy the uncollected balance. There is a \$25 charge for any check or other deposit that is returned unpaid by your bank. This fee will be collected by the Plan Administrator through the sale of the number of shares from your Plan account necessary to satisfy the fee.

## **Dividend Reinvestment Options**

### **12. What are the dividend reinvestment options?**

If you mark Full Dividend Reinvestment on your Enrollment Form, the Plan Administrator will purchase additional shares of common stock for your Plan account with:

all cash distributions on both shares of common stock for which you hold certificates in your name and your shares acquired through the Plan, as well as units that you own both inside and outside the Plan; and  
any optional cash investments you make through the Plan.

If you mark Partial Dividend Reinvestment on your Enrollment Form, the Plan Administrator will reinvest dividends on a portion of your certificated shares of common stock that you indicated and pay cash dividends on the rest of your certificated shares. Dividends on all Plan shares will automatically be reinvested. In addition, the Plan Administrator will apply to the purchase of additional shares for your account:

all of the remaining cash distributions on both your certificated shares and Plan shares, and units held inside and outside the Plan; and  
any optional cash investments you make through the Plan.

Under the Emergency Economic Stabilization Act, passed by Congress in 2008, if you mark Partial Dividend Reinvestment on your Enrollment Form, you must reinvest at least 10% of your dividend distribution.

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If you mark **All Dividends Paid in Cash**, none of your cash distributions will be reinvested. You will receive a check or electronic deposit for the full amount of cash distributions paid on all shares and units held in certificate form and/or in your Plan account.

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Automatic reinvestment of your cash distributions does not relieve you of liability for income taxes that may be owed on your distributions. Distributions paid on shares credited to your Plan account will be included in information provided both to you and the IRS.

## **Purchases and Price**

### **13. What is the source of the shares of common stock purchased under the Plan?**

Shares of common stock will be purchased by the Plan Administrator:

directly from us in the form of newly issued shares;  
from parties other than us, through open market transactions; or  
using a combination of direct purchases and open market transactions;  
in each case, at our sole discretion.

Purchases of shares of common stock in the open market may be made on any stock exchange where our common stock is traded or in negotiated transactions on such terms as the Plan Administrator may reasonably determine.

Neither we nor any participant will have any authority or power to direct the date, time or price at which shares of common stock may be purchased by the Plan Administrator, and no one, other than the Plan Administrator, may select the broker or dealer through or from whom purchases are to be made.

### **14. When will the shares of common stock be purchased for my account under the Plan?**

The Purchase Date is the date or dates on which the Plan Administrator purchases shares of our common stock for the Plan, as described below. In making purchases for a participant's account, the Plan Administrator may commingle the participant's funds with those of other participants in the Plan. Neither we nor any participant has any authority or power to direct the time or the price at which any market purchase is completed or as to the selection of a broker or dealer through or from whom such purchases are to be made.

#### *Dividend or Distribution Reinvestments.*

If the Plan Administrator acquires shares of common stock directly from us, it will combine the dividend or distribution funds of all Plan participants whose dividends or distributions are automatically reinvested and the Purchase Date will generally be the dividend or distribution payment date (and any succeeding trading days necessary to complete the order). The quarterly dividend payment is authorized each quarter by our board of directors. The Dividend Record Date (as described below) generally precedes the dividend payment date by approximately two to three weeks. We historically have paid dividends on or about the 15<sup>th</sup> day of each May, August, November and February. If the dividend payment date falls on a day that is not a NYSE trading day, then the Purchase Date will be the next trading day (and any succeeding trading days necessary to complete the order). In addition, if the dividend is payable on a day when optional cash payments are to be invested, dividend funds may be commingled with any such pending cash investments and a combined order may be executed.

If the Plan Administrator acquires shares of common stock from parties other than us through open market transactions, such purchases will occur during a period beginning on the day that would be deemed the Purchase Date if the shares were acquired directly from us and ending no later than 10 trading days following the date on which we paid the applicable cash dividend, except where completion at a later date is necessary or advisable under any applicable federal or state securities laws or regulations. The record date associated with a particular dividend or

distribution is referred to in this Plan as a Dividend Record Date.

*Initial and Optional Cash Investments up to \$7,500.*

If the Plan Administrator acquires shares of common stock directly from us, then the Purchase Date for cash investments up to \$7,500 will be on the 15<sup>th</sup> calendar day of each month, or the next trading day if the 15<sup>th</sup> day is not a trading day. If the Plan Administrator acquires shares from third parties other than us through open market transactions, it will attempt to buy our common stock in the open market through a registered broker-dealer. Such purchases will begin on the day that would be deemed the Purchase Date if the shares were acquired directly from us and will be completed no later than 10 trading days following such date, except where completion at a later date is necessary or advisable under any applicable federal or state securities laws or regulations.

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If you are investing by mail, the Plan Administrator must receive your physical check at least two business days prior to a Purchase Date.

Initial and optional cash investments received after the applicable deadline will be applied to purchase shares on the following Purchase Date. If you are investing online, please refer to your confirmation page for the estimated debit date for your one-time deduction. The Plan Administrator will commingle all funds received from participants. Once you have placed your order, you may not request a cash refund or otherwise change your order. No interest will be paid on funds pending investment held by the Plan Administrator.

If your optional cash payment or direct debit is returned as unpaid, the Plan Administrator reserves the right to debit cash that has not yet been invested. If the funds were invested, then the Plan Administrator will sell the shares that had been purchased to cover the returned check or direct debit. If the sale of the purchased shares is insufficient to cover the returned check, then additional shares will be sold from your account. In addition, the Plan Administrator will sell shares from your account to cover the returned check or direct debit fee of \$25.00.

*Initial and Optional Cash Investments in Excess of \$7,500.*

For shares of common stock purchased by the Plan Administrator directly from us with a cash investment in excess of \$7,500 pursuant to an approved Request for Waiver, the Purchase Date(s), as specified on such waiver, will be one or more separate days in a Pricing Period that are NYSE trading days, with an equal amount of your cash investment being invested on each such day, subject to the qualifications set forth under the heading *Minimum Price Per Share for Optional Cash Investments in excess of \$7,500* below.

The Pricing Period is the period of time encompassing at least one day or any number of trading days. We will determine the length of the Pricing Period in our sole discretion. The Pricing Period shall be no less than one and no more than 10 trading days (subject to the Pricing Period extension described in Question 15 below) commencing one business day after funds are due.

Notwithstanding the foregoing, neither the Company nor the Plan Administrator shall be liable when conditions, including compliance with the rules and regulations of the SEC, prevent the purchase of shares or interfere with the timing of purchases. **No interest will accrue on any cash investment held by the plan administrator prior to the date such funds are used to purchase shares.**

**15. What will be the price of the shares of common stock purchased under the Plan?**

The Purchase Price is the price at which the Plan Administrator purchases our common stock with reinvested dividends and optional cash payments. The Purchase Price under the Plan depends in part on whether the Plan Administrator purchases the shares of common stock from us or from third parties. The Purchase Price also depends on whether we are offering discounts from market prices afforded under the Plan at that time.

*Dividend Reinvestments.*

If the Plan Administrator purchases shares of common stock directly from us for reinvested dividends, then the Plan Administrator will pay a price equal to 100% (subject to a discount as described below) of the unsolicited volume weighted average price, rounded to four decimal places, of our common stock reported by the NYSE for the trading hours from 9:30 a.m. to 4:00 p.m. Eastern time for the trading day relating to the Purchase Date or, if no trading occurs in shares of common stock on the applicable Purchase Date, the first trading day immediately preceding the Purchase Date for which trades are reported. The Purchase Price on each Purchase Date may be reduced by any

discount that we have provided for dividend reinvestments up to a maximum discount of 5%.

If shares of common stock are acquired from parties other than us through open market transactions, then the Purchase Price will be the weighted average price per share paid by the Plan Administrator for such shares. In some instances, filling a purchase order may require the execution of multiple trades in the market and may take more than one trading day to complete.

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*Initial and Optional Cash Investments up to \$7,500.*

If the Plan Administrator purchases shares of our common stock directly from us with cash investments of up to \$7,500, then the Plan Administrator will pay a price equal to 100% (subject to a discount as described below) of the unsolicited volume weighted average price, rounded to four decimal places, of our common stock reported by the NYSE for the trading hours from 9:30 a.m. to 4:00 p.m. Eastern time for the trading day relating to the Purchase Date or, if no trading occurs in shares of common stock on the applicable Purchase Date, the first trading day immediately preceding the Purchase Date for which trades are reported. The Purchase Price on each Purchase Date may be reduced by any discount that we have provided for initial or optional cash investments of less than \$7,500 up to a maximum discount of 5%.

If shares of common stock are acquired from third parties through open market transactions, then the Purchase Price will be the weighted average price per share paid by the Plan Administrator for such shares. In some instances, filling a purchase order may require the execution of multiple trades in the market and may take more than one trading day to complete.

*Initial and Optional Cash Investments in Excess of \$7,500.*

Shares of common stock purchased pursuant to an approved Request for Waiver will be purchased as described below. Once approved, participants wishing to make cash investments in excess of \$7,500 must wire the approved funds to the Plan Administrator at least one business day prior to the beginning of the Pricing Period. If we grant your request to purchase shares of common stock pursuant to a Request for Waiver, the Plan Administrator will pay a price equal to 100% (subject to a discount as described below) of the unsolicited volume weighted average price, rounded to four decimal places, of our common stock reported by the NYSE for the trading hours from 9:30 a.m. to 4:00 p.m. Eastern time for the trading day relating to each day of the Pricing Period. The Pricing Period for cash investments made pursuant to an approved Request for Waiver will be the day or days set forth in the Request for Waiver which may be up to 10 trading days (subject to the extension described below). The Purchase Price on each Purchase Date may be reduced by any discount that we have provided for cash investments in excess of \$7,500 up to a maximum discount of 5%.

*Minimum Price Per Share for Optional Cash Investments in excess of \$7,500.*

We may set a minimum purchase price per share, which we refer to as the Minimum Price for cash investments in excess of \$7,500 for any Pricing Period. We will determine whether to set a Minimum Price at least three business days before the first day of the Pricing Period. We will notify the Plan Administrator of the Minimum Price, if any, and we will provide this information on the DRIP/Stock Purchase section of the Investor Relations webpage of our website at [www.edrtrust.com](http://www.edrtrust.com). In deciding whether to set a Minimum Price, we will consider current market conditions, the level of participation in the Plan and our current and projected capital needs.

We will fix the Minimum Price for a Pricing Period as a dollar amount that the unsolicited volume weighted average price, rounded to four decimal places, of our common stock reported by the NYSE for the trading hours from 9:30 a.m. to 4:00 p.m. Eastern time for each trading day of such Pricing Period (not adjusted for discounts, if any) must equal or exceed. Except as provided below, we will exclude from the Pricing Period and from the determination of the Purchase Price any trading day within the Pricing Period that does not meet the Minimum Price. We also will exclude from the Pricing Period and from the determination of the Purchase Price any day in which no trades of common stock are made on the NYSE. Thus, for example, if the Minimum Price is not met for two of the trading days in a 10-day Pricing Period, then we will base the Purchase Price upon the remaining eight trading days in which the Minimum Price was met unless we have activated the pricing period extension feature for the Pricing Period as described below.

*Pricing Period Extensions.*

We may elect to activate for any particular Pricing Period the pricing period extension feature which will provide that the initial Pricing Period will be extended by the number of days during such period that the Minimum Price is not satisfied or on which there are no trades of our common stock reported by the NYSE, subject to a maximum of three trading days.

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If we elect to activate the pricing period extension feature and the Minimum Price is satisfied for any additional day that has been added to the initial Pricing Period, then that day will be included as one of the trading days for the Pricing Period in lieu of the day on which the Minimum Price was not met or trades of our common stock were not reported. For example, if the determined Pricing Period is 10 days, and the Minimum Price is not satisfied for three out of those 10 days in the initial Pricing Period, and we had previously announced at the time of the Request for Waiver acceptance that the pricing period extension feature was activated, then the Pricing Period will automatically be extended, and, if the Minimum Price is satisfied on the next three trading days (or a subset thereof), then those three days (or a subset thereof) will be included in the Pricing Period in lieu of the three days on which the Minimum Price was not met. As a result, the Purchase Price will be based upon the 10 trading days of the initial and extended Pricing Period on which the Minimum Price was satisfied and all of the cash investment will be invested (rather than 30% being returned).

### *Return of Unsubscribed Funds.*

We will return a portion of each cash investment in excess of \$7,500 for each trading day of a Pricing Period or extended Pricing Period, if applicable, for which the Minimum Price is not met or for each day in which no trades of common stock are reported on the NYSE. We refer to these cash proceeds as Unsubscribed Funds. Any Unsubscribed Funds will be returned without interest within five business days after the last day of the Pricing Period, or if applicable, the extended Pricing Period. Thus, for example, the Unsubscribed Funds in a 10-day Pricing Period will equal one-tenth of the total amount of such cash investment (not just the amount exceeding \$7,500) for each trading day that the Minimum Price is not met or for each trading day in which sales are not reported.

The establishment of the Minimum Price and the possible return of a portion of the investment applies only to cash investments in excess of \$7,500. Setting a Minimum Price for a Pricing Period will not affect the setting of a Minimum Price for any other Pricing Period.

### *Discount.*

The discount rate of 0% to 5% that may be offered with respect to a particular Purchase Date to participants on all shares of common stock purchased directly from us may be obtained by calling our Chief Financial Officer at (901) 259-2500. We will provide the discount rate, if any, at least three business days before the Purchase Date.

### **16. Is the discount for shares of common stock purchased under the Plan subject to change?**

The discount from market prices on shares of common stock purchased directly from us is subject to change from time to time (but in no event will the discount exceed 5% of the market price for shares of our common stock on the applicable Purchase Date) and is also subject to discontinuance at our discretion at any time based on a number of factors, including current market conditions, the level of participation in the Plan and our current and projected capital needs. We intend to provide notice prior to any change or elimination of the discount. Currently, the discount for common stock purchased directly from us (as shares of newly issued common stock) under the Plan is 1.5% of the market price for shares of our common stock.

### **17. Will fractional shares of common stock be purchased?**

If any dividend or optional cash investment is not sufficient to purchase a whole share of our common stock, a fractional share equivalent will be credited to your account. Dividends will be paid on the fraction and will be reinvested or paid in cash in accordance with your standing instructions.

## Sale of Common Stock

### 18. How may I request that shares of common stock held in my account be sold or transferred?

#### Sale

You may request that all or any part of the shares of common stock or other class of stock that we may issue in the future held in your account be sold either when an account is being terminated or without terminating the account by contacting the Plan Administrator in writing, by telephone or through their website (see Question 3 for contact information). If all shares of common stock (including any fractional share) held

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in your account are sold, the account will be terminated automatically, and you will have to complete and file a new Enrollment Form in order to participate again in the Plan.

The Plan Administrator will cause your shares to be sold on the open market within five business days of receipt of your request. The Plan Administrator may combine your shares to be sold with those of other Plan participants selling shares at the same time. The sales price per share will be the weighted average price per share received by the Plan Administrator for all sales made for that day (and any succeeding days necessary to complete the sale order). Once sold, the Plan Administrator will send you the proceeds, less a service charge of \$15 and applicable brokerage commissions, currently \$.10 per share sold. Proceeds are normally paid by check and are distributed within 24 hours after your sale transaction has settled.

The Plan Administrator reserves the right to decline to process a sale if it determines, in its sole discretion, that supporting legal documentation is required. In addition, no one will have any authority or power to direct the time or price at which shares for the Plan are sold, and no one, other than the Plan Administrator, will select the broker(s) or dealer(s) through or from whom sales are to be made.

You should be aware that the price of our common stock may rise or fall during the period between a request for sale, its receipt by the Plan Administrator and the ultimate sale on the open market. Instructions sent to the Plan Administrator to sell shares are binding and may not be rescinded. If you prefer to have complete control as to the exact timing and sales prices, you can transfer the shares to a broker of your own choosing and sell them through that broker.

### **Transfer**

You may transfer ownership of some or all of your shares of common stock held through the Plan.

You may call the Plan Administrator at (866) 659-2645 for complete transfer instructions or go to [www.amstock.com](http://www.amstock.com) to download the appropriate materials. You will be asked to send the Plan Administrator written transfer instructions and your signature must be Medallion Guaranteed by a financial institution. Most banks and brokers participate in the Medallion Guarantee Program. The Medallion Guarantee Program ensures that the individual signing is in fact the owner of the shares of common stock to be transferred. A notary is not sufficient.

You may transfer shares to new or existing stockholders. However, a new Plan account will not be opened for a transferee as a result of a transfer of less than one full share.

### **19. What happens when I sell or transfer all of the shares of common stock and /or other class of stock registered in my name?**

Your participation in the Plan with respect to such holdings will be terminated.

## **Reports to Participants**

### **20. How will I keep track of my investments?**

After an investment is made under the Plan for your account, you will be sent a statement which will provide a record of the cost of the shares of common stock purchased for your account, the number of shares of common stock purchased, the date on which the shares of common stock were credited to your account and the total number of shares

of our common stock, other classes of stock we may issue in the future and/or units in your account. In addition, you will be sent income tax information for reporting dividends received and receive the same communications sent to our stockholders, such as our annual reports and proxy statements. You will also receive any IRS information returns, if required. If you prefer, and if such materials are available online, you may consent to receive communications from us electronically over the Internet. Instead of receiving materials by mail, you will receive an electronic notice to the e-mail address of record, notifying you of the availability of our materials and instructing you on how to view and act on them. In addition, you can review your current account status, Plan options and transaction history online at any time at [www.amstock.com](http://www.amstock.com).

Please retain all transaction statements for tax purposes as there may be a fee for reconstructing past history.

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## **Stock Certificates**

### **21. Will I receive certificates for shares of common stock purchased under the Plan?**

Shares of common stock purchased under the Plan are credited to your Plan account in book-entry form.

No certificates for shares of our common stock credited to your Plan account will be issued to you unless you submit a written, telephonic or Internet request to the Plan Administrator (see Question 3 for contact information). Such requests will be handled by the Plan Administrator, at no charge, normally within five business days. Any remaining whole shares of common stock and any fractional shares will continue to be credited to your account. Certificates for fractional shares will not be issued under any circumstances. If you request a certificate for all shares of common stock credited to your account, a certificate will be issued for the whole shares, and a cash payment will be made for any remaining fractional shares. That cash payment will be based upon the then current market price for the common stock, less any fees.

Shares of common stock which are purchased for and credited to your account under the Plan may not be pledged. If you wish to pledge such shares, you must request that a certificate for such shares of common stock first be issued in your name.

### **22. What is the effect on my account if I request a certificate for whole shares of common stock held in the account?**

If you maintain an account for reinvestment of distributions, all distributions on the shares of common stock for which a certificate is requested will continue to be reinvested under the option you have selected under the Plan until you file a new Enrollment Form changing your investment election.

### **23. How do I replace a lost, stolen or destroyed stock certificate?**

If your stock certificate is lost, stolen or destroyed, you should notify the Plan Administrator immediately so that a stop transfer order can be placed on the certificate. You should provide as much specific information about the certificate in question as possible in order to assist the Plan Administrator in identifying which certificate to place a stop transfer order against (certificate number, number of shares, date issued, etc.). The Plan Administrator will send you the forms necessary for issuing a replacement certificate. Please note that there is a fee of approximately 2% of the market value of the shares (minimum of \$40) charged to purchase the replacement indemnity bond.

### **24. May shares of common stock, other classes of stock and units held in certificate form be deposited in my Plan account?**

You may deposit with the Plan Administrator any certificates for shares of common stock or other classes of stock that may be issued in the future or hereafter registered in your name for safekeeping through the Plan. There is a \$7.50 fee per transaction.

Certificates sent to the Plan Administrator should not be endorsed. If you elect to deposit certificates with the Plan Administrator for safekeeping, the Plan Administrator recommends that you send those certificates along with a letter of instruction by registered mail, return receipt requested and properly insured for 3% of the market value, or by some other form of traceable delivery to the address in Question 3. The Plan Administrator will send you a quarterly statement confirming each deposit of certificates.

All distributions on any shares of common stock or other class of stock represented by certificates deposited in accordance with the Plan will be reinvested under the option you have selected. The Plan Administrator will credit the shares represented by the certificates to your account in book-entry form and will combine the shares with any whole and fractional shares then held in your account. In addition to protecting against the loss, theft or destruction of your certificates, this service is convenient if and when you sell common stock through the Plan.

## **Withdrawal From The Plan**

### **25. May I withdraw from the Plan?**

Yes, by contacting the Plan Administrator using the contact information found in Question 3.

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### **26. What happens when I terminate my account?**

If your notice of termination is received by the Plan Administrator three business days prior to the dividend payment date, the Plan Administrator will distribute such dividends in cash. If your request is received less than three business days prior to the dividend payment date, then that dividend will be reinvested. However, all subsequent dividends will be paid in cash on all balances.

If you elect to make optional cash investments through the Automatic Monthly Electronic Deduction feature of the Plan, you may terminate the automatic deductions by notifying the Plan Administrator in writing by telephone or through their website (see Question 3 for contact information). Your request will be processed and will become effective as promptly as is practicable.

When terminating an account, you may request that a stock certificate be issued for all whole shares of common stock and other stock held in the account. As soon as practicable after notice of termination is received, the Plan Administrator will send to you (i) a certificate for all whole shares of common stock and other stock held in the account and (ii) a check, less fees, representing the value of any fractional share held in the account. After an account is terminated, all distributions for the terminated account will be paid to you unless you re-elect to participate in the Plan.

When terminating an account, you may request that all shares of common stock and other stock, both full and fractional, certified to the Plan account be sold or that certain of the shares of common stock and other stock be sold and a certificate be issued for the remaining shares. The Plan Administrator will remit to the participant the net proceeds of any sale, less fees.

### **27. When may a stockholder or unitholder re-elect to participate in the Plan?**

Generally, a stockholder or unitholder of record may re-elect to participate at any time. However, we and the Plan Administrator reserve the right to reject any Enrollment Form on the grounds of excessive participation and withdrawal. Such reservation is intended to minimize unnecessary administrative expenses and to encourage the use of the Plan as a long-term investment service.

## **Other Information**

### **28. Will interest be paid on Plan accounts?**

No. Interest will not be paid on Plan accounts or on any amounts held pending investment.

### **29. Who will hold the additional shares of common stock purchased through the Plan?**

Shares of common stock purchased through the Plan are held in safekeeping in book-entry form on the Plan Administrator's records. The number of shares (including fractional interests) held for each participant will be shown on each account statement. Keeping shares of common stock in book-entry form protects against certificate loss, theft and destruction.

**30. What happens if we issue a stock dividend or declare a stock split?**

Any stock dividends or split shares of common stock distributed by us to you will be based on both the shares of common stock registered in your name in certificate form and the shares (whole and fractional) credited to your Plan account. Such stock dividend or stock split shares will be added to your Plan account in book-entry form. You will receive a statement indicating the number of shares of common stock or dividends earned as a result of the transaction. Transaction processing may either be curtailed or suspended until the completion of any stock dividend, stock split or corporate action.

**31. If we issue rights to purchase securities to our stockholders, how will the rights for shares of common stock held in my account be handled?**

If we have a rights offering in which separately tradable and exercisable rights are issued to our registered stockholders, the rights attributable to whole shares of common stock held in your account will be transferred to you as promptly as practicable after the rights are issued. Rights attributable to fractional shares will be reinvested in shares of common stock. Transaction processing may either be curtailed or suspended until the completion of any stock dividend, stock split or corporate action.

**32. How are the shares of common stock in my account voted at stockholder meetings?**

You will receive proxy materials from us for shares of common stock registered in the Plan Administrator's name through the Plan in the same manner as shares of common stock registered in your own name, if any. Shares of common stock credited to your Plan account may also be voted in person at the meeting.

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**33. What are our and the Plan Administrator s responsibilities under the Plan?**

We, and the Plan Administrator in administering the Plan, are not liable for any act done in good faith or required by applicable law or for any good faith omission to act. This limitation of liability includes, without limitation, any claim of liability (i) arising out of failure to terminate a Plan participant s account upon such participant s death prior to receipt by the Plan Administrator of notice in writing of such death, (ii) with respect to the prices and times at which shares of common stock are purchased or sold for a participant or (iii) with respect to any fluctuation in market value before or after any purchase or sale of shares of our common stock.

We and the Plan Administrator will not have any duties, responsibilities or liabilities other than those expressly set forth in the Plan or as imposed by applicable laws, including federal securities laws. Because the Plan Administrator has assumed all responsibility for administering the Plan, we specifically disclaim any responsibility for any of the Plan Administrator s actions or inactions in connection with the administration of the Plan. None of our directors, officers, employees, or stockholders will have any personal liability under the Plan.

We and the Plan Administrator will be entitled to rely on completed forms and the proof of due authority to participate in the Plan without further responsibility of investigation or inquiry.

The Plan Administrator may resign as administrator of the Plan at any time, in which case we will appoint a successor administrator. In addition, we may replace the Plan Administrator with a successor administrator at any time.

**34. What are my responsibilities under the Plan?**

The shares of common stock or other stock in your account may revert to the state in which you live in the event that the shares are deemed, under your state s laws, to have been abandoned by you. For this reason, you should notify the Plan Administrator promptly in writing of any change of address. The Plan Administrator will address account statements and other communications to you at the last address of record you provide to them.

You will have no right to draw checks or drafts against your account or to instruct the Plan Administrator with respect to any shares or cash held by the Plan Administrator except as expressly provided herein.

**35. May the Plan be amended, suspended or terminated?**

While we expect to continue the Plan indefinitely, we may amend, suspend or terminate the Plan at any time, but such action shall have no retroactive effect that would prejudice your interests.

**36. What happens if the Plan is terminated?**

If the Plan is terminated, whole shares will continue to be held in book-entry form in your Plan account or distributed in certificate form at our sole discretion. A cash payment will be made for any fractional share.

The Plan Administrator also may terminate your Plan account if you do not own at least one whole share. In the event your Plan account is terminated for this reason, a check for the cash value of the fractional share will be sent to you, less any fees, and your account will be closed.

**37. Who interprets and regulates the Plan?**

We are authorized to issue such interpretations, adopt such regulations and take such action as we may deem reasonably necessary to effectuate the Plan. Any action to effectuate the Plan taken by us or the Plan Administrator in the good faith exercise of our respective judgments will be binding on all Plan participants.

**38. Can the Transfer Agent and Registrar change?**

The Plan Administrator presently acts as transfer agent and registrar for shares of our common stock. We reserve the right to terminate the Plan Administrator and appoint a new transfer agent and registrar or administer the Plan ourselves. All Plan participants will receive notice of any such change.

**39. What law governs the Plan?**

The terms and conditions of the Plan and its operation shall be governed by the laws of the State of Maryland.

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**40. Am I protected against losses?**

Your investment in the Plan is no different from any investment in shares of common stock held by you. If you choose to participate in the Plan, then you should recognize that we, our subsidiaries, our affiliates and the Plan Administrator cannot assure you of a profit or protect you against loss on the shares of common stock that you purchase through the Plan. You bear the risk of loss in value and enjoy the benefits of gains with respect to all your shares of common stock. You need to make your own independent investment and participation decisions consistent with your situation and needs. We, our subsidiaries, our affiliates and the Plan Administrator cannot guarantee liquidity in the markets, and the value and marketability of your shares of common stock may be adversely affected by market conditions.

**Plan accounts are not insured or protected by the Securities Investor Protection Corporation or any other entity and are not guaranteed by the FDIC or any government agency.**

In addition, the Purchase Price for shares of common stock acquired through the Plan will vary and cannot be predicted. The Purchase Price may be more or less than the price of acquiring shares on the open market on the related dividend payment date. Your shares of common stock acquired through the Plan will be exposed to changes in market conditions and changes in the market value of the shares. Your ability to sell as to timing, pricing terms and related expenses or otherwise liquidate shares through the Plan is subject to the terms of the Plan and the withdrawal procedures. Also, no interest will be paid on dividends, cash or other funds held by the Plan Administrator pending investment.

**41. Are we assured of receiving a distribution?**

In order to maintain our qualification as a REIT, we must distribute to our stockholders at least 90% of our REIT taxable income each year. This distribution requirement limits our ability to maintain future dividend payments if earnings decline and limits the capital available to us to internally fund growth. The requirements to maintain qualification as a REIT are complex and technical, and we may not be able to maintain our qualification as a REIT for reasons beyond our control. Failing to maintain our qualification as a REIT would adversely affect our tax status and could reduce the amount of money available for distributions to our stockholders. Our board of directors has the ultimate discretion over our investment, financing and distribution policies, subject to statutory and regulatory requirements and other factors, such as maintaining our qualification as a REIT. While we expect to continue paying distributions to our stockholders, the amount and frequency of these distributions may be reduced, or the payment of distributions may be terminated, at any time without notice.

**42. What are the federal income tax consequences of participation in the Plan?**

If you reinvest distributions you nevertheless will be treated for federal income tax purposes as having received a distribution on the distribution payment date. By reinvesting distributions, you will be liable for the payment of income tax on the distributions despite not receiving an immediate cash distribution to satisfy the tax liability. In addition, to the extent that we pay brokerage commissions on your behalf or you acquire shares of our common stock at a discount in connection with your participation in the Plan, the Internal Revenue Service has indicated that you may be treated as having received constructive distributions, which may give rise to additional tax liability. See Additional Material U.S. Federal Income Tax Considerations in this prospectus supplement and Material U.S. Federal Income Tax Considerations in the accompanying prospectus.

**43. What transactions can I conduct through the Plan Administrator's online services?**

The Plan Administrator offers you a convenient way to invest in our common stock online, without having to send in any forms or checks by mail. Through the Plan Administrator's online services, you may:

Enroll in the Plan;

Authorize a one-time withdrawal of funds from your U.S. bank account to make your initial investment or to purchase additional shares of our common stock;

Establish automatic monthly investments;  
Change your dividend reinvestment election;

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Review your transaction history and position summary;  
Change or terminate automatic monthly investments;  
Request certificates;  
Arrange for online sales of some or all of your shares of common stock;  
Download enrollment and other forms;  
Update personal information;  
Receive transaction confirmations via email; and  
Arrange to receive our annual reports and other materials over the Internet.  
You can access these services through the Plan Administrator's website, *www.amstock.com*. Participation in the Plan through the Internet is voluntary.

If you are currently a stockholder or unitholder, you will need your account number, social security number and password to access your account online.

## **DIVIDENDS AND DISTRIBUTIONS**

We currently pay quarterly dividends to our stockholders and distributions to unitholders. The decision as to whether to authorize and pay dividends on our common stock and distributions on units in the future, as well as the timing, amount and composition of any such future dividends and distributions, will be at the sole discretion of our board of directors in light of conditions then existing, including our earnings, funds from operations, financial condition, liquidity, capital requirements, debt maturities, the availability of capital, contractual prohibitions on other restrictions, applicable REIT and legal restrictions and general overall economic conditions and other factors. We reserve the right to pay any or all of our dividends and distributions in a combination of cash and shares of our common stock in accordance with recent guidance issued by the IRS. We can provide no assurance that our board of directors will not reduce or eliminate the payment of dividends on our common stock and distributions on units, or change the form of any dividend and distribution payments in accordance with applicable IRS procedures, in the future.

## **USE OF PROCEEDS**

We will only receive proceeds from the sale of shares of our common stock purchased by the Plan Administrator directly from us pursuant to the Plan. We will not receive proceeds from the sale of shares of common stock that the Plan Administrator purchases in the open market or in privately negotiated transactions. Unless we specify otherwise, we intend to use any net proceeds to provide additional funds for general corporate purposes.

## **PLAN OF DISTRIBUTION**

The shares of common stock acquired through the Plan will be sold directly by us as newly issued shares of common stock, or will be acquired in the open market or in privately negotiated transactions. If you acquire shares of common stock through the Plan and resell them shortly before or after acquiring them (including covering short positions), under certain circumstances, you may be participating in a distribution of securities that would require your compliance with Regulation M under the Exchange Act, and you may be considered to be an underwriter within the meaning of the Securities Act. We will not extend to you any rights or privileges other than those to which you would be entitled as a participant in the Plan nor will we enter into any agreement with you regarding your purchase of those shares of common stock or any resale or distribution of those shares.

Any financial intermediary or other person may acquire shares of common stock through the Plan at a discount by reinvesting cash dividends or making optional cash investments that are subsequently applied to the purchase of newly issued shares of common stock directly from us and may capture the discount by reselling the shares shortly thereafter. We have not entered into any arrangements with any financial intermediary or other person to engage in such arrangements. We anticipate that the availability of a discount

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from market prices may encourage some participants in the Plan to purchase more shares of common stock than they would purchase without the discount, but we have no basis to quantify the extent to which additional shares of common stock will be purchased because of the discount. We reserve the right to modify, suspend or terminate participation in the Plan by otherwise eligible persons to eliminate practices that are inconsistent with the purpose of the Plan.

Subject to the availability of our common stock registered for issuance under the Plan, there is no total maximum number of shares of common stock that can be issued pursuant to the Plan.

We will pay any and all brokerage commissions and related expenses incurred in connection with purchases of shares of common stock through the Plan. Upon withdrawal by a participant from the Plan by the sale of shares of common stock held through the Plan, the participant will receive the proceeds of such sale less a nominal fee per transaction paid to the Plan Administrator (if such resale is made by the Plan Administrator at the request of a participant), any related brokerage commissions and any applicable transfer taxes.

Shares of our common stock may not be available through the Plan in all states. This prospectus supplement does not constitute an offer to sell, or a solicitation of an offer to buy, any shares of common stock or other securities in any state or any other jurisdiction to any person to whom it is unlawful to make such offer in such jurisdiction.

## **ADDITIONAL MATERIAL U.S. FEDERAL INCOME TAX CONSIDERATIONS**

The following discussion, which supplements the discussion under the heading **Material U.S. Federal Income Tax Considerations** in the accompanying prospectus, is a summary of additional federal income tax considerations regarding participation by a U.S. Participant (as defined below) in the Plan.

This discussion is for general informational purposes only and is not tax advice. This discussion does not address all aspects of taxation that may be relevant to particular investors in light of their personal investment or tax circumstances, or to certain types of investors that are subject to special treatment under the federal income tax laws, such as insurance companies, tax-exempt organizations (except to the limited extent discussed in the accompanying prospectus under **Material U.S. Federal Income Tax Considerations Taxation of Tax-Exempt Stockholders**), financial institutions or broker-dealers, non-U.S. individuals and foreign corporations (except to the limited extent discussed in the accompanying prospectus under **Material U.S. Federal Income Tax Considerations Taxation of Non-U.S. Stockholders**) and other persons subject to special tax rules. Moreover, this summary assumes that our stockholders hold our stock as a capital asset for federal income tax purposes, which generally means property held for investment.

The statements in this section are based on the current federal income tax laws, including the Code, the regulations promulgated by the U.S. Treasury Department, or the Treasury Regulations, rulings and other administrative interpretations and practices of the IRS, and judicial decisions, all as currently in effect, and all of which are subject to differing interpretations or to change, possibly with retroactive effect. We cannot assure you that new laws, interpretations of law, or court decisions, any of which may take effect retroactively, will not cause any statement in this section to become inaccurate. In addition, this discussion does not address any aspect of the laws of any state, local or foreign jurisdiction.

We urge you to consult your own tax advisor regarding the specific tax consequences to you of (i) participation in the Plan, including any elections you may make under the Plan, (ii) the acquisition, ownership and

disposition of our common stock and (iii) our election to be taxed as a REIT. Specifically, we urge you to consult your own tax advisor regarding the federal, state, local, foreign, and other tax consequences of such participation, acquisition, ownership, disposition and election, and potential changes in applicable tax laws.

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## **Participation in the Plan by U.S. Participants**

The following summary describes certain federal income tax consequences to U.S. Participants of participating in the Plan. For purposes of this summary, the term U.S. Participant means a participant in the Plan that, for federal income tax purposes, is:

an individual who is a citizen or resident of the United States;  
a corporation (including an entity treated as an association taxable as a corporation for federal income tax purposes) created or organized under the laws of the United States, any of its states or the District of Columbia;  
an estate whose income is subject to federal income taxation regardless of its source; or  
any trust if (1) a U.S. court is able to exercise primary supervision over the administration of such trust and one or more U.S. persons have the authority to control all substantial decisions of the trust or (2) it has a valid election in place to be treated as a U.S. person.

If an entity treated as a partnership for federal income tax purposes is a participant in the Plan, the federal income tax treatment of an owner of such entity generally will depend on the status of the owner and the activities of the entity. If you are an owner of an entity that is taxed as a partnership and that is participating in the Plan, you should consult your tax advisor regarding the tax consequences of the acquisition, ownership and disposition of our common stock by the entity.

Distributions with respect to shares of our common stock held by U.S. Participants that are reinvested in additional shares of our common stock pursuant to the Plan generally will be treated for federal income tax purposes in the same manner as cash distributions. Accordingly, to the extent that we have current or accumulated earnings and profits for federal income tax purposes, U.S. Participants will recognize taxable dividend income in an amount equal to (i) the amount of cash distributions that such U.S. Participants would have received if they had not elected to reinvest such distributions in additional shares of our common stock pursuant to the Plan, plus (ii) any brokerage commission paid by us on behalf of such U.S. Participants, as described below. Each U.S. Participant will receive an IRS Form 1099-DIV after the end of each year which will specify the amounts of dividend income, return of capital and capital gain that such U.S. Participant will be treated as having received for such year for federal income tax purposes.

We will pay all brokerage commissions and other administrative charges on behalf of U.S. Participants participating in the Plan with respect to reinvestments of distributions in additional shares of our common stock. The IRS has held in certain private letter rulings that brokerage commissions paid by a corporation with respect to open market purchases on behalf of participants in a distribution reinvestment plan or pursuant to optional cash purchase features of a plan were to be treated as constructive distributions to participants who were stockholders of the corporation. In these rulings, the IRS determined that the participants were subject to federal income tax on the payment of such fees or commissions in the same manner as cash distributions and that the amount of such fees or commissions were includable in the participant's cost basis of the shares purchased. Accordingly, to the extent that we pay brokerage commissions with respect to any open market or privately negotiated purchases made with reinvested distributions or optional cash purchases by the Plan Administrator, we currently intend to take the position that U.S. Participants that participate in the Plan will be treated for federal income tax purposes as having received their proportionate amount of the brokerage commissions as additional distributions, as described above. We intend to take the position, however, that administrative charges of the Plan paid by us are not constructive distributions to U.S. Participants.

We believe and intend to take the position that the Plan qualifies as a dividend reinvestment plan (or DRP) (as defined in the applicable Treasury Regulations). Absent an election to the contrary by a U.S. Participant, the Plan Administrator intends to use the first-in, first-out method when determining the federal income tax basis of any shares of our common stock acquired by or for a U.S. Participant under the Plan. Under this method, the shares sold or

transferred are charged against the earliest lot purchased or acquired by or for a U.S. Participant to determine the federal income tax basis of the shares. In the alternative, U.S. Participants may designate their preference for the specific identification method or the average basis method for determining the federal income tax basis of any shares they hold in the DRP. Such designation must be in writing to the Plan Administrator. Under the average basis method, all sales or other dispositions

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of shares of our common stock that such U.S. Participant holds in the Plan that were acquired on or after January 1, 2012 generally would have a single federal income tax basis, which would be determined by averaging the federal income tax basis of all shares acquired through the Plan since such date.

A U.S. Participant's federal income tax basis in the shares of common stock acquired under the distribution reinvestment features of the Plan generally will equal the total amount of distributions the U.S. Participant is treated as receiving, as described above. A U.S. Participant's federal income tax basis in the shares of common stock acquired through an optional cash purchase under the Plan generally will equal the amount of the optional cash payment paid by the U.S. Participant, plus the total amount of any distributions that the U.S. Participant is treated as receiving, as described above.

A U.S. Participant's holding period for the shares of our common stock acquired under the Plan will begin on the day following the date such shares were purchased for such U.S. Participant's account. Consequently, shares of our common stock acquired on different dates will have different holding periods.

A U.S. Participant will recognize gain or loss when whole shares of our common stock or rights applicable to our common stock acquired under the Plan are sold or exchanged. A U.S. Participant will also recognize gain or loss when receiving a cash payment for a fractional share of our common stock credited to the holder's account when the holder withdraws from the Plan or if the Plan terminates. The amount of the U.S. Participant's gain or loss will equal the difference between the amount such holder receives for the shares of our common stock or rights applicable to our common stock, net of any selling expenses paid by such U.S. Participant, and such U.S. Participant's adjusted federal income tax basis of such shares. A U.S. Participant will not realize any gain or loss for federal income tax purposes, however, on the receipt of any stock certificates representing shares of our common stock that previously were credited to the U.S. Participant's account pursuant to the Plan.

## **LEGAL MATTERS**

Certain matters of Maryland law, including the validity of the common stock to be issued through the Plan, will be passed upon for us by Venable LLP, Baltimore, Maryland. Certain federal income tax matters will be passed upon for us by Bass, Berry & Sims PLC, Memphis, Tennessee.

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PROSPECTUS

**Common Stock  
Preferred Stock  
Debt Securities  
Depositary Shares  
Subscription Rights**

We may offer, from time to time, one or more series or classes of common stock, preferred stock, debt securities, depositary shares and subscription rights. We refer to our common stock, preferred stock, debt securities, depositary shares and subscription rights collectively as the securities. We may offer the securities separately or together, in separate series or classes and in amounts, at prices and on terms described in one or more supplements to this prospectus.

We will deliver this prospectus together with an accompanying prospectus supplement setting forth the specific terms of the securities we are offering. The accompanying prospectus supplement also will contain information, where applicable, about U.S. federal income tax considerations relating to, and any listing on a securities exchange of, the securities covered by the prospectus supplement. In addition, the specific terms may include limitations on direct or beneficial ownership and restrictions on transfer of the securities offered by this prospectus, in each case as may be appropriate to preserve our status as a real estate investment trust for federal income tax purposes.

We may offer and sell these securities to or through one or more underwriters, dealers and agents, or directly to purchasers, on a continuous or delayed basis. If any underwriters, dealers or agents are involved in the sale of any of the securities, their names, and any applicable purchase price, fee, commission or discount arrangement with, between or among them, will be set forth, or will be calculable from the information set forth, in an accompanying prospectus supplement. For more detailed information, see Plan of Distribution in this prospectus. No securities may be sold without delivery of an accompanying prospectus supplement describing the method and terms of the offering of those securities.

Our common stock is listed on the New York Stock Exchange under the symbol EDR.

**Investing in our securities involves substantial risks. See Risk Factors beginning on page 3 of this prospectus, as well as the Risk Factors incorporated by reference herein from our most recent Annual Report on Form 10-K, our Quarterly Reports on Form 10-Q and other reports and information that we file with the Securities and Exchange Commission.**

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

**The date of this prospectus is September 7, 2012.**

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**No dealer, salesperson or other person is authorized to give any information or to represent anything not contained or incorporated by reference in this prospectus, any accompanying prospectus supplement or any free writing prospectus we may provide you in connection with an offering of securities. You must not rely on any unauthorized information or representations not contained or incorporated by reference in this prospectus, any accompanying prospectus supplement or any free writing prospectus. This prospectus, any accompanying prospectus supplement or any free writing prospectus does not constitute an offer to sell or the solicitation of an offer to buy any securities other than the registered securities to which they relate, nor does this prospectus, any accompanying supplement to this prospectus or any free writing prospectus constitute an offer to sell or the solicitation of an offer to buy securities in any jurisdiction to any person to whom it is unlawful to make such offer or solicitation in such jurisdiction. The information contained in this prospectus, any prospectus supplement to this prospectus, any free writing prospectus or the documents incorporated by reference herein or therein are accurate only as of the date of such document. Our business, financial condition, liquidity, results of operations, funds from operations and prospects may have changed since those dates.**

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## **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 process for the delayed offering and sale of securities pursuant to Rule 415 under the Securities Act of 1933, as amended, or the Securities Act. Under the shelf registration process, we may, over time, sell any combination of the securities described in this prospectus in one or more offerings. This prospectus provides you with a general description of the securities that we may offer. As allowed by SEC rules, this prospectus does not contain all the information you can find in the registration statement or the exhibits to the registration statement. We will not use this prospectus to offer and sell securities unless it is accompanied by a prospectus supplement that more fully describes the securities being offered and the terms of the offering. Any accompanying prospectus supplement or free writing prospectus may also add to, update or supersede other information contained in this prospectus. Before purchasing any securities, you should carefully read this prospectus, any prospectus supplement and any free writing prospectus together with the information incorporated or deemed to be incorporated by reference herein as described under the heading **Where You Can Find More Information** in this prospectus. All references to **we**, **our**, **us**, **EdR** and the **Company** in this prospectus mean Education Realty Trust, Inc. and its consolidated subsidiaries, except where it is made clear that the term means only Education Realty Trust, Inc.

## **FORWARD-LOOKING STATEMENTS**

This prospectus and any accompanying prospectus supplement, including the documents incorporated by reference into this prospectus and any accompanying prospectus supplement, contain forward-looking statements within the meaning of Section 27A of the Securities Act and Section 21E of the Securities Exchange Act of 1934, as amended, or the Exchange Act. Forward-looking statements provide our current expectations or forecasts of future events and are not statements of historical fact. These forward-looking statements include information about possible or assumed future events, including, among other things, discussion and analysis of our future financial condition, results of operations and funds from operations, our strategic plans and objectives, cost management, occupancy and leasing rates and trends, liquidity and ability to refinance our indebtedness as it matures, anticipated capital expenditures (and access to capital) required to complete projects, amounts of anticipated cash distributions to our stockholders in the future and other matters. Words such as **anticipates**, **expects**, **intends**, **plans**, **believes**, **seeks**, **estimates** and other words of these words and similar expressions are intended to identify forward-looking statements. These statements are not guarantees of future performance and are subject to risks, uncertainties and other factors, some of which are beyond our control, are difficult to predict and/or could cause actual results to differ materially from those expressed or forecasted in the forward-looking statements.

Forward-looking statements involve inherent uncertainty and may ultimately prove to be incorrect or false. You are cautioned to not place undue reliance on forward-looking statements. Except as otherwise may be required by law, we undertake no obligation to update or revise forward-looking statements to reflect changed assumptions, the occurrence of unanticipated events or actual operating results. Our actual results could differ materially from those anticipated in these forward-looking statements as a result of various factors, including, but not limited to:

risks and uncertainties related to the recent recession, the national and local economies, and the real estate industry in general and in our specific markets (including university enrollment conditions and admission policies and our relationship with these universities);

volatility in the capital markets;  
rising interest and insurance rates;

competition from university-owned or other private collegiate housing and our inability to obtain new tenants on favorable terms, or at all, upon the expiration of existing leases;  
availability and terms of capital and financing, both to fund our operations and to refinance our indebtedness as it matures;

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legislative or regulatory changes, including changes to laws governing collegiate housing, construction and real estate investment trusts;

our possible failure to qualify as a real estate investment trust, or REIT, and the risk of changes in laws affecting REITs;

our dependence upon key personnel whose continued service is not guaranteed;

our ability to identify, hire and retain highly-qualified executives in the future;

availability of appropriate acquisition and development targets;

failure to integrate acquisitions successfully;

the financial condition and liquidity of, or disputes with, our joint venture and development partners;

impact of ad valorem, property and income taxes;

changes in generally accepted accounting principles;

construction delays, increasing construction costs or construction costs that exceed estimates;

potential liability for uninsured losses and environmental liabilities; and

lease-up risks.

This list of risks and uncertainties, however, is only a summary of some of the most important factors and is not intended to be exhaustive. You should carefully review the risks and information contained, or incorporated by reference, in this prospectus or in any accompanying prospectus supplement, including, without limitation, the Risk Factors incorporated by reference herein from our most recent Annual Report on Form 10-K, our Quarterly Reports on Form 10-Q and other reports and information that we file with the SEC. New factors may also emerge from time to time that could materially and adversely affect us.

## **THE COMPANY**

We are a self-managed and self-advised REIT, organized in July 2004 to develop, acquire, own and manage collegiate housing communities located on or near university campuses. We were formed to continue and expand upon the collegiate housing business of Allen & O Hara, Inc., a company with over 40 years of experience as an owner, manager and developer of collegiate housing. We own and operate collegiate housing communities, provide third-party management services for collegiate housing communities, selectively develop collegiate housing communities for our own account and provide third-party development and construction consulting services on collegiate housing development projects for universities and other third parties.

Our primary business objective is to achieve sustainable long-term growth and maximize long-term stockholder value. We intend to achieve this objective by (i) acquiring collegiate housing communities nationwide that meet our focused investment criteria, (ii) maximizing net operating income from the operation of our owned communities through proactive and goal-oriented property management strategies, (iii) building our third-party business of management services and development and construction consulting services and (iv) selectively developing communities for our own account.

All of our assets are held by, and we conduct substantially all of our activities through, Education Realty Operating Partnership, LP, or the Operating Partnership, and its wholly owned subsidiaries. We are the sole general partner of our Operating Partnership, and, as a result, our board of directors effectively directs all of the Operating Partnership's affairs. As of June 30, 2012, we owned 99.1% of the outstanding partnership units of the Operating Partnership. In addition, University Towers Operating Partnership, LP, or the University Towers Partnership, which is our affiliate, owns and operates our University Towers property located in Raleigh, North Carolina. As of June 30, 2012, we owned 72.7% of the units in the University Towers Partnership.



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Our executive offices are located at 999 South Shady Grove Road, Suite 600, Memphis, Tennessee 38120, and our telephone number is (901) 259-2500. Our website address is *www.edrtrust.com*. However, the information located on, or accessible from, our website is not, and shall not be deemed to be, a part of this prospectus, any accompanying prospectus supplement or any free writing prospectus or incorporated into any other filings that we make with the SEC.

**RISK FACTORS**

Investment in any securities offered pursuant to this prospectus involves substantial risks. You should carefully consider the risk factors incorporated by reference to our most recent Annual Report on Form 10-K, our subsequent Quarterly Reports on Form 10-Q and the other information contained in this prospectus, as updated by our subsequent filings under the Exchange Act, and the risk factors and other information contained in any accompanying prospectus supplement before acquiring any of such securities. The occurrence of any of these risks might cause you to lose all or part of your investment in the offered securities. Please also refer to the section entitled "Forward-Looking Statements" in this prospectus.

**CONSOLIDATED RATIO OF EARNINGS TO FIXED CHARGES**

Our consolidated ratios of earnings to fixed charges for the six months ended June 30, 2012 and the years ended December 31, 2007, 2008, 2009, 2010 and 2011 are set forth below. For purposes of calculating the ratio of earnings to fixed charges, earnings consist of income before taxes, noncontrolling interest and equity in earnings of equity investees, plus fixed charges less capitalized interest. Fixed charges include, where applicable, interest expense, capitalized interest, amortization of premiums, discounts, and deferred financing costs related to debt and an estimate of the interest component of rent expense.

	Year Ended December 31,					Six Months Ended June 30, 2012
	2007	2008	2009	2010	2011	
Consolidated ratio of earnings to fixed charges	*	*	1.1	*	*	1.1

\* For the years ended December 31, 2007, 2008, 2010 and 2011, fixed charges exceeded earnings by \$6.8 million, \$5.8 million, \$7.3 million and \$12.8 million, respectively.

**USE OF PROCEEDS**

Unless we specify otherwise in an accompanying prospectus supplement, we intend to use the net proceeds from the sale of securities by us to provide additional funds for general corporate purposes. Any allocation of the net proceeds of an offering of securities to a specific purpose will be determined at the time of such offering and will be described in the accompanying supplement to this prospectus.



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## **DESCRIPTION OF CAPITAL STOCK**

### **General**

We were formed under the laws of the State of Maryland. Rights of our stockholders are governed by the Maryland General Corporation Law, or MGCL, our charter and our bylaws. The following is a summary of the material provisions of our capital stock.

### **Authorized Stock**

Our charter provides that we may issue up to 200,000,000 shares of common stock, par value \$0.01 per share, and 50,000,000 shares of preferred stock, par value \$0.01 per share. In addition, our charter provides that our board of directors, without any action by our stockholders, may amend our charter from time to time to increase or decrease the aggregate number of shares of stock or the number of shares of stock of any class or series that we have authority to issue. As of August 24, 2012, there were 113,017,462 shares of common stock issued and outstanding and no shares of preferred stock issued and outstanding.

### **Common Stock**

Subject to the preferential rights of any other class or series of stock and to the provisions of the charter regarding the restrictions on ownership and transfer of stock, holders of shares of our common stock are entitled to receive distributions on such stock when, as and if authorized by our board of directors out of funds legally available therefor and declared by us and to share ratably in the assets of our company legally available for distribution to our stockholders in the event of our liquidation, dissolution or winding up after payment of or adequate provision for all known debts and liabilities of our company, including the preferential rights on dissolution of any class or classes of preferred stock.

Subject to the provisions of our charter regarding the restrictions on ownership and transfer of stock and except as may otherwise be specified in the terms of any class or series of common stock, each outstanding share of our common stock entitles the holder to one vote on all matters submitted to a vote of stockholders, including the election of directors and, except as provided with respect to any other class or series of stock, the holders of such shares will possess the exclusive voting power. There is no cumulative voting in the election of our board of directors, which means that the holders of a majority of the outstanding shares of our common stock can elect all of the directors then standing for election and the holders of the remaining shares will not be able to elect any directors.

Holders of shares of our common stock have no preference, conversion, exchange, sinking fund, or redemption rights, have no preemptive rights to subscribe for any securities of our company and generally have no appraisal rights unless our board of directors determines that appraisal rights apply, with respect to all or any classes or series of stock, to one or more transactions occurring after the date of such determination in connection with which holders would otherwise be entitled to exercise appraisal rights. Subject to the provisions of the charter regarding the restrictions on ownership and transfer of stock, shares of our common stock will have equal distribution, liquidation and other rights.

Under the MGCL, a Maryland corporation generally cannot dissolve, amend its charter, merge, consolidate, transfer all or substantially all of its assets, engage in a statutory share exchange or engage in similar transactions outside the ordinary course of business unless declared advisable by the board of directors and approved by the affirmative vote

of stockholders holding at least two-thirds of the shares entitled to vote on the matter unless a lesser percentage (but not less than a majority of all of the votes entitled to be cast on the matter) is set forth in the corporation's charter. Our charter provides for a lesser percentage for these matters. Therefore, except for certain charter amendments, any such action will be effective and valid if declared advisable by our board of directors and taken or approved by the affirmative vote of stockholders entitled to cast a majority of all the votes entitled to be cast on the matter. In addition,

Maryland law permits a corporation to transfer all or substantially all of its assets without the approval of the stockholders of the corporation to one or more persons if all of the equity interests of the person or persons are owned, directly or indirectly, by the corporation. Maryland law also does not require approval of the stockholders of a parent corporation to merge or sell all or substantially all of the assets of a subsidiary entity.

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Our charter authorizes our board of directors to reclassify any unissued shares of our common stock into other classes or series of classes of stock and to establish the number of shares in each class or series and to set the preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications or terms or conditions of redemption for each such class or series.

## **Preferred Stock**

Our charter authorizes our board of directors to classify any unissued shares of preferred stock and to reclassify any unissued shares of common stock and any previously classified but unissued shares of preferred stock of any series. Prior to issuance of shares of each series, our board of directors is required by the MGCL and our charter to set the terms, preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications and terms or conditions of redemption for each such series. Thus, our board of directors could authorize the issuance of shares of common or preferred stock with terms and conditions which could have the effect of delaying, deferring or preventing a transaction or a change of control in EdR that might involve a premium price for holders of our common stock or otherwise be in their best interest. If we offer shares of preferred stock, the accompanying prospectus supplement will describe each of the following terms that may be applicable in respect of any preferred stock offered and issued pursuant to this prospectus:

the specific designation, number of shares, seniority and purchase price;  
any liquidation preference per share;  
any maturity date;

any mandatory or optional redemption or repayment dates and terms or sinking fund provisions;  
any dividend rate or rates and the dates on which any dividends will be payable (or the method by which such rates or dates will be determined);

any voting rights;  
any rights to convert the preferred stock into other securities or rights, including a description of the securities or rights into which such preferred stock is convertible (which may include other shares of preferred stock) and the terms and conditions upon which such conversions will be effected, including, without limitation, conversion rates or formulas, conversion periods and other related provisions;

the place or places where dividends and other payments with respect to the preferred stock will be payable; and any additional voting, dividend, liquidation, redemption and other rights, preferences, privileges, limitations and restrictions, including restrictions imposed for the purpose of maintaining our qualification as a REIT under the Internal Revenue Code of 1986, as amended, or the Code.

## **Power to Increase Authorized Stock and Issue Additional Shares of Our Common Stock and Preferred Stock**

We believe that the power of our board of directors, without stockholder approval, to amend our charter from time to time to increase the aggregate number of shares of stock or the number of shares of stock of any class or series that we have authority to issue, to issue additional authorized but unissued shares of our common stock or preferred stock and to classify or reclassify unissued shares of our common stock or preferred stock and thereafter to cause us to issue such classified or reclassified shares of stock will provide us with flexibility in structuring possible future financings and acquisitions and in meeting other needs which might arise. The additional classes or series, as well as the common stock, will be available for issuance without further action by our stockholders, unless stockholder consent is required by applicable law or the rules of any stock exchange or automated quotation system on which our securities may be listed or traded. Although our board of directors does not intend to do so, it could authorize us to issue a class or series that could, depending upon the terms of the particular class or series, delay, defer or prevent a transaction or a change of control in EdR that might involve a premium price for our stockholders or otherwise be in their best interest.



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## **Restrictions on Ownership and Transfer**

In order for us to maintain our qualification as a REIT under the Code, not more than 50% of the value of the outstanding shares of our capital stock may be owned, actually or constructively, by five or fewer individuals (as defined in the Code to include certain entities) during the last half of a taxable year (other than the first year for which an election to be a REIT has been made by us). In addition, if we, or one or more owners (actually or constructively) of 10% or more of us, actually or constructively owns 10% or more of a tenant of ours (or a tenant of any partnership in which we are a partner), the rent received by us (either directly or through any such partnership) from such tenant will not be qualifying income for purposes of the REIT gross income tests under the Code. Our capital stock must also be beneficially owned by 100 or more persons during at least 335 days of a taxable year of 12 months or during a proportionate part of a shorter taxable year (other than the first year for which an election to be a REIT has been made by us). For further discussion, see Material U.S. Federal Income Tax Considerations.

Our charter contains restrictions on the ownership and transfer of our capital stock. The relevant sections of our charter provide that, subject to the exceptions described below, no person or persons acting as a group may own, or be deemed to own by virtue of the attribution provisions of the Code, more than (i) 9.8% of the most restrictive of the number, voting power, or value of shares of our outstanding capital stock or (ii) 9.8% of the most restrictive of the number, voting power or value of our outstanding common stock. We refer to these restrictions as the capital stock ownership limit and the common stock ownership limit and collectively as the ownership limits.

The ownership attribution rules under the Code are complex and may cause stock owned actually or constructively by a group of related individuals and/or entities to be owned constructively by one individual or entity. As a result, the acquisition of less than 9.8% of our capital stock or our common stock (or the acquisition of an interest in an entity that owns, actually or constructively, our capital stock or our common stock) by an individual or entity, could, nevertheless cause that individual or entity, or another individual or entity, to own constructively in excess of 9.8% of our outstanding capital stock or our outstanding common stock and thereby result in a violation of the ownership limits.

Our board of directors may, in its sole discretion, waive (prospectively or retroactively) the ownership limits with respect to one or more stockholders if (i) it obtains such representations and undertakings as are reasonably necessary to ascertain that no individual's beneficial or constructive ownership of shares of our capital stock will result in our being treated as closely held within the meaning of Section 856(h) of the Code or will otherwise cause us to fail to maintain our REIT qualification, and (ii) such stockholders do not, and represent that they will not, own, actually or constructively, an interest in any tenant of ours (or a tenant of any entity owned or controlled by us) that would cause us to own, actually or constructively, more than a 9.9% interest in such tenant. Such stockholders must also agree that any violation or attempted violation of these restrictions will result in the automatic transfer of the shares of capital stock causing the violation to a charitable trust.

As a condition of any grant of a waiver from the capital stock ownership limit or the common stock ownership limit, our board of directors may require an opinion of counsel or IRS ruling satisfactory to our board of directors and/or representations or undertakings from the stockholder requesting the waiver with respect to preserving our qualification as a REIT.

In connection with the waiver of the capital stock ownership limit or the common stock ownership limit or at any other time, our board of directors may decrease the capital stock ownership limit or the common stock ownership limit for all other persons and entities. The decreased capital stock ownership limit or common stock ownership limit will not be effective for any person or entity whose ownership of our capital stock is in excess of such decreased

ownership limit until such time as such person or entity's ownership falls below the decreased capital stock ownership limit or the common stock ownership limit, but any further acquisition of our common stock or other class or series of our capital stock, as the case may be, in excess of such capital stock ownership limit or the common stock ownership limit will be in violation of the capital stock ownership limit or common stock ownership limit. Additionally, any increase in the capital stock

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ownership limit may not allow five or fewer individuals (as defined for purposes of the REIT ownership restrictions under the Code) to beneficially own more than 49.9% of the value of our outstanding capital stock.

Our charter further prohibits:

any person from actually or constructively owning shares of our capital stock that would result in us being closely held under Section 856(h) of the Code or otherwise cause us to fail to qualify as a REIT; and

any person from transferring shares of our capital stock if such transfer would result in shares of our capital stock being beneficially owned by fewer than 100 persons (determined without reference to any rules of attribution).

Any person who acquires or attempts or intends to acquire beneficial or constructive ownership of our capital stock that will or may violate any of the foregoing restrictions on transferability and ownership will be required to give written notice immediately to us (or, in the case of a proposed or attempted transaction, at least 15 days prior written notice) and provide us with such other information as we may request in order to determine the effect of such transfer on our status as a REIT. The foregoing provisions on transferability and ownership will not apply if our board of directors determines that it is no longer in our best interests to attempt to maintain our qualification as a REIT or that compliance with the restrictions is no longer required to maintain our qualification as a REIT.

Pursuant to our charter, any attempted transfer of our capital stock which, if effective, would result in our stock being owned by fewer than 100 persons will be null and void. In addition, if any purported transfer of our stock or any other event would result in any person violating the capital stock ownership limit or the common stock ownership limit or our being closely held under Section 856(h) of the Code or otherwise failing to qualify as a REIT, then the number of shares of capital stock in excess of the capital stock ownership limit or the common stock ownership limit or causing the violation (rounded to the nearest whole share) will be automatically transferred to, and held by, a trust for the exclusive benefit of one or more charitable organizations selected by us. In the event that the transfer to the trust would not be effective for any reason to prevent the violation, however, any such purported transfer will be void and of no force or effect with respect to the purported transferee or owner (collectively referred to hereinafter as the purported owner) as to the number of shares of common stock or other class or series of capital stock in excess of the capital stock ownership limit or the common stock ownership limit or causing the violation. The trustee of the trust will be designated by us and must be unaffiliated with us and with any purported owner. The automatic transfer will be effective as of the close of business on the business day prior to the date of the violative transfer or other event that results in a transfer to the trust. The purported owner will have no rights to the shares of capital stock held by the trustee. Any distribution paid to the purported owner, prior to our discovery that the shares of capital stock had been automatically transferred to a charitable trust as described above, must be repaid to the trustee upon demand for distribution to the charitable beneficiary of the trust and all distributions paid by us with respect to such excess shares prior to the sale by the trustee of such shares shall be paid to the trustee for the exclusive benefit of the charitable beneficiary.

Subject to Maryland law, effective as of the date that such excess shares of capital stock are transferred to the charitable trust, the trustee shall have the authority (at the trustee's sole discretion) (i) to rescind as void any vote cast by a purported owner prior to our discovery that such shares have been transferred to the charitable trust and (ii) to recast such vote in accordance with the desires of the trustee acting for the benefit of the beneficiary of the trust, provided, however, that if we have already taken irreversible action, then the trustee shall not have the authority to rescind and recast such vote.

Within 20 days of receiving notice from us of the transfer of shares of capital stock to the trust, the trustee must sell the shares to a person or entity designated by the trustee that could own the shares without violating the ownership limits or other restrictions. Upon receiving the proceeds of such sale, the trustee must distribute to the purported owner an amount equal to the lesser of (i) the net price paid by the purported owner for the shares (or, if the event

which resulted in the transfer to the trust did not involve a purchase of such shares at market price, the market price on the day of the event which resulted in the transfer of such

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shares of our stock to the trust) and (ii) the net sales proceeds received by the trustee for the shares. The trustee may reduce the amount payable to the purported owner by the amount of dividends and other distributions which have been paid to the purported owner and are owed by the purported owner to the trustee. Any proceeds in excess of the amount distributable to the purported owner will be distributed to the charitable beneficiary. If, prior to our discovery that shares of capital stock have been transferred to the trustee, such shares are sold by a purported owner, then such shares will be deemed to have been sold on behalf of the trust and, to the extent that the purported owner received an amount for such shares that exceeds the amount that the purported owner was entitled to receive, the purported owner must pay such excess to the trustee upon demand.

Shares of our capital stock that are transferred to the charitable trustee are deemed offered for sale to us, or our designee, at a price per share equal to the lesser of (i) the price paid by the purported owner for such shares (or, if the event which resulted in the transfer to the trust did not involve a purchase of such shares at market price, the market price on the day of the event which resulted in the transfer of such shares to the trust) and (ii) the market price on the date we, or our designee, accepts such offer. We may reduce the amount payable to the purported owner by the amount of any distributions which have been paid to the purported owner and are owed by the purported owner to the trustee. We may pay the amount of such reduction to the trustee for the benefit of the charitable beneficiary. We have the right to accept such offer until the trustee has sold the shares of our capital stock held in the trust pursuant to the charter provisions described in the immediately preceding paragraph. Upon a sale of such shares to us, the interest of the charitable beneficiary in such shares terminates and the trustee must distribute the net proceeds of the sale to the purported owner, and any distributions held by the trustee with respect to such capital stock will be paid to the charitable beneficiary.

All persons who own, directly or by virtue of the attribution provisions of the Code, 5% or more (or such other percentage as provided in the regulations promulgated under the Code) of our outstanding stock must give written notice to us within 30 days after the end of each taxable year. In addition, each stockholder will, upon demand, be required to disclose to us in writing such information with respect to the direct, indirect and constructive ownership of shares of our stock as our board of directors deems reasonably necessary to determine the effect of the stockholder's constructive ownership on our REIT status, to ensure compliance with the capital stock ownership limit and to comply with the requirements or any taxing authority or governmental agency.

Any certificates representing shares of our capital stock shall bear a legend referring to the restrictions described above.

These ownership limits could delay, defer or prevent a transaction or a change of control in EdR that might involve a premium price over the then prevailing market price for the holders of some, or a majority, of our outstanding shares of common stock (and certain other series or classes of capital stock that we may issue in the future) or which such holders might believe to be otherwise in their best interest.

## **Transfer Agent and Registrar**

The transfer agent and registrar for our common stock is American Stock Transfer & Trust Company, LLC.

## **Material provisions of Maryland law and of our charter and bylaws**

The following is a summary of certain provisions of Maryland law and of our charter and bylaws. See [Where You Can Find More Information](#) in this prospectus.

***The Board of Directors.*** Our bylaws provide that the number of directors of our Company may be established by our board of directors but may not be fewer than the minimum number permitted under the MGCL (generally, one) nor more than 15. Any vacancy may be filled, at any regular meeting or at any special meeting called for that purpose, only by a majority of the remaining directors, even if the remaining directors do not constitute a quorum, and any director elected to fill a vacancy will serve for the remainder of the full term of the directorship in which such vacancy occurred and until a successor is elected and qualifies.

Each member of our board of directors will serve one-year terms, with each current director serving until the next annual meeting of stockholders and until their respective successors are duly elected and qualify. Our

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common stockholders will have no right to cumulative voting in the election of directors. Consequently, at each annual meeting of stockholders at which our board of directors is elected, the holders of a majority of the shares of our common stock will be able to elect all of the members of our board of directors. Moreover, our charter permits our stockholders to remove a director, but only for cause, upon the affirmative vote of a majority of the shares of our common stock entitled to vote generally in the election of directors.

**Business Combinations.** Maryland law prohibits business combinations between a corporation and an interested stockholder or an affiliate of an interested stockholder for five years after the most recent date on which the interested stockholder becomes an interested stockholder. These business combinations include a merger, consolidation, statutory share exchange, or, in circumstances specified in the statute, certain transfers of assets, certain stock issuances and transfers, liquidation plans and reclassifications involving interested stockholders and their affiliates.

Maryland law defines an interested stockholder as:

any person who beneficially owns 10% or more of the voting power of our outstanding voting stock; or an affiliate or associate of the corporation who, at any time within the two-year period prior to the date in question, was the beneficial owner of 10% or more of the voting power of the then-outstanding stock of the corporation.

A person is not an interested stockholder if the board of directors approves in advance the transaction by which the person otherwise would have become an interested stockholder. However, in approving the transaction, the board of directors may provide that its approval is subject to compliance, at or after the time of approval, with any terms and conditions determined by the board of directors.

After the five-year prohibition, any business combination between a corporation and an interested stockholder generally must be recommended by the board of directors and approved by the affirmative vote of at least:

80% of the votes entitled to be cast by holders of the then outstanding shares of voting stock; and two-thirds of the votes entitled to be cast by holders of the voting stock other than shares held by the interested stockholder with whom or with whose affiliate the business combination is to be effected or shares held by an affiliate or associate of the interested stockholder.

These super-majority vote requirements do not apply if the common stockholders receive a minimum price, as defined under Maryland law, for their shares in the form of cash or other consideration in the same form as previously paid by the interested stockholder for its shares.

The statute permits various exemptions from its provisions, including business combinations that are approved by the board of directors before the time that the interested stockholder becomes an interested stockholder.

Our board of directors has by resolution exempted any business combination between the corporation and our officers and directors from these provisions of the MGCL and, consequently, the five-year prohibition and the super-majority vote requirements will not apply to business combinations between us and any of our officers and directors unless our board later resolves otherwise. We believe that our ownership restrictions will substantially reduce the risk that a stockholder would become an interested stockholder within the meaning of the Maryland business combination statute.

**Control Share Acquisitions.** The MGCL provides that control shares of a Maryland corporation acquired in a control share acquisition have no voting rights except to the extent approved at a special meeting by the affirmative vote of two-thirds of the votes entitled to be cast on the matter, excluding shares of stock in a corporation in respect of which any of the following persons is entitled to exercise or direct the exercise of the voting power of shares of stock of the corporation in the election of directors: (i) a person who makes or proposes to make a control share acquisition, (ii) an officer of the corporation or (iii) an employee of the corporation who is also a director of the corporation. Control

shares are voting shares of stock which, if aggregated with all other such shares of stock previously acquired by the acquiror or in respect of which the acquiror is able to exercise or direct the exercise of voting power (except solely by virtue of a

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revocable proxy), would entitle the acquiror to exercise voting power in electing directors within one of the following ranges of voting power: (i) one-tenth or more but less than one-third, (ii) one-third or more but less than a majority, or (iii) a majority or more of all voting power. Control shares do not include shares that the acquiring person is then entitled to vote as a result of having previously obtained stockholder approval. A control share acquisition means the acquisition of issued and outstanding control shares, subject to certain exceptions.

A person who has made or proposes to make a control share acquisition, upon satisfaction of certain conditions (including an undertaking to pay expenses), may compel our board of directors to call a special meeting of stockholders to be held within 50 days of demand to consider the voting rights of the shares. If no request for a meeting is made, the corporation may itself present the question at any stockholders meeting.

If voting rights are not approved at the meeting or if the acquiring person does not deliver an acquiring person statement as required by the statute, then, subject to certain conditions and limitations, the corporation may redeem any or all of the control shares (except those for which voting rights have previously been approved) for fair value determined, without regard to the absence of voting rights for the control shares, as of the date of the last control share acquisition by the acquiror or of any meeting of stockholders at which the voting rights of such shares are considered and not approved. If voting rights for control shares are approved at a stockholders meeting and the acquiror becomes entitled to vote a majority of the shares entitled to vote, all other stockholders may exercise appraisal rights. The fair value of the shares as determined for purposes of such appraisal rights may not be less than the highest price per share paid by the acquiror in the control share acquisition.

The control share acquisition statute does not apply (a) to shares acquired in a merger, consolidation or share exchange if the corporation is a party to the transaction or (b) to acquisitions approved or exempted by the charter or bylaws of the corporation.

Our bylaws contain a provision exempting from the control share acquisition statute any and all acquisitions by any person of our stock and, consequently, the applicability of the control share acquisitions unless we later amend our bylaws to modify or eliminate this provision.

**Subtitle 8.** Subtitle 8 of Title 3 of the MGCL permits a Maryland corporation with a class of equity securities registered under the Exchange Act and at least three independent directors to elect to be subject, by provision in its charter or bylaws or a resolution of its board of directors and notwithstanding any contrary provision in the charter or bylaws, to any or all of five provisions:

- a classified board;
- a two-thirds vote requirement for removing a director;
- a requirement that the number of directors be fixed only by vote of the directors;
- a requirement that a vacancy on the board be filled only by the remaining directors and for the remainder of the full term of the class of directors in which the vacancy occurred; and
- a majority requirement for the calling by stockholders of a special meeting of stockholders.

Through provisions in our charter and bylaws unrelated to Subtitle 8, we already (a) vest in the board the exclusive power to fix the number of directorships and (b) require, unless called by our chairman of the board of directors, our president, our chief executive officer or the board of directors, the request of holders of a majority of outstanding shares entitled to vote to call a special meeting. We have elected to be subject to the provisions of Subtitle 8 relating to the filling of vacancies on the board.

**Amendment to our charter.** Our charter may be amended only if declared advisable by the board of directors and approved by the affirmative vote of the holders of at least a majority of all of the votes entitled to be cast on the

matter, other than amendments to provisions relating to the removal of directors or certain other amendments, which must be declared advisable by our board of directors and approved by the affirmative vote of two-thirds of all the votes entitled to be cast on the matter.

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***Dissolution of our Company.*** The dissolution of our Company must be declared advisable by a majority of the entire board of directors and approved by the affirmative vote of the holders of not less than a majority of all of the votes entitled to be cast on the matter.

***Advance notice of director nominations and new business.*** Our bylaws provide that, with respect to an annual meeting of stockholders, nominations of individuals for election to our board of directors and the proposal of business to be considered by stockholders may be made only:

pursuant to our notice of the meeting;  
by, or at the direction of, our board of directors; or  
by a stockholder who is a stockholder of record both at the time of giving of notice and at the time of the annual meeting, who is entitled to vote at the meeting in the election of each individual so nominated or on any such other business and who has complied with the advance notice procedures set forth in our bylaws.  
With respect to special meetings of stockholders, only the business specified in our Company's notice of meeting may be brought before the meeting of stockholders, unless otherwise provided by law.

Nominations of individuals for election to our board of directors at any special meeting of stockholders may be made only:

by, or at the direction of, our board of directors; or  
provided that our board of directors has determined that directors shall be elected at such special meeting, by any stockholder who is a stockholder of record both at the time of giving of notice and at the time of the special meeting, who is entitled to vote at the meeting in the election of each individual so nominated and who has complied with the advance notice procedures set forth in our bylaws.

***Anti-takeover effect of certain provisions of Maryland law and of our charter and bylaws.*** The business combination provisions of the MGCL, the provisions of our charter regarding the restrictions on ownership and transfer of our stock and the advance notice provisions of our bylaws could delay, defer or prevent a transaction or a change of control in EdR that might involve a premium price for holders of our common stock or otherwise be in their best interest. Likewise, if our board of directors resolves to avail the corporation of any of the provisions of Subtitle 8 of Title 3 of the MGCL not currently applicable to us or if the provision in the bylaws opting out of the control share acquisition provisions of the MGCL were rescinded, these provisions of the MGCL could have similar anti-takeover effects.

***Indemnification and limitation of directors and officers liability.*** Maryland law permits us to include in our charter a provision limiting the liability of our directors and officers to us and our stockholders for money damages, except for liability resulting from (i) actual receipt of an improper benefit or profit in money, property or services or (ii) active and deliberate dishonesty established by a final judgment and material to the cause of action. Our charter contains a provision that eliminates directors' and officers' liability to the maximum extent permitted by Maryland law.

The MGCL requires a corporation unless its charter provides otherwise, which our charter does not, to indemnify a director or officer who has been successful, on the merits or otherwise, in the defense of any proceeding to which he or she is made, or threatened to be made, a party by reason of his or her service in that capacity. The MGCL permits a corporation to indemnify its present and former directors and officers, among others, against judgments, penalties, fines, settlements and reasonable expenses actually incurred by them in connection with any proceeding to which they may be made or threatened to be made a party by reason of their service in those or other capacities unless it is established that:

an act or omission of the director or officer was material to the matter giving rise to the proceeding and:

was committed in bad faith; or  
was the result of active and deliberate dishonesty;

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the director or officer actually received an improper personal benefit in money, property or services; or in the case of any criminal proceeding, the director or officer had reasonable cause to believe that the act or omission was unlawful.

However, under the MGCL, a Maryland corporation may not, and our Company will not, indemnify for an adverse judgment in a suit by or in the right of the corporation or for a judgment of liability on the basis that personal benefit was improperly received, unless in either case a court orders indemnification and then only for expenses. In addition, the MGCL permits a corporation to, and our Company will, advance reasonable expenses to a director or officer upon the corporation's receipt of:

a written affirmation by the director or officer of his or her good faith belief that he or she has met the standard of conduct necessary for indemnification by the corporation; and  
a written undertaking by the director or officer or on the director's or officer's behalf to repay the amount paid or reimbursed by the corporation if it is ultimately determined that the director or officer did not meet the standard of conduct.

Our charter authorizes us to obligate our Company and our bylaws obligate us, to the fullest extent permitted by Maryland law, to indemnify and, without requiring a preliminary determination of the ultimate entitlement to indemnification, pay or reimburse reasonable expenses in advance of final disposition of a proceeding to:

any present or former director or officer who is made, or threatened to be made, a party to the proceeding by reason of his or her service in that capacity; or

any individual who, while a director or officer of our Company and at our request, serves or has served another corporation, real estate investment trust, partnership, joint venture, trust, employee benefit plan or any other enterprise as a director, officer, partner or trustee and who is made, or threatened to be made, a party to the proceeding by reason of his or her service in that capacity.

Our bylaws also authorize us, subject to approval from our board of directors or a committee thereof, to indemnify and advance expenses to any person who served a predecessor of ours in any of the capacities described above and to any employee or agent of our Company or a predecessor of our Company.

The partnership agreements of our Operating Partnership and University Towers Partnership provide that we, as general partner of our Operating Partnership and University Towers Partnership, and our officers and directors are indemnified to the fullest extent permitted by law.

We have entered into indemnification agreements with each of our executive officers and directors.

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## **DESCRIPTION OF DEBT SECURITIES**

We may issue debt securities under one or more trust indentures to be executed by us and a specified trustee. The terms of the debt securities will include those stated in the indenture and those made a part of the indenture by reference to the Trust Indenture Act of 1939, or the Trust Indenture Act. The indentures will be qualified under the Trust Indenture Act.

The following description sets forth certain anticipated general terms and provisions of the debt securities to which an accompanying prospectus supplement may relate. The particular terms of the debt securities offered by an accompanying prospectus supplement (which terms may be different than those stated below) and the extent, if any, to which such general provisions may apply to the debt securities so offered will be described in the prospectus supplement relating to such debt securities. Accordingly, for a description of the terms of a particular issue of debt securities, investors should review both the accompanying prospectus supplement relating thereto and the following description. A form of the indenture (as discussed herein) has been filed as an exhibit to the registration statement of which this prospectus is a part.

The debt securities will be our direct obligations and may be either senior debt securities or subordinated debt securities. The indebtedness represented by subordinated securities will be subordinated in right of payment to the prior payment in full of our senior debt (as defined in the applicable indenture).

Except as set forth in the applicable indenture and described in an accompanying prospectus supplement relating thereto, the debt securities may be issued without limit as to aggregate principal amount, in one or more series, secured or unsecured, in each case as established from time to time in or pursuant to authority granted by a resolution of the board of directors or as established in the applicable indenture. All debt securities of one series need not be issued at the same time and, unless otherwise provided, a series may be reopened, without the consent of the holders of the debt securities of such series, for issuance of additional debt securities of such series.

The accompanying prospectus supplement relating to any series of debt securities being offered will contain their specific terms, including, without limitation:

- their title and whether they are senior securities or subordinated securities;
- their initial aggregate principal amount and any limit on their aggregate principal amount;
- the percentage of the principal amount at which they will be issued and, if other than 100% of the principal amount, the portion of the principal amount payable upon declaration of acceleration of their maturity;
- the terms, if any, upon which they may be convertible into shares of our common stock or preferred stock and the terms and conditions upon which a conversion will be effected, including the initial conversion price or rate and the conversion period;
- if convertible, the portion of the principal amount that is convertible into common stock or preferred stock, or the method by which any portion will be determined;
- if convertible, any applicable limitations on the ownership or transferability of the common stock or preferred stock into which they are convertible;
- the date or dates, or the method for determining the date or dates, on which the principal will be payable;
- the rate or rates (which may be fixed or variable), or the method for determining the rate or rates, at which they will bear interest, if any;
- the date or dates, or the method for determining the date or dates, from which any interest will accrue, the interest payment dates on which any interest will be payable, the regular record dates for the interest payment dates, or the method by which the date will be determined, the person to whom the interest will be payable, and the basis upon

which interest will be calculated if other than that of a 360-day year of twelve 30-day months;

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the place or places where the principal (and premium, if any) and interest, if any, will be payable, where they may be surrendered for conversion or registration of transfer or exchange and where notices or demands to or upon us may be served;

the period or periods within which, the price or prices at which and the terms and conditions upon which they may be redeemed, as a whole or in part, at our option, if we are to have the option;

our obligation, if any, to redeem, repay or purchase them pursuant to any sinking fund or analogous provision or at the option of a holder, and the period or periods within which, the price or prices at which and the terms and conditions upon which they will be redeemed, repaid or purchased, as a whole or in part, pursuant to this obligation;

if other than U.S. dollars, the currency or currencies in which they are denominated and payable, which may be a foreign currency or units of two or more foreign currencies or a composite currency or currencies, and the related terms and conditions;

whether the payments of principal (and premium, if any) or interest, if any, may be determined with reference to an index, formula or other method (which index, formula or method may, but need not be, based on a currency, currencies, currency unit or units or composite currencies) and the manner in which the amounts will be determined;

any additions to, modifications of or deletions from their terms with respect to the events of default or covenants set forth in the indenture;

any provisions for collateral security for their repayment;

whether they will be issued in certificated or book-entry form;

whether they will be in registered or bearer form and, if in registered form, the denominations if other than \$1,000 and any integral multiple thereof and, if in bearer form, the denominations and related terms and conditions;

the applicability, if any, of defeasance and covenant defeasance provisions of the applicable indenture;

whether and under what circumstances we will pay additional amounts as contemplated in the applicable indenture in respect of any tax, assessment or governmental charge and, if so, whether we will have the option to redeem them in lieu of making the payment; and

any other terms and any deletions from or modifications or additions to the applicable indenture.

The debt securities may provide for less than the entire principal amount thereof to be payable upon declaration of acceleration of the maturity thereof. Special federal income tax, accounting and other considerations applicable to debt securities will be described in the accompanying prospectus supplement.

The applicable indenture may contain provisions that would limit our ability to incur indebtedness or that would afford holders of debt securities protection in the event of a highly leveraged or similar transaction involving us or in the event of a change of control.

Restrictions on ownership and transfer of our common stock and preferred stock are designed to preserve our qualification as a REIT and, therefore, may act to prevent or hinder a change of control. See [Description Of Capital Stock Restrictions on Ownership and Transfer](#) in this prospectus. Investors should review the accompanying prospectus supplement for information with respect to any deletions from, modifications of or additions to the events of default or covenants that are described below, including any addition of a covenant or other provision providing event risk or similar protection.

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## **Merger, Consolidation or Sale**

The applicable indenture will provide that we may consolidate with, or sell, lease or convey all or substantially all of our assets to, or merge with or into, any other corporation, provided that:

we are the continuing corporation, or the successor corporation (if other than EdR) formed by or resulting from any consolidation or merger or which has received the transfer of our assets will be organized and existing under U.S. or state law and expressly assumes payment of the principal of (and premium, if any), and interest on, all of the applicable debt securities and the due and punctual performance and observance of all of the covenants and conditions contained in the applicable indenture;

immediately after giving effect to the transaction and treating any indebtedness which becomes our obligation or the obligation of any subsidiary as a result thereof as having been incurred by us or such subsidiary at the time of the transaction, no event of default under the applicable indenture, and no event which, after notice or the lapse of time, or both, would become an event of default, will have occurred and be continuing; and

an officer's certificate and legal opinion covering these conditions will be delivered to the trustee.

## **Covenants**

The applicable indenture will contain covenants requiring us to take certain actions and prohibiting us from taking certain actions. The covenants with respect to any series of debt securities will be described in the accompanying prospectus supplement.

## **Events of Default, Notice and Waiver**

Each indenture will describe specific events of default with respect to a series of debt securities issued under the indenture. These events of default are likely to include (with grace and cure periods):

our failure to pay any installment of interest;

our failure to pay their principal (or premium, if any) at their maturity;

our failure to make any required sinking fund payment;

our breach of any other covenant or warranty contained in the applicable indenture (other than a covenant added to the indenture solely for the benefit of a different series of debt securities); and

certain events of bankruptcy, insolvency or reorganization, or court appointment of a receiver, liquidator or trustee of us or any substantial part of our property.

If an event of default under any indenture with respect to debt securities of any series at the time outstanding occurs and is continuing, then the applicable trustee or the holders of not less than 25% of the principal amount of the outstanding debt securities of that series may declare the principal amount (or, if the debt securities of that series are original issue discount securities or indexed securities, such portion of the principal amount as may be specified in the terms thereof) of all the debt securities of that series to be due and payable immediately by written notice thereof to us (and to the applicable trustee if given by the holders). However, at any time after such a declaration of acceleration with respect to debt securities of such series (or of all debt securities then outstanding under any indenture, as the case may be) has been made, but before a judgment or decree for payment of the money due has been obtained by the applicable trustee, the holders of not less than a majority in principal amount of outstanding debt securities of such series (or of all debt securities then outstanding under the applicable indenture, as the case may be) may rescind and annul such declaration and its consequences if:

we shall have deposited with the applicable trustee all required payments of the principal of (and premium, if any) and interest on the debt securities of such series (or of all debt securities then outstanding under the applicable indenture, as the case may be), plus certain fees, expenses, disbursements and advances of the applicable trustee; and  
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all events of default, other than the non-payment of accelerated principal (or specified portion thereof), with respect to debt securities of such series (or of all debt securities then outstanding under the applicable indenture, as the case may be) have been cured or waived as provided in such indenture.

Each indenture also will provide that the holders of not less than a majority in principal amount of the outstanding debt securities of any series (or of all debt securities then outstanding under the applicable indenture, as the case may be) may waive any past default with respect to the series and its consequences, except a:

payment default; or

covenant default that cannot be modified or amended without the consent of the holder of each outstanding debt security affected thereby.

Each trustee will be required to give notice to the holders of debt securities within a certain number of days of a default under the applicable indenture unless the default has been cured or waived; provided, however, that the trustee may withhold notice to the holders of any series of debt securities of any default with respect to the series (except a default in the payment of the principal of (or premium, if any) or interest on any debt security of the series or in the payment of any sinking fund installment in respect of any debt security of the series) if specified responsible officers of the trustee consider withholding the notice to be in the interest of the holders.

Each indenture will prohibit the holders of debt securities of any series from instituting any proceedings, judicial or otherwise, with respect to the indenture or for any remedy thereunder, except in the case of failure of the applicable trustee, for a certain period of time after the trustee has received a written request to institute proceedings in respect of an event of default from the holders of not less than a majority in principal amount of the outstanding debt securities of such series, as well as the furnishing of indemnity reasonably satisfactory to it. This provision will not prevent any holder of debt securities from instituting a suit to enforce the payment of the principal of (and premium, if any) and interest on the debt securities at the respective due dates thereof.

Subject to the indenture, no trustee will be under any obligation to exercise any of its rights or powers under an indenture at the request or direction of any holders of any series of debt securities then outstanding, unless the holders furnish the trustee thereunder reasonable security or indemnity. The holders of not less than a majority in principal amount of the outstanding debt securities of any series (or of all debt securities then outstanding under an indenture, as the case may be) will have the right to direct the time, method and place of conducting any proceeding for any remedy available to the applicable trustee, or of exercising any trust or power conferred upon the trustee. However, a trustee may refuse to follow any direction which is in conflict with any law or the applicable indenture, which may involve the trustee in personal liability or which may be unduly prejudicial to the holders of debt securities of such series not joining therein.

Within a certain period of time of the close of each fiscal year, we will be required to deliver to each trustee, a certificate, signed by one of several specified officers, stating whether or not the officer has knowledge of any default under the applicable indenture and, if so, specifying each default and the nature and status thereof.

## **Modification of the Indenture**

The indenture will likely be modified or amended, with the consent of the holders of not less than a majority in principal amount of each series of the outstanding debt securities issued under the indenture affected by the modification or amendment, provided that no modification or amendment may, without the consent of each affected holder of the debt securities:

change the stated maturity date of the principal of (or premium, if any) or any installment of interest, if any, on the debt securities;

reduce the principal amount of (or premium, if any) or the interest, if any, on the debt securities or the principal amount due upon acceleration of an original issue discount security;

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change the place or currency of payment of principal of (or premium, if any) or interest, if any, on the debt securities; impair the right to institute suit for the enforcement of any payment on or with respect to the debt securities; reduce the above-stated percentage of holders of the debt securities necessary to modify or amend the indenture; or modify the foregoing requirements or reduce the percentage of the outstanding debt securities necessary to waive compliance with certain provisions of the indenture or for waiver of certain defaults.

A record date may be set for any act of the holders with respect to consenting to any amendment.

The holders of not less than a majority in principal amount of the outstanding debt securities of each series affected thereby will have the right to waive our compliance with certain covenants in the indenture. Each indenture will contain provisions for convening meetings of the holders of debt securities of a series to take permitted action. Under certain circumstances, we and the trustee may make modifications and amendments to an indenture without the consent of any holders of outstanding debt securities.

## **Redemption of Debt Securities**

The debt securities may be redeemed at any time at our option, in whole or in part, to protect our qualification as a REIT. The debt securities will also be subject to optional or mandatory redemption on terms and conditions described in the accompanying prospectus supplement.

## **Conversion of Debt Securities**

The terms and conditions, if any, upon which any debt securities are convertible into shares of our common stock or preferred stock will be set forth in the applicable prospectus supplement relating thereto. The terms will include:

whether the debt securities are convertible into shares of our common stock or preferred stock;  
the conversion price (or the manner of calculating the price);  
the conversion period;

the events requiring an adjustment to the conversion price and provisions affecting conversion if the debt securities are redeemed; and

any restrictions on conversion.

## **Subordination**

Upon any distribution to our creditors in a liquidation, dissolution or reorganization, the payment of the principal of and interest on any subordinated securities will be subordinated to the extent provided in the applicable indenture to the prior payment in full of all senior securities. No payment of principal or interest will be permitted to be made on subordinated securities at any time if any payment default or any other default which permits accelerations exists. After all senior securities are paid in full and until the subordinated securities are paid in full, holders of subordinated securities will be subrogated to the right of holders of senior securities to the extent that distributions otherwise payable to holders of subordinated securities have been applied to the payment of senior securities. By reason of any subordination, in the event of a distribution of assets upon our insolvency, some of our general creditors may recover more, ratably, than holders of subordinated securities. The accompanying prospectus supplement or the information incorporated herein by reference will contain the approximate amount of senior securities outstanding as of the end of our most recent fiscal quarter.



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## **Global Debt Securities**

The debt securities of a series may be issued in whole or in part in global form. The global securities will be deposited with a depository, or with a nominee for a depository, identified in the accompanying prospectus supplement. In this case, one or more global securities will be issued in a denomination or aggregate denominations equal to the portion of the aggregate principal amount of outstanding debt securities of the series to be represented by the global security or securities. Unless and until it is exchanged in whole or in part for debt securities in definitive form, a global security may not be transferred except as a whole by the depository for the global security to a nominee of the depository or by a nominee of the depository to the depository or another nominee of the depository or by the depository or any nominee to a successor of the depository or a nominee of the successor.

The specific material terms of the depository arrangement with respect to any portion of a series of debt securities to be represented by a global security will be described in the accompanying prospectus supplement. We anticipate that the following provisions will apply to all depository arrangements.

Upon the issuance of a global security, the depository for the global security will credit, on its book-entry registration and transfer system, the respective principal amounts of the debt securities represented by the global security to the accounts of persons, or participants, that have accounts with the depository. The accounts to be credited will be designated by any underwriters or agents participating in the distribution of the debt securities. Ownership of beneficial interests in a global security will be limited to participants or persons that may hold interests through participants. Ownership of beneficial interests in the global security will be shown on, and the transfer of that ownership will be effected only through, records maintained by the depository for the global security, with respect to interests of participants, or by participants or persons that hold through participants, with respect to interests of persons other than participants. So long as the depository for a global security, or its nominee, is the registered owner of the global security, the depository or the nominee, as the case may be, will be considered the sole owner or holder of the debt securities represented by the global security for all purposes under the indenture; provided, however, that for purposes of obtaining any consents or directions required to be given by the holders of the debt securities, we, the trustee and our agents will treat a person as the holder of the principal amount of debt securities as specified in a written statement of the depository. Except as set forth herein or otherwise provided in the accompanying prospectus supplement, owners of beneficial interests in a global security will not be entitled to have the debt securities represented by the global security registered in their names, will not receive physical delivery of the debt securities in definitive form and will not be considered the owners or holders thereof under the indenture.

Principal, premium, if any, and interest payments on debt securities represented by a global security registered in the name of a depository or its nominee will be made to the depository or its nominee, as the case may be, as the registered owner of the global security. Neither we, the trustee nor any paying agent for the debt securities will have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests in the global security or for maintaining, supervising or reviewing any records relating to the beneficial ownership interests.

We expect that the depository for any debt securities represented by a global security, upon receipt of any payment of principal, premium, if any, or interest will immediately credit participants' accounts with payments in amounts proportionate to their respective beneficial interests in the principal amount of the global security as shown on the records of the depository. We also expect that payments by participants will be governed by standing instructions and customary practices, as is now the case with the securities held for the accounts of customers registered in street names and will be the responsibility of the participants.

If the depositary for any debt securities represented by a global security is at any time unwilling or unable to continue as depositary and a successor depositary is not appointed by us within the period of time set forth in the indenture, we will issue the debt securities in definitive form in exchange for the global security. In addition, we may at any time, and in our sole discretion, determine not to have any of the debt securities of a series represented by one or more global securities and, in that event, will issue debt securities of the series in definitive form in exchange for all of the global security or securities representing the debt securities.

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The laws of some states require that certain purchasers of securities take physical delivery of the securities in definitive form. These laws may impair the ability to transfer beneficial interests in debt securities represented by global securities.

**Governing Law**

The indenture and the debt securities will be governed by and construed in accordance with the internal laws of the State of New York.

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## **DESCRIPTION OF DEPOSITARY SHARES**

### **General**

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

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

The particular terms of the depositary shares offered by any prospectus supplement and the extent, if any, to which such general provisions may not apply to the depositary shares so offered will be described in the prospectus supplement relating to such securities. You should refer to, and read this summary together with, the deposit agreement and related depositary receipt. You can obtain copies of any form of deposit agreement or other agreement pursuant to which the depositary shares are issued by following the directions described under the caption **Where You Can Find More Information** in the accompanying prospectus.

### **Dividends and Other Distributions**

The depositary will distribute all cash dividends or other cash distributions received in respect of our preferred stock to the record holders of depositary shares relating to such preferred stock in proportion to the number of such depositary shares owned by such holders. The depositary shall distribute only such amount, however, as can be distributed without attributing to any holder of depositary shares a fraction of one cent, and the balance not so distributed shall be added to and treated as part of the next sum received by the depositary for distribution to record holders of depositary shares.

In the event of a distribution other than in cash, the depositary will distribute property received by it to the record holders of depositary shares entitled thereto, unless the depositary determines that it is not feasible to make such distribution, in which case the depositary may, with our approval, sell such property and distribute the net proceeds from such sale to such holders.

The deposit agreement will also contain provisions relating to the manner in which any subscription or similar rights offered by us to holders of our preferred stock shall be made available to the holders of depositary shares.

### **Redemption of Depositary Shares**

If a series of preferred stock represented by depositary shares is subject to redemption, the depositary shares will be redeemed from the proceeds received by the depositary resulting from the redemption, in whole or in part, of such

series of preferred stock held by the depositary. The redemption price per depositary share will be equal to the applicable fraction of the redemption price per share payable with respect to such series of preferred stock. Whenever we redeem shares of preferred stock held by the depositary, the depositary will redeem as of the same redemption date the number of depositary shares representing the shares of preferred stock so redeemed. If fewer than all the depositary shares are to be redeemed, the depositary shares to be redeemed will be selected by lot or pro rata as may be determined by the depositary.

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After the date fixed for redemption, the depositary shares so called for redemption will no longer be outstanding and all rights of the holders of the depositary shares will cease, except the right to receive the money, securities or other property payable upon such redemption and any money, securities or other property to which the holders of such depositary shares were entitled upon such redemption upon surrender to the depositary of the depositary receipts evidencing such depositary shares.

### **Voting Our Preferred Stock**

Upon receipt of notice of any meeting at which the holders of 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 preferred stock. Each record holder of such depositary shares on the record date (which will be the same date as the record date for our preferred stock) will be entitled to instruct the depositary as to the exercise of the voting rights pertaining to the amount of preferred stock represented by such holder's depositary shares. The depositary will endeavor, insofar as practicable, to vote the amount of preferred stock represented by such depositary shares in accordance with such instructions, and we will agree to take all action which may be deemed necessary by the depositary in order to enable the depositary to do so. The depositary may abstain from voting shares of preferred stock to the extent it does not receive specific instructions from the holders of depositary shares representing such preferred stock.

### **Amendment and Termination of the Depositary Agreement**

The form of depositary receipt evidencing the depositary shares and any provision of the deposit agreement may at any time be amended by agreement between the depositary and us. However, any amendment that materially and adversely alters the rights of the holders of depositary shares will not be effective unless such amendment has been approved by the holders of at least a majority of the depositary shares then outstanding. The deposit agreement may be terminated by us or the depositary only if (i) all outstanding depositary shares have been redeemed or (ii) there has been a final distribution in respect of our preferred stock in connection with any liquidation, dissolution or winding up of the Company and such distribution has been distributed to the holders of depositary receipts.

### **Charges of Depositary**

We will pay all transfer and other taxes and governmental charges arising solely from the existence of the depositary arrangements. We will pay charges of the depositary in connection with the initial deposit of our preferred stock and any redemption of our preferred stock. Holders of depositary receipts will pay other transfer and other taxes and governmental charges and such other charges, including a fee for the withdrawal of shares of preferred stock upon surrender of depositary receipts, as are expressly provided in the deposit agreement to be for their accounts.

### **Miscellaneous**

The depositary will forward to holders of depositary receipts all reports and communications from EdR that are delivered to the depositary and that we are required to furnish to holders of preferred stock.

Neither the depositary nor EdR will be liable if it is prevented or delayed by law or any circumstance beyond its control in performing its obligations under the deposit agreement. The obligations of the depositary and EdR under the deposit agreement will be limited to performance in good faith of their duties thereunder and they will not be obligated to prosecute or defend any legal proceeding in respect of any depositary shares or preferred stock unless

satisfactory indemnity is furnished. They may rely upon written advice of counsel or accountants, or upon information provided by persons presenting preferred stock for deposit, holders of depositary receipts or other persons believed to be competent and on documents believed to be genuine.

## **Resignation and Removal of the Depositary**

The depositary may resign at any time by delivering to us notice of its election to do so, and we may at any time remove the depositary, any such resignation or removal to take effect upon the appointment of a successor depositary and its acceptance of such appointment. Such successor depositary must be appointed within 60 days after delivery of the notice of resignation or removal.

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## **Restrictions on Ownership**

The deposit agreement will contain provisions restricting the ownership and transfer of depositary shares. Such restrictions will be described in the applicable prospectus supplement and will be referenced on the applicable depositary receipts.

## **DESCRIPTION OF SUBSCRIPTION RIGHTS**

We may issue subscription rights to purchase one or more series or classes of common stock, preferred stock, debt securities and depositary shares. We may issue subscription rights independently or together with any other offered security, which may or may not be transferable by the stockholder. In connection with any offering of subscription rights, we may enter into a standby arrangement with one or more underwriters or other purchasers pursuant to which the underwriters or other purchasers may be required to purchase any securities remaining unsubscribed for after such offering.

The accompanying prospectus supplement relating to any subscription rights we may offer will contain the specific terms of the subscription rights. These terms may include the following:

- the price, if any, for the subscription rights;
- the exercise price payable for common stock, preferred stock, debt securities or depositary shares upon the exercise of the subscription rights;
- the number of subscription rights issued to each security holder;
- the number and terms of the common stock, preferred stock, debt securities or depositary shares which may be purchased per each subscription right;
- the extent to which the subscription rights are transferable;
- any provisions for adjustment of the number or amount of securities receivable upon exercise of the subscription rights or the exercise price of the subscription rights;
- any other terms of the subscription rights, including the terms, procedures and limitations relating to the exchange and exercise of the subscription rights;
- the date on which the right to exercise the subscription rights shall commence, and the date on which the subscription rights shall expire;
- the extent to which the subscription rights may include an over-subscription privilege with respect to unsubscribed securities; and
- if applicable, the material terms of any standby underwriting or purchase arrangement entered into by us in connection with the offering of subscription rights.

The description in the accompanying prospectus supplement of any subscription rights we offer will not necessarily be complete and will be qualified in its entirety by reference to the applicable subscription rights certificate or subscription rights agreement, which will be filed with the SEC if we offer subscription rights. For more information on how you can obtain copies of any subscription rights certificate or subscription rights agreement if we offer subscription rights, see [Where You Can Find More Information](#) in this prospectus. We urge you to read the applicable subscription rights certificate, the applicable subscription rights agreement and any applicable prospectus supplement in their entirety.

# **BOOK ENTRY PROCEDURES AND SETTLEMENT**

We may issue the securities offered pursuant to this prospectus in certificated or book-entry form or in the form of one or more global securities. The accompanying prospectus supplement will describe the manner in which the securities offered thereby will be issued.

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## **MATERIAL U.S. FEDERAL INCOME TAX CONSIDERATIONS**

This section summarizes the material federal income tax consequences generally resulting from our election to be taxed as a REIT and the material federal income tax considerations relating to the ownership and disposition of our common stock. As used in this section, the terms we and our refer solely to Education Realty Trust, Inc. and not to our subsidiaries and affiliates which have not elected to be taxed as REITs for federal income tax purposes.

This discussion is not exhaustive of all possible tax considerations and does not provide a detailed discussion of any state, local or foreign tax considerations. This discussion does not address all aspects of taxation that may be relevant to particular investors in light of their personal investment or tax circumstances, or to certain types of investors that are subject to special treatment under the federal income tax laws, such as insurance companies, tax-exempt organizations (except to the limited extent discussed below under Taxation of Tax-Exempt Stockholders ), financial institutions or broker-dealers, non-U.S. individuals and foreign corporations (except to the limited extent discussed below under Taxation of Non-U.S. Stockholders ) and other persons subject to special tax rules. Moreover, this summary assumes that our stockholders hold our common stock as a capital asset for federal income tax purposes, which generally means property held for investment. The statements in this section are based on the current federal income tax laws, including the Code, the regulations promulgated by the U.S. Treasury Department, or the Treasury Regulations, rulings and other administrative interpretations and practices of the IRS, and judicial decisions, all as currently in effect, and all of which are subject to differing interpretations or to change, possibly with retroactive effect. This discussion is for general purposes only and is not tax advice. We cannot assure you that new laws, interpretations of law, or court decisions, any of which may take effect retroactively, will not cause any statement in this section to be inaccurate.

As discussed below in Taxation in Connection with Holding Securities other than our Common Stock, we intend to describe in any prospectus supplement related to the offering of our preferred stock, debt securities, depositary shares or subscription rights, the material federal income tax considerations relating to the ownership and disposition of such securities as will be sold by us pursuant to that prospectus supplement.

**We urge you to consult your own tax advisor regarding the specific tax consequences to you of acquisition, ownership and disposition of our securities and of our election to be taxed as a REIT. Specifically, you should consult your own tax advisor regarding the federal, state, local, foreign, and other tax consequences of such acquisition, ownership, disposition and election, and regarding potential changes in applicable tax laws.**

### **Taxation of Our Company**

We elected to be taxed as a REIT under the federal income tax laws beginning with our taxable year ended December 31, 2005. We believe that, beginning with such taxable year, we have been organized and have operated in such a manner as to qualify for taxation as a REIT under the Code, and we intend to continue to operate in such a manner. However, no assurances can be given that our beliefs or expectations will be fulfilled, since qualification as a REIT depends on our continuing to satisfy numerous asset, income, stock ownership and distribution tests described below, the satisfaction of which depends, in part, on our operating results.

The sections of the Code relating to qualification, operation and taxation as a REIT are highly technical and complex. The following discussion sets forth only the material aspects of those sections. This summary is qualified in its entirety by the applicable Code provisions and the related Treasury Regulations, and administrative and judicial

interpretations thereof.

In connection with the filing of this registration statement, Bass, Berry & Sims PLC has rendered an opinion that we qualified to be taxed as a REIT under the federal income tax laws for our taxable years ended December 31, 2008 through December 31, 2011, and our organization and current and proposed method of operation will enable us to continue to qualify as a REIT for our taxable year ending December 31, 2012 and thereafter. Investors should be aware that Bass, Berry & Sims PLC's opinion is based on the federal income tax law governing qualification as a REIT as of the date of such opinion, which is subject to change, possibly on a retroactive basis, is not binding on the IRS or any court, and speaks only as of the date issued. In

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addition, Bass, Berry & Sims PLC's opinion is based on customary assumptions and is conditioned upon certain representations made by us as to factual matters, including representations regarding the nature of our assets and the future conduct of our business. Moreover, our continued qualification and taxation as a REIT depend on our ability to meet, on a continuing basis, through actual results, certain qualification tests set forth in the federal income tax laws.

Those qualification tests involve the percentage of our gross income that we earn from specified sources, the percentage of our assets that falls within specified categories, the diversity of our stock ownership, and the percentage of our earnings that we distribute. Bass, Berry & Sims PLC will not review our compliance with those tests on a continuing basis. Accordingly, no assurance can be given that the actual results of our operations for any particular taxable year will satisfy such requirements. Bass, Berry & Sims PLC's opinion does not foreclose the possibility that we may have to use one or more of the REIT savings provisions described below, which may require us to pay a material excise or penalty tax in order to maintain our REIT qualification. For a discussion of the tax consequences of our failure to maintain our qualification as a REIT, see "Failure to Qualify as a REIT" below.

Pursuant to our charter, our Board has the authority to revoke or otherwise terminate our status as a REIT, if it determines, in its sole judgment, that it is in our best interest to do so. In addition, our Board has the authority to waive any restrictions and limitations contained in our charter that are intended to preserve our status as a REIT during any period in which our Board has determined that it is no longer in our best interests to pursue or preserve our status as a REIT.

If we maintain our qualification as a REIT, we generally will not be subject to federal income tax on the taxable income that we distribute to our stockholders because we will be entitled to a deduction for dividends that we pay. The benefit of that tax treatment is that it avoids the double taxation, or taxation at both the corporate and stockholder levels, that generally results from owning stock in a corporation. In general, income generated by a REIT is taxed only at the stockholder level if such income is distributed by the REIT to its stockholders. We will be subject to federal tax, however, in the following circumstances:

We are subject to the corporate federal income tax on any REIT taxable income, including net capital gain, that we do not distribute to our stockholders during, or within a specified time period after, the calendar year in which the income is earned.

We may be subject to the corporate alternative minimum tax on any items of tax preference, including any deductions of net operating losses.

We are subject to tax, at the highest corporate rate, on:

net income from the sale or other disposition of property acquired through foreclosure ( foreclosure property ), as described below under "Gross Income Tests - Foreclosure Property," that we hold primarily for sale to customers in the ordinary course of business, and

◦ other non-qualifying income from foreclosure property.

We are subject to a 100% tax on net income from sales or other dispositions of property, other than foreclosure property, that we hold primarily for sale to customers in the ordinary course of business.

If we fail to satisfy one or both of the 75% gross income test or the 95% gross income test, as described below under "Gross Income Tests," but nonetheless continue to qualify as a REIT because we meet other requirements, we will be subject to a 100% tax on:

◦ the greater of the amount by which we fail the 75% gross income test or the 95% gross income test, in either case, multiplied by

◦ a fraction intended to reflect our profitability.

If we fail to distribute during a 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 required to be distributed from earlier periods, then we will be subject to a 4% nondeductible excise tax on the excess of the required distribution over the amount we actually distributed.



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If we fail any of the asset tests, other than a de minimis failure of the 5% asset test, the 10% vote test or the 10% value test, as described below under Asset Tests, as long as (1) the failure was due to reasonable cause and not to willful neglect, (2) we file a description of each asset that caused such failure with the IRS, and (3) we dispose of the assets causing the failure or otherwise comply with the asset tests within six months after the last day of the quarter in which we identify such failure, we will pay a tax equal to the greater of \$50,000 or the highest federal corporate income tax rate (currently 35%) multiplied by the net income from the nonqualifying assets during the period in which we failed to satisfy the asset tests.

If we fail to satisfy one or more requirements for REIT qualification, other than the gross income tests and the asset tests, and such failure is due to reasonable cause and not to willful neglect, we will be required to pay a penalty of \$50,000 for each such failure.

We will be subject to a 100% excise tax on transactions with a taxable REIT subsidiary that are not conducted on an arm's-length basis.

If we acquire any asset from a C corporation, or a corporation that generally is subject to full corporate-level tax, in a merger or other transaction in which we acquire a basis in the asset that is determined by reference either to the C corporation's basis in the asset or to another asset, we will pay tax at the highest corporate rate applicable if we recognize gain on the sale or disposition of the asset during the 10-year period after we acquire the asset. The amount of gain on which we will pay tax generally is the lesser of:

- the amount of gain that we recognize at the time of the sale or disposition, and
- the amount of gain that we would have recognized if we had sold the asset at the time we acquired it.

The earnings of our subsidiary entities that are C corporations, including taxable REIT subsidiaries, are subject to federal corporate income tax.

In addition, we may be subject to a variety of taxes, including payroll taxes and state, local and foreign income, property and other taxes on our assets and operations. We also could be subject to tax in situations and on transactions not presently contemplated.

## **Requirements for Qualification as a REIT**

A REIT is a corporation, trust or association that meets each of the following requirements:

- (1) It is managed by one or more trustees or directors;
- (2) Its beneficial ownership is evidenced by transferable shares of stock, or by transferable shares or certificates of beneficial interest;
- (3) It would be taxable as a domestic corporation, but for Sections 856 through 860 of the Code, i.e. the REIT provisions;
- (4) It is neither a financial institution nor an insurance company subject to special provisions of the federal income tax laws;
- (5) At least 100 persons are beneficial owners of its stock or ownership shares or certificates (determined without reference to any rules of attribution);
- (6) Not more than 50% in value of its outstanding stock or shares of beneficial interest is owned, directly or indirectly, by five or fewer individuals, which the federal income tax law defines to include certain entities, during the last half of any taxable year;

- (7) It elects to be a REIT, or has made such election for a previous taxable year, and satisfies all relevant filing and other administrative requirements established by the IRS that must be met to elect and maintain REIT status;

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- (8) It uses a calendar year for federal income tax purposes and complies with the recordkeeping requirements of the federal income tax laws; and
- (9) It meets certain other qualifications, tests described below, regarding the sources of its gross income, the nature and diversification of its assets and the distribution of its income.

We must meet requirements 1 through 4, and 8 during our entire taxable year and must meet requirement 5 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. If we comply with certain requirements for ascertaining the beneficial ownership of our outstanding stock in a taxable year and have no reason to know that we violated requirement 6, we will be deemed to have satisfied requirement 6 for that taxable year. For purposes of determining stock ownership under requirement 6, an individual generally includes a supplemental unemployment compensation benefits plan, a private foundation, or a portion of a trust permanently set aside or used exclusively for charitable purposes. An individual, however, generally does not include a trust that is a qualified employee pension or profit sharing trust under the federal income tax laws, and beneficiaries of such a trust will be treated as holding our stock in proportion to their actuarial interests in the trust for purposes of requirement 6. Our charter provides for restrictions regarding the ownership and transfer of our stock that should allow us to continue to satisfy these requirements. The provisions of the charter restricting the ownership and transfer of our stock are described in Description of Stock Restrictions on Ownership and Transfer. We believe we have issued sufficient stock with enough diversity of ownership to satisfy requirements 5 and 6 set forth above. For purposes of requirement 8, we have adopted December 31 as our year end, and thereby satisfy this requirement.

**Qualified REIT Subsidiaries.** A qualified REIT subsidiary generally is a corporation, all of the stock of which is owned, directly or indirectly, by a REIT and that is not treated as a taxable REIT subsidiary. A corporation that is a qualified REIT subsidiary is treated as a division of the REIT that owns, directly or indirectly, all of its stock and not as a separate entity for federal income tax purposes. Thus, all assets, liabilities, and items of income, deduction, and credit of a qualified REIT subsidiary are treated as assets, liabilities, and items of income, deduction, and credit of the REIT that directly or indirectly owns the qualified REIT subsidiary. Consequently, in applying the REIT requirements described herein, the separate existence of any qualified REIT subsidiary that we own will be ignored, and all assets, liabilities, and items of income, deduction, and credit of such subsidiary will be treated as our assets, liabilities, and items of income, deduction, and credit.

**Other Disregarded Entities and Partnerships.** An unincorporated domestic entity, such as a partnership or limited liability company that has a single owner, as determined under federal income tax law, generally is not treated as an entity separate from its owner for federal income tax purposes. We own various direct and indirect interests in entities that are classified as partnerships, limited liability companies and trusts for state law purposes. Nevertheless, many of these entities currently are not treated as entities separate from their owners for federal income tax purposes because such entities are treated as having a single owner for federal income tax purposes. Consequently, the assets and items of gross income of such entities will be treated as assets and items of gross income of their owners for federal income tax purposes.

An unincorporated domestic entity with two or more owners, as determined under the federal income tax laws, generally is treated as a partnership for federal income tax purposes. In the case of a REIT that is a partner in a partnership, the REIT is treated as owning its proportionate share of the assets of the partnership and as earning its allocable share of the gross income of the partnership for purposes of the applicable REIT qualification tests. Thus, our proportionate share of the assets and items of gross income of our Operating Partnership and any other partnership, joint venture, or limited liability company that is treated as a partnership for federal income tax purposes is treated as our assets and items of gross income for purposes of applying the various REIT qualification tests. For purposes of the 10% value test (described in Asset Tests ), our proportionate share is based on our proportionate

interest in the equity interests and certain debt securities issued by a partnership. For all of the other asset and income tests, our proportionate share is based on our proportionate interest in the capital of the partnership.

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***Taxable REIT Subsidiaries.*** A REIT is permitted to own, directly or indirectly, up to 100% of the stock of one or more taxable REIT subsidiaries. The subsidiary and the REIT generally must jointly elect to treat the subsidiary as a taxable REIT subsidiary. A corporation of which a taxable REIT subsidiary directly or indirectly owns more than 35% of the voting power or value of the securities, however, is automatically treated as a taxable REIT subsidiary without an election. The separate existence of a taxable REIT subsidiary is not ignored for federal income tax purposes. A taxable REIT subsidiary is a fully taxable corporation that may earn income that would not be qualifying income for purposes of the gross income tests, as described below, if earned directly by the parent REIT. Accordingly, a taxable REIT subsidiary generally is subject to corporate income tax on its earnings, which may reduce the cash flow generated by us and our subsidiaries in the aggregate, and may reduce our ability to make distributions to our stockholders.

We are not treated as holding the assets of a taxable REIT subsidiary or as receiving any income that the taxable REIT subsidiary earns. Rather, the stock issued by a taxable REIT subsidiary to us is an asset in our hands, and we treat the distributions paid to us from such taxable REIT subsidiary, if any, as income. This treatment may affect our compliance with the gross income tests and asset tests. Because a REIT does not include the assets and gross income of taxable REIT subsidiaries in determining the REIT's compliance with REIT requirements, such entities may be used by the REIT to undertake indirectly activities that the REIT requirements might otherwise preclude the REIT from doing directly or through a pass-through subsidiary (e.g., a partnership). If dividends are paid to us by one or more of our domestic taxable REIT subsidiaries we may own, then a portion of such dividends that we distribute to our stockholders who are taxed at individual rates generally will be eligible for taxation at preferential dividend income tax rates rather than at ordinary income rates (currently through 2012). See Annual Distribution Requirements and Taxation of Taxable U.S. Stockholders Distributions.

A taxable REIT subsidiary pays federal income tax at corporate rates on any income that it earns. Restrictions imposed on REITs and their taxable REIT subsidiaries are intended to ensure that taxable REIT subsidiaries will be subject to appropriate levels of federal income taxation. These restrictions limit the deductibility of interest paid or accrued by a taxable REIT subsidiary to its parent REIT and impose a 100% excise tax on transactions between a taxable REIT subsidiary and its parent REIT or the REIT's tenants that are not conducted on an arm's-length basis. Our taxable REIT subsidiaries currently engage in activities that would jeopardize our REIT status if we engaged in the activities directly or through one or more of our pass-through subsidiaries. In particular, our taxable REIT subsidiaries generally will conduct third party services and other business activities that might give rise to impermissible tenant services income or to income from prohibited transactions if such services or activities were conducted by us or through one or more of our pass-through subsidiaries. See Gross Income Tests Rents from Real Property and Gross Income Tests Prohibited Transactions.

## **Gross Income Tests**

We must satisfy two gross income tests annually to maintain our qualification as a REIT. First, at least 75% of our gross income for each taxable year must consist of defined types of income that we derive, directly or indirectly, from investments relating to real property or mortgages on real property or qualified temporary investment income. Qualifying income for purposes of that 75% gross income test generally includes:

- rents from real property;
- interest on debt secured by mortgages on real property or on interests in real property;
- dividends or other distributions on, and gain from the sale of, stock or shares of beneficial interest in other REITs;
- gain from the sale of real estate assets;
- income and gain derived from foreclosure property; and

income derived from the temporary investment of new capital that is attributable to the issuance of our stock or a public offering of our debt with a maturity date of at least five years and that we receive during the one-year period beginning on the date on which we receive such new capital.

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Second, in general, at least 95% of our gross income for each taxable year must consist of income that is qualifying income for purposes of the 75% gross income test, other types of interest and dividends, gain from the sale or disposition of stock or securities, or any combination of these.

Gross income from our sale of property that we hold primarily for sale to customers in the ordinary course of business will be excluded from gross income for purposes of the 75% and 95% gross income tests. In addition, any gains from hedging transactions, as defined in Hedging Transactions, that are clearly and timely identified as such will be excluded from gross income for purposes of the 75% and 95% gross income tests. Finally, certain foreign currency gains will be excluded from gross income for purposes of one or both of the gross income tests.

The following paragraphs discuss the specific application of the gross income tests to us.

***Rents from Real Property.*** Rent that we receive for the use of our real property will qualify as rents from real property, which is qualifying income for purposes of the 75% and 95% gross income tests, only if the following conditions are met:

First, the rent must not be based in whole or in part on the income or profits of any person. Participating rent, however, will qualify as rents from real property if it is based on percentages of receipts or sales and the percentages:

are fixed at the time the leases are entered into;  
are not renegotiated during the term of the leases in a manner that has the effect of basing percentage rent on income or profits; and

conform with normal business practice.

More generally, the rent will not qualify as rents from real property if, considering the relevant lease and all the surrounding circumstances, the arrangement does not conform with normal business practice, but is in reality used as a means of basing the rent on income or profits. Rents that we receive are not determined to any extent by reference to any person's income or profits, in compliance with the rules above.

Second, we must not own, actually or constructively, 10% or more of the stock or the assets or net profits of any tenant, referred to as a related-party tenant, other than a taxable REIT subsidiary. The constructive ownership rules generally provide that, if 10% or more in value of our stock is owned, directly or indirectly, by or for any person, we are considered as owning the stock owned, directly or indirectly, by or for such person. We do not own any stock or any assets or net profits of any tenant directly. However, because the constructive ownership rules are broad and it is not possible to monitor direct and indirect transfers of our stock continually, no absolute assurance can be given that such transfers or other events of which we have no knowledge will not cause us to own constructively 10% or more of a tenant (or a subtenant, in which case only rent attributable to the subtenant is disqualified) other than a taxable REIT subsidiary at some future date.

Under an exception to the related-party tenant rule described in the preceding paragraph, rent that we receive from a taxable REIT subsidiary will qualify as rents from real property as long as (1) at least 90% of the leased space in the property is leased to persons other than taxable REIT subsidiaries and related-party tenants, and (2) the amount paid by the taxable REIT subsidiary to rent space at the property is substantially comparable to rents paid by other tenants of the property for comparable space. The substantially comparable requirement must be satisfied when the lease is entered into, when it is extended, and when the lease is modified, if the modification increases the rent paid by the taxable REIT subsidiary. If the requirement that at least 90% of the leased space in the related property is rented to unrelated tenants is met when a lease is entered into, extended, or modified, such requirement will continue to be met as long as there is no increase in the space leased to any taxable REIT subsidiary or related-party tenant. Any increased rent attributable to a modification of a lease with a taxable REIT subsidiary in which we own directly or

indirectly more than 50% of the voting power or value of the stock (a controlled taxable REIT subsidiary ) will not be treated as rents from real property.

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Third, we must not furnish or render noncustomary services, other than a de minimis amount of noncustomary services, as described below, to the tenants of our properties, or manage or operate our properties, other than through an independent contractor who is adequately compensated and from whom we do not derive or receive any income. However, we need not provide services through an independent contractor, but instead may provide services directly to our tenants, if the services are usually or customarily rendered in connection with the rental of space for occupancy only and are not considered to be provided for the tenants' convenience. In addition, we may provide a minimal amount of noncustomary services to the tenants of a property, other than through an independent contractor, as long as our income from the services (valued at not less than 150% of our direct cost for performing such services) does not exceed 1% of our income from the related property. Finally, we may own up to 100% of the stock of one or more taxable REIT subsidiaries, which may provide noncustomary services to our tenants without our rents from the related properties being treated as nonqualifying income for purposes of the 75% and 95% gross income tests. We have not performed, and do not intend to perform, any services other than customary ones for our tenants, unless such services are provided through independent contractors or taxable REIT subsidiaries.

If the rent from a lease of property does not qualify as rents from real property because (1) the rent is based on the net income or profits of the tenant, (2) the lessee is a related-party tenant or fails to qualify for the exception to the related-party tenant rule for qualifying taxable REIT subsidiaries, or (3) we furnish noncustomary services to the tenants of the property, or manage or operate the property, other than through a qualifying independent contractor or a taxable REIT subsidiary, that are in excess of 1% of our gross income from the related property, none of the rent from the property would qualify as rents from real property. In any of these circumstances, we may lose our REIT status, unless we qualify for certain statutory relief provisions, because we may be unable to satisfy either the 75% or 95% gross income test.

Tenants may be required to pay, in addition to base rent, reimbursements for certain amounts we are obligated to pay to third parties (such as a lessee's proportionate share of a property's operational or capital expenses), penalties for nonpayment or late payment of rent or additions to rent. These and other similar payments should qualify as rents from real property. To the extent they do not, they should be treated as interest that qualifies for the 95% gross income test.

In addition, rent attributable to any personal property leased in connection with a lease of real property will not qualify as rents from real property if the rent attributable to such personal property exceeds 15% of the total rent received under the lease. The rent attributable to personal property under a lease is the amount that bears the same ratio to total rent under the lease for the taxable year as the average of the fair market values of the leased personal property at the beginning and at the end of the taxable year bears to the average of the aggregate fair market values of both the real and personal property covered by the lease at the beginning and at the end of such taxable year, or the personal property ratio. If a portion of the rent that we receive from a property does not qualify as rents from real property because the rent attributable to personal property exceeds 15% of the total rent for a taxable year, the portion of the rent that is attributable to personal property will not be qualifying income for purposes of either the 75% or 95% gross income test. Thus, if such rent attributable to personal property, plus any other income that is nonqualifying income for purposes of the 95% gross income test, during a taxable year exceeds 5% of our gross income during the year, we would lose our REIT status, unless we qualified for certain statutory relief provisions. With respect to each of our leases, we believe that the personal property ratio generally is less than 15%. Where that is not, or may in the future not be, the case, we believe that any income attributable to personal property will not jeopardize our ability to maintain our qualification as a REIT. There can be no assurance, however, that the IRS would not challenge our calculation of a personal property ratio, or that a court would not uphold such assertion. If such a challenge were successfully asserted, we could fail to satisfy the 75% or 95% gross income test and thus potentially lose our REIT status.



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**Interest.** For purposes of the 75% and 95% gross income tests, the term interest generally does not include any amount received or accrued, directly or indirectly, if the determination of such amount depends in whole or in part on the income or profits of any person. However, an amount received or accrued generally will not be excluded from the term interest solely because it is based on a fixed percentage or percentages of receipts or sales. Furthermore, to the extent that interest from a loan that is based on the profit or net cash proceeds from the sale of the property securing the loan constitutes a shared appreciation provision, income attributable to such participation feature will be treated as gain from the sale of the secured property.

We may invest opportunistically from time to time in mortgage debt and mezzanine loans. Interest on debt secured by a mortgage on real property or on interests in real property, including, for this purpose, discount points, prepayment penalties, loan assumption fees, and late payment charges that are not compensation for services, generally is qualifying income for purposes of the 75% gross income test. However, if a loan is secured by real property and other property and the highest principal amount of such loan that was outstanding during a taxable year exceeds the fair market value of the real property securing the loan as of the date the REIT agreed to originate or acquire the loan, a portion of the interest income from such loan will not be qualifying income for purposes of the 75% gross income test, but will be qualifying income for purposes of the 95% gross income test. The portion of the interest income that will not be qualifying income for purposes of the 75% gross income test will be equal to the interest income attributable to the portion of the principal amount of the loan that is not secured by real property. The principal amount of the loan that is not secured by real property is the amount by which the loan exceeds the value of the real estate that is security for the loan.

Mezzanine loans are loans secured by equity interests in an entity that directly or indirectly owns real property, rather than by a direct mortgage of the real property. IRS Revenue Procedure 2003-65 provides a safe harbor pursuant to which a mezzanine loan, if it meets each of the requirements contained in the Revenue Procedure, will be treated by the IRS as a real estate asset for purposes of the REIT asset tests described below, and interest derived from it will be treated as qualifying mortgage interest for purposes of the 75% gross income test. Although the Revenue Procedure provides a safe harbor on which taxpayers may rely, it does not prescribe rules of substantive tax law. We anticipate that any mezzanine loans that we originate or acquire typically will not meet all of the requirements for reliance on this safe harbor. Nevertheless, we intend to invest in any mezzanine loans in a manner that will enable us to continue to satisfy the gross income tests and asset tests.

**Dividends.** Our share of any dividends received from any corporation or entity treated as a corporation for federal income tax purposes (including any taxable REIT subsidiary, but excluding any REIT or qualified REIT subsidiary) in which we own an equity interest will qualify for purposes of the 95% gross income test but not for purposes of the 75% gross income test. Our share of any dividends received from any other REIT in which we own an equity interest will be qualifying income for purposes of both gross income tests. Any dividends received by us from a qualified REIT subsidiary will be excluded from gross income for purposes of the 75% and 95% gross income tests.

**Prohibited Transactions.** A REIT will incur a 100% tax on the net income derived from any sale or other disposition of property, other than foreclosure property, that the REIT holds primarily for sale to customers in the ordinary course of a trade or business (a prohibited transaction). Any net income derived from such prohibited transactions is excluded from gross income solely for purposes of the 75% and 95% gross income tests. Whether a REIT holds an asset primarily for sale to customers in the ordinary course of a trade or business depends on the facts and circumstances that exist from time to time, including those related to a particular asset. A safe harbor to the characterization of the sale of property by a REIT as a prohibited transaction and the resulting imposition of the 100% prohibited transaction tax is available, however, if the following requirements are met:

the REIT has held the property for not less than two years;

the aggregate expenditures made by the REIT, or any partner of the REIT, during the two-year period preceding the date of the sale that are includable in the basis of the property do not exceed 30% of the selling price of the property;

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either (1) during the year in question, the REIT did not make more than seven property sales other than sales of foreclosure property or sales to which Section 1033 of the Code applies, (2) the aggregate adjusted bases of all such properties sold by the REIT during the year did not exceed 10% of the aggregate bases of all of the assets of the REIT at the beginning of the year or (3) the aggregate fair market value of all such properties sold by the REIT during the year did not exceed 10% of the aggregate fair market value of all of the assets of the REIT at the beginning of the year;

in the case of property not acquired through foreclosure or lease termination, the REIT has held the property for at least two years for the production of rental income; and

if the REIT has made more than seven property sales (excluding sales of foreclosure property) during the taxable year, substantially all of the marketing and development expenditures with respect to the property were made through an independent contractor from whom the REIT derives no income.

We will attempt to comply with the terms of the safe-harbor provisions in the federal income tax laws prescribing when an asset sale will not be characterized as a prohibited transaction. We cannot assure you, however, that we can comply with the safe-harbor provisions or that we will avoid owning property that may be characterized as property held primarily for sale to customers in the ordinary course of a trade or business. We may hold and dispose of certain properties through a taxable REIT subsidiary if we conclude that the sale or other disposition of such property may not fall within the safe-harbor provisions. The 100% prohibited transactions tax will not apply to gains from the sale of property that is held through a taxable REIT subsidiary or other taxable corporation, although such income will be taxed to the taxable REIT subsidiary or other taxable corporation at federal corporate income tax rates.

***Foreclosure Property.*** We will be subject to tax at the maximum corporate rate on any income from foreclosure property, other than income that otherwise would be qualifying income for purposes of the 75% gross income test, less expenses directly connected with the production of that income. Gross income from foreclosure property will qualify under the 75% and 95% gross income tests, however. Foreclosure property is any real property, including interests in real property, and any personal property incident to such real property:

that is acquired by a REIT as the result of the REIT having bid on such property at foreclosure, or having otherwise reduced such property to ownership or possession by agreement or process of law, after there was a default or default was imminent on a lease of such property or on indebtedness that such property secured;

for which the related loan or leased property was acquired by the REIT at a time when the default was not imminent or anticipated; and

for which the REIT makes a proper election to treat the property as foreclosure property.

A REIT will not be considered to have foreclosed on a property where the REIT takes control of the property as a mortgagee-in-possession and cannot receive any profit or sustain any loss except as a creditor of the mortgagor. Property generally ceases to be foreclosure property at the end of the third taxable year following the taxable year in which the REIT acquired the property (or longer if an extension is granted by the Secretary of the U.S. Treasury). This period (as extended, if applicable) terminates, and foreclosure property ceases to be foreclosure property on the first day:

on which a lease is entered into for the property that, by its terms, will give rise to income that does not qualify for purposes of the 75% gross income test, or any amount is received or accrued, directly or indirectly, pursuant to a lease entered into on or after such day that will give rise to income that does not qualify for purposes of the 75% gross income test;

on which any construction takes place on the property, other than completion of a building, or any other improvement, where more than 10% of the construction was completed before default became imminent; or

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which is more than 90 days after the day on which the REIT acquired the property and the property is used in a trade or business which is conducted by the REIT, other than through an independent contractor from whom the REIT itself does not derive or receive any income.

**Hedging Transactions.** From time to time, we or our subsidiaries may enter into hedging transactions with respect to one or more of our or our subsidiaries' assets or liabilities. Our or our subsidiaries' hedging activities may include entering into interest rate swaps, caps, and floors, options to purchase such items, and futures and forward contracts. Income and gain from hedging transactions will be excluded from gross income for purposes of both the 75% and 95% gross income tests. A hedging transaction means either (1) any transaction entered into in the normal course of our or our subsidiaries' trade or business primarily to manage the risk of interest rate, price changes, or currency fluctuations with respect to borrowings made or to be made, or ordinary obligations incurred or to be incurred, to acquire or carry real estate assets or (2) any transaction entered into primarily to manage the risk of currency fluctuations with respect to any item of income or gain that would be qualifying income under the 75% or 95% gross income test (or any property which generates such income or gain). We are required to clearly identify any such hedging transaction before the close of the day on which it was acquired, originated, or entered into and to satisfy other identification requirements. We intend to structure any hedging transactions in a manner that does not jeopardize our qualification as a REIT; however, no assurance can be given that our hedging activities will give rise to income that qualifies for purposes of either or both of the gross income tests.

**Failure to Satisfy Gross Income Tests.** We intend to monitor our sources of income, including any non-qualifying income received by us, and manage our assets so as to ensure our compliance with the gross income tests. If we fail to satisfy one or both of the gross income tests for any taxable year, we nevertheless may maintain our qualification as a REIT for that year if we qualify for relief under certain provisions of the federal income tax laws. Those relief provisions are available if:

our failure to meet the applicable test is due to reasonable cause and not to willful neglect; and following such failure for any taxable year, we file a schedule of the sources of our income with the IRS in accordance with the Treasury Regulations.

We cannot predict, however, whether any failure to meet these tests will qualify for the relief provisions. In addition, as discussed above in *Taxation of Our Company*, even if the relief provisions apply, we would incur a 100% tax on the gross income attributable to the greater of (1) the amount by which we fail the 75% gross income test, or (2) the amount by which we fail the 95% gross income test, multiplied, in either case, by a fraction intended to reflect our profitability.

## **Asset Tests**

To maintain our qualification as a REIT, we also must satisfy the following asset tests at the end of each quarter of each taxable year.

First, at least 75% of the value of our total assets, or the 75% asset test, must consist of:

cash or cash items, including certain receivables;  
government securities;  
interests in real property, including leaseholds and options to acquire real property and leaseholds;  
interests in mortgage loans secured by real property;  
stock or shares of beneficial interest in other REITs; and  
investments in stock or debt instruments during the one-year period following our receipt of new capital that we raise through equity offerings or public offerings of debt with at least a five-year term.

Second, of our assets that are not qualifying assets for purposes of the 75% asset test described above, the value of our interest in any one issuer's securities may not exceed 5% of the value of our total assets, or the 5% asset test.

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Third, of our assets that are not qualifying assets for purposes of the 75% asset test described above, we may not own more than 10% of the voting power of any one issuer's outstanding securities, or the 10% vote test, or more than 10% of the value of any one issuer's outstanding securities, or the 10% value test.

Fourth, no more than 25% of the value of our total assets may consist of the securities of one or more taxable REIT subsidiaries.

Fifth, no more than 25% of the value of our total assets may consist of the securities of taxable REIT subsidiaries and other taxable subsidiaries and other assets that are not qualifying assets for purposes of the 75% asset test.

For purposes of the 5% asset test, the 10% vote test and the 10% value test, the term securities does not include stock in another REIT, equity or debt securities of a qualified REIT subsidiary or taxable REIT subsidiary, mortgage loans that constitute real estate assets, or equity interests in an entity taxed as a partnership. The term securities, however, generally includes debt securities issued by an entity taxed as a partnership or another REIT, except that for purposes of the 10% value test, the term securities does not include:

Straight debt securities, which is defined as a written unconditional promise to pay on demand or on a specified date a sum certain in money if (1) the debt is not convertible, directly or indirectly, into equity, and (2) the interest rate and interest payment dates are not contingent on profits, the borrower's discretion, or similar factors. Straight debt securities do not include any securities issued by a partnership or a corporation in which we or any controlled taxable REIT subsidiary hold non- straight debt securities that have an aggregate value of more than 1% of the issuer's outstanding securities. However, straight debt securities include debt subject to the following contingencies:

a contingency relating to the time of payment of interest or principal, as long as either (1) there is no change to the effective yield of the debt obligation, other than a change to the annual yield that does not exceed the greater of 0.25% or 5% of the annual yield, or (2) neither the aggregate issue price nor the aggregate face amount of the issuer's debt obligations held by us exceeds \$1 million and no more than 12 months of unaccrued interest on the debt obligations can be required to be prepaid; and

a contingency relating to the time or amount of payment on a default or prepayment of a debt obligation, as long as the contingency is consistent with customary commercial practice.

Any loan to an individual or an estate.

Any section 467 rental agreement, other than an agreement with a related-party tenant.

Any obligation to pay rents from real property.

Certain securities issued by governmental entities.

Any security issued by a REIT.

Any debt instrument issued by an entity treated as a partnership for federal income tax purposes in which we are a partner to the extent of our proportionate interest in the debt and equity securities of the partnership.

Any debt instrument issued by an entity treated as a partnership for federal income tax purposes not described in the preceding bullet points if at least 75% of the partnership's gross income, excluding income from prohibited transactions, is qualifying income for purposes of the 75% gross income test described above in Gross Income Tests.

For purposes of the 10% value test, our proportionate share of the assets of an entity taxed as a partnership is our proportionate interest in any securities issued by such entity, without regard to the securities described in the preceding two bullet points above.

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We believe that the assets that we hold satisfy the foregoing asset test requirements. However, we will not obtain, nor are we required to obtain under the federal income tax laws, independent appraisals to support our conclusions as to the value of our assets and securities or the real estate collateral for the mortgage or mezzanine loans that we may originate or acquire. Moreover, the values of some assets may not be susceptible to a precise determination. As a result, there can be no assurance that the IRS will not contend that our ownership of securities and other assets violates one or more of the asset tests applicable to REITs.

As noted above, we may invest opportunistically in loans secured by interests in real property. If the outstanding principal balance of a loan during a taxable year exceeds the fair market value of the real property securing such loan as of the date we agreed to originate or acquire the loan, a portion of such loan likely will not constitute a qualifying real estate asset under the federal income tax laws. Although the law on the matter is not entirely clear, it appears that the nonqualifying portion of such loan will be equal to the portion of the loan amount that exceeds the value of the associated real property that serves as security for that loan.

**Failure to Satisfy Asset Tests.** We will monitor the status of our assets for purposes of the various asset tests and will manage our portfolio in order to comply at all times with such tests. Nevertheless, if we fail to satisfy the asset tests at the end of a calendar quarter, we would not lose our REIT status if:

we satisfied the asset tests at the end of the preceding calendar quarter; and  
the discrepancy between the value of our assets and the asset test requirements arose from changes in the market values of our assets and was not caused, in part or in whole, by the acquisition of one or more non-qualifying assets. If we did not satisfy the condition described in the second bullet point immediately above, we still could avoid REIT disqualification by eliminating any discrepancy within 30 days after the close of the calendar quarter in which the discrepancy arose.

In the event that we violate the 5% asset test, the 10% vote test or the 10% value test described above, we will not lose our REIT status if (1) the failure is de minimis (up to the lesser of 1% of our assets or \$10 million) and (2) we dispose of assets causing the failure or otherwise comply with the asset tests within six months after the last day of the quarter in which we identify such failure. In the event of a failure of any of such asset tests other than a de minimis failure, as described in the preceding sentence, we will not lose our REIT status if (1) the failure was due to reasonable cause and not to willful neglect, (2) we file a description of each asset causing the failure with the IRS, (3) we dispose of assets causing the failure or otherwise comply with the asset tests within six months after the last day of the quarter in which we identify the failure, and (4) we pay a tax equal to the greater of \$50,000 or 35% of the net income from the nonqualifying assets during the period in which we failed to satisfy the asset tests.

## **Annual Distribution Requirements**

Each taxable year, we must distribute dividends, other than capital gain dividends and deemed distributions of retained capital gain, to our stockholders in an aggregate amount at least equal to:

the sum of

- 90% of our REIT taxable income, computed without regard to the dividends paid deduction and our net capital gain or loss, and
- 90% of our after-tax net income, if any, from foreclosure property, minus the sum of certain items of non-cash income.

Generally, we must pay such distributions in the taxable year to which they relate, or in the following taxable year if either (1) we declare the distribution before we timely file our federal income tax return for the year and pay the

distribution on or before the first regular dividend payment date after such declaration or (2) we declare the distribution in October, November, or December of the taxable year, payable to stockholders of record on a specified day in any such month, and we actually pay the dividend before the end of January of the following year. In both instances, these distributions relate to our prior taxable year for purposes of the annual distribution requirement.

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We will pay federal income tax on taxable income, including net capital gain, that we do not distribute to our stockholders. Furthermore, if we fail to distribute during a calendar year, or by the end of January of the following calendar year in the case of distributions with declaration and record dates falling in the last three months of the calendar year, at least the sum of:

85% of our REIT ordinary income for the year,  
95% of our REIT capital gain income for the year, and  
any undistributed taxable income from prior years,

we will incur a 4% nondeductible excise tax on the excess of such required distribution over the amounts we actually distributed.

We may elect to retain and pay federal income tax on the net long-term capital gain that we receive in a taxable year. If we so elect, we will be treated as having distributed any such retained amount for purposes of the 4% nondeductible excise tax described above. We intend to make timely distributions sufficient to satisfy the annual distribution requirement and to minimize corporate income tax and avoid the 4% nondeductible excise tax.

In addition, if we were to recognize built-in gain on the disposition of any assets acquired from an entity treated as a C corporation for federal income tax purposes in a transaction in which our basis in the assets was determined by reference to such entity's tax basis (for instance, if the assets were acquired in a tax-free reorganization), we would be required to distribute at least 90% of the built-in-gain net of the tax we would pay on such gain. Built-in gain is the excess of (1) the fair market value of the asset (measured at the time of acquisition) over (2) the basis of the asset (measured at the time of acquisition).

It is possible that, from time to time, we may experience timing differences between the actual receipt of income and actual payment of deductible expenses and the inclusion of that income and deduction of such expenses in arriving at our REIT taxable income. Further, it is possible that, from time to time, we may be allocated a share of net capital gain from a partnership (or an entity treated as a partnership for federal income tax purposes) in which we own an interest that is attributable to the sale of depreciated property that exceeds our allocable share of cash attributable to that sale. As a result of the foregoing, we may have less cash than is necessary to make distributions to our stockholders that are sufficient to avoid corporate income tax and the 4% nondeductible excise tax imposed on certain undistributed income or even to meet the annual distribution requirement. In such a situation, we may need to borrow funds or issue additional stock or, if possible, pay dividends consisting, in whole or in part, of our stock or debt securities.

In order for distributions to be counted as satisfying the annual distribution requirement for REITs, and to provide us with a REIT-level tax deduction, the distributions must not be preferential dividends. A distribution is not a preferential dividend if the distribution is (1) pro rata among all outstanding shares within a particular class, and (2) in accordance with the preferences among different classes of stock as set forth in our organizational documents.

Under certain circumstances, we may be able to correct a failure to meet the distribution requirement for a year by paying deficiency dividends to our stockholders in a later year. We may include such deficiency dividends in our deduction for dividends paid for the earlier year. Although we may be able to avoid income tax on amounts distributed as deficiency dividends, we will be required to pay interest to the IRS based on the amount of any deduction we take for deficiency dividends.

## **Recordkeeping Requirements**

We must maintain certain records in order to maintain our qualification as a REIT. To avoid paying monetary penalties, we must demand, on an annual basis, information from certain of our stockholders designed to disclose the actual ownership of our outstanding stock, and we must maintain a list of those persons failing or refusing to comply with such demand as part of our records. A stockholder that fails or refuses to comply with such demand is required by the Treasury Regulations to submit a statement with its tax return disclosing the actual ownership of our stock and other information. We intend to comply with these recordkeeping requirements.

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## **Failure to Qualify as a REIT**

If we fail to satisfy one or more requirements for REIT qualification, other than the gross income tests and the asset tests, we could avoid disqualification if our failure is due to reasonable cause and not to willful neglect and we pay a penalty of \$50,000 for each such failure. In addition, there are statutory relief provisions for a failure of the gross income tests and asset tests, as described in **Gross Income Tests** and **Asset Tests**.

If we were to fail to maintain our qualification as a REIT in any taxable year, and no relief provision applied, we would be subject to federal income tax on our taxable income at federal corporate income tax rates and any applicable alternative minimum tax. In calculating our taxable income for a year in which we failed to maintain our qualification as a REIT, we would not be able to deduct amounts distributed to our stockholders, and we would not be required to distribute any amounts to our stockholders for that year. In such event, to the extent of our current and accumulated earnings and profits, distributions to our stockholders generally would be taxable to our stockholders as ordinary income. Subject to certain limitations of the federal income tax laws, our corporate stockholders may be eligible for the dividends received deduction, and stockholders taxed at individual rates may be eligible for a reduced federal income tax rate (15% through 2012) on such dividends. Unless we qualified for relief under the statutory relief provisions described in the preceding paragraph, we also would be disqualified from taxation as a REIT for the four taxable years following the year during which we ceased to maintain our qualification as a REIT. We cannot predict whether in all circumstances we would qualify for such statutory relief.

## **Taxation in Connection with Holding Securities other than our Common Stock**

We intend to describe in any prospectus supplement related to the offering of our preferred stock, debt securities, depositary shares or subscription rights, the material federal income tax considerations relating to the ownership and disposition of such securities as will be sold by us pursuant to such prospectus supplement, including, if applicable, (1) the taxation of any debt securities that will be sold with original issue discount or acquired with market discount or amortizable bond premium and (2) the tax treatment of sales, exchanges or retirements of our debt securities.

## **Taxation of Taxable U.S. Stockholders**

For purposes of our discussion, the term **U.S. stockholder** means a holder of our common stock that, for federal income tax purposes, is:

a citizen or resident of the United States;  
a corporation (including an entity treated as a corporation for federal income tax purposes) created or organized under the laws of the United States, any of its states or the District of Columbia;

an estate whose income is subject to federal income taxation regardless of its source; or  
any trust if (1) a U.S. court is able to exercise primary supervision over the administration of such trust and one or more U.S. persons have the authority to control all substantial decisions of the trust or (2) it has a valid election in place to be treated as a U.S. person.

If a partnership, entity or arrangement treated as a partnership for federal income tax purposes (a **partnership**) holds our common stock, the federal income tax treatment of an owner of the partnership generally will depend on the status of the owner and the activities of the partnership. If you are an owner of a partnership holding our common stock, you are urged to consult your tax advisor regarding the consequences of the ownership and disposition of our common stock by the partnership.

***Distributions.*** As long as we qualify as a REIT, distributions made out of our current or accumulated earnings and profits that we do not designate as capital gain dividends or retained long-term capital gains will be dividend income to taxable U.S. stockholders. In determining the extent to which a distribution with respect to our stock constitutes a dividend for federal income tax purposes, our earnings and profits will be allocated first to distributions with respect to our preferred stock, if any, and then to our common stock. A corporate U.S. stockholder will not qualify for the dividends-received deduction generally available to corporations. Dividends paid to a U.S. stockholder generally will not qualify for the tax rates applicable to

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qualified dividend income. Legislation enacted in 2003, 2006 and 2010 reduced the maximum tax rate for qualified dividend income to 15% for tax years 2003 through 2012. Without future Congressional action, the maximum tax rate on qualified dividend income will increase to 39.6% in 2013. Qualified dividend income generally includes dividends paid by domestic C corporations and certain qualified foreign corporations to U.S. stockholders that are taxed at individual rates. Because we are not generally subject to federal income tax on the portion of our REIT taxable income that we distribute to our stockholders, our dividends generally will not constitute qualified dividend income.

As a result, our REIT dividends generally will be taxed at the higher tax rates applicable to ordinary income. The highest marginal individual income tax rate on ordinary income is 35% through 2012. Without future Congressional action, the maximum individual income tax rate on ordinary income will increase to 39.6% in 2013. The federal income tax rates applicable to qualified dividend income generally will apply, however, to our ordinary REIT dividends, if any, that are (1) attributable to qualified dividends received by us prior to 2013 from non-REIT corporations, such as any taxable REIT subsidiaries, or (2) attributable to income recognized by us prior to 2013 and on which we have paid federal corporate income tax (e.g., to the extent that we distribute less than 100% of our taxable income). In general, to qualify for the reduced federal income tax rate on qualified dividend income under such circumstances, a U.S. stockholder must hold our stock for more than 60 days during the 121-day period beginning on the date that is 60 days before the date on which our stock becomes ex-dividend. In addition, certain individuals, estates and trusts will be subject to a 3.8% Medicare tax on dividend income recognized after 2012.

Any distribution we declare in October, November, or December of any year that is payable to a U.S. stockholder of record on a specified date in any of those months will be treated as paid by us and received by the U.S. stockholder on December 31 of that year, provided that we actually pay the distribution during January of the following calendar year.

Distributions to a U.S. stockholder which we designate as capital gain dividends generally will be treated as long-term capital gain, without regard to the period for which the U.S. stockholder has held our stock. See Capital Gains and Losses below. A corporate U.S. stockholder may be required to treat up to 20% of certain capital gain dividends as ordinary income.

We may elect to retain and pay federal corporate income tax on the net long-term capital gain that we receive in a taxable year. In that case, to the extent that we designate such amount in a timely notice to our stockholders, a U.S. stockholder would be taxed on its proportionate share of our undistributed long-term capital gain. The U.S. stockholder would receive a credit or refund for its proportionate share of the federal corporate income tax we paid. The U.S. stockholder would increase its basis in our common stock by the amount of its proportionate share of our undistributed long-term capital gain, minus its share of the federal corporate income tax we paid.

A U.S. stockholder will not incur federal income tax on a distribution in excess of our current and accumulated earnings and profits if the distribution does not exceed the U.S. stockholder's adjusted basis in our common stock. Instead, the distribution will reduce the U.S. stockholder's adjusted basis in our common stock, and any amount in excess of both its share of our current and accumulated earnings and profits and its adjusted basis will be treated as capital gain, long-term if the stock has been held for more than one year, provided the stock is a capital asset in the hands of the U.S. stockholder.

U.S. stockholders may not include in their individual federal income tax returns any of our net operating losses or capital losses. Instead, these losses are generally carried over by us for potential offset against our future income.

Taxable distributions from us and gain from the disposition of our common stock will not be treated as passive activity income; and, therefore, U.S. stockholders generally will not be able to apply any passive activity losses, such as, for example, losses from certain types of limited partnerships in which the U.S. stockholder is a limited partner, against such income. In addition, taxable distributions from us and gain from the disposition of our common stock

generally will be treated as investment income for purposes of the investment interest limitations. We will notify U.S. stockholders after the close of our taxable year as to the portions of the distributions attributable to that year that constitute ordinary income, return of capital and capital gain.

***Dispositions.*** A U.S. stockholder who is not a dealer in securities generally must treat any gain or loss realized on a taxable disposition of our common stock as long-term capital gain or loss if the U.S. stockholder

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has held such stock for more than one year, and otherwise as short-term capital gain or loss. In general, a U.S. stockholder will realize gain or loss in an amount equal to the difference between (i) the sum of the fair market value of any property and the amount of cash received in such disposition and (ii) the U.S. stockholder's adjusted tax basis in such stock. A U.S. stockholder's adjusted tax basis in our stock generally will equal the U.S. stockholder's acquisition cost, increased by the excess of undistributed net capital gains deemed distributed to the U.S. stockholder over the federal corporate income tax deemed paid by the U.S. stockholder on such gains and reduced by any returns of capital. However, a U.S. stockholder must treat any loss on a sale or exchange of our common stock held by such stockholder for six months or less as a long-term capital loss to the extent of capital gain dividends and any other actual or deemed distributions from us that such U.S. stockholder treats as long-term capital gain. All or a portion of any loss that a U.S. stockholder realizes on a taxable disposition of shares of our common stock may be disallowed if the U.S. stockholder purchases other shares of our common stock within 30 days before or after the disposition. In addition, certain individuals, estates and trusts will be subject to a 3.8% Medicare tax on capital gains recognized after 2012.

**Capital Gains and Losses.** The tax-rate differential between long-term capital gain and ordinary income for non-corporate taxpayers may be significant. A taxpayer generally must hold a capital asset for more than one year for gain or loss derived from its sale or exchange to be treated as long-term capital gain or loss. The highest marginal individual income tax rate currently is 35% (which rate, absent Congressional action, will increase to 39.6% in 2013). The maximum tax rate on long-term capital gain applicable to U.S. stockholders taxed at individual rates currently is 15% (which rate, absent Congressional action, will increase to 20% in 2013). The maximum tax rate on long-term capital gain from the sale or exchange of section 1250 property (i.e., generally, depreciable real property) is 25% to the extent the gain would have been treated as ordinary income if the property were section 1245 property (i.e., generally, depreciable personal property). We generally will designate whether a distribution that we designate as capital gain dividends (and any retained capital gain that we are deemed to distribute) is attributable to the sale or exchange of section 1250 property. The characterization of income as capital gain or ordinary income may affect the deductibility of capital losses. A non-corporate taxpayer may deduct capital losses not offset by capital gains against its ordinary income only up to a maximum annual amount of \$3,000. A non-corporate taxpayer may carry forward unused capital losses indefinitely. A corporate taxpayer must pay tax on its net capital gain at federal corporate income tax rates, whether or not such gains are classified as long-term capital gains. A corporate taxpayer may deduct capital losses only to the extent of capital gains, with unused losses carried back three years and forward five years.

## **Taxation of Tax-Exempt Stockholders**

Tax-exempt entities, including qualified employee pension and profit sharing trusts and individual retirement accounts and annuities, generally are exempt from federal income taxation. However, they are subject to taxation on their unrelated business taxable income, or UBTI. Although many investments in real estate generate UBTI, the IRS has issued a ruling that dividend distributions from a REIT to an exempt employee pension trust do not constitute UBTI so long as the exempt employee pension trust does not otherwise use the stock or shares of beneficial interest of the REIT in an unrelated trade or business of the pension trust. Based on that ruling, amounts that we distribute to tax-exempt stockholders generally should not constitute UBTI. However, if a tax-exempt stockholder were to finance its acquisition of our common stock with debt, a portion of the income that it received from us would constitute UBTI pursuant to the debt-financed property rules. Furthermore, social clubs, voluntary employee benefit associations, supplemental unemployment benefit trusts, and qualified group legal services plans that are exempt from taxation under special provisions of the federal income tax laws are subject to different UBTI rules, which generally will require them to characterize distributions that they receive from us as UBIT.

Finally, in certain circumstances, a qualified employee pension or profit-sharing trust that owns more than 10% of the value of our stock must treat a percentage of the dividends that it receives from us as UBTI. Such percentage is equal

to the gross income that we derive from unrelated trades or businesses, determined as if we were a pension trust, divided by our total gross income for the year in which we pay the dividends. Such rule applies to a pension trust holding more than 10% of the value of our stock only if:

the percentage of our dividends that the tax-exempt trust must treat as unrelated business taxable income is at least 5%;

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we qualify as a REIT by reason of the modification of the rule requiring that no more than 50% of our stock be owned by five or fewer individuals that allows the beneficiaries of the pension trust to be treated as holding our stock in proportion to their actuarial interests in the pension trust; and

either:

one pension trust owns more than 25% of the value of our stock; or  
a group of pension trusts, of which each pension trust holds more than 10% of the value of our stock, collectively owns more than 50% of the value of our stock.

As a result of limitations included in our charter on the transfer and ownership of our stock, we do not expect to be classified as a pension-held REIT, and, therefore, the tax treatment described in this paragraph should be inapplicable to our stockholders. However, because shares of our common stock are publicly traded, we cannot guarantee that this will always be the case.

## **Taxation of Non-U.S. Stockholders**

For purposes of our discussion, the term non-U.S. stockholder means a holder of our common stock that is not a U.S. stockholder, a partnership (or an entity treated as a partnership for federal income tax purposes) or a tax-exempt stockholder. The rules governing federal income taxation of non-U.S. stockholders, including nonresident alien individuals, foreign corporations, foreign partnerships, and other foreign stockholders, are complex. This section is only a summary of certain of those rules.

**We urge non-U.S. stockholders to consult their own tax advisors to determine the impact of federal, state, local and foreign income tax laws on the acquisition, ownership and disposition of our common stock, including any reporting requirements.**

**Distributions.** A non-U.S. stockholder that receives a distribution that is not attributable to gain from our sale or exchange of a United States real property interest, or a USRPI (discussed below), and that we do not designate as a capital gain dividend or retained long-term capital gain will recognize ordinary income to the extent that we pay such distribution out of our current and accumulated earnings and profits. A withholding tax equal to 30% of the gross amount of the distribution ordinarily will apply unless an applicable tax treaty reduces or eliminates the tax. A non-U.S. stockholder generally will be subject to federal income tax at graduated rates, however, on any distribution treated as effectively connected with the non-U.S. stockholder's conduct of a U.S. trade or business, in the same manner as U.S. stockholders are taxed on distributions. A corporate non-U.S. stockholder may, in addition, be subject to the 30% branch profits tax with respect to any such distribution. We plan to withhold federal income tax at the rate of 30% on the gross amount of any distribution paid to a non-U.S. stockholder unless:

a lower treaty rate applies and the non-U.S. stockholder submits an IRS Form W-8BEN to us evidencing eligibility for that reduced rate;

the non-U.S. stockholder submits an IRS Form W-8ECI to us claiming that the distribution is effectively connected income; or

the distribution is treated as attributable to a sale of a USRPI under FIRPTA (discussed below).

A non-U.S. stockholder will not incur tax on a distribution in excess of our current and accumulated earnings and profits if the excess portion of such distribution does not exceed such non-U.S. stockholder's adjusted basis in our common stock. Instead, the excess portion of such distribution will reduce the non-U.S. stockholder's adjusted basis in our common stock. A non-U.S. stockholder will be subject to tax on a distribution that exceeds both our current and accumulated earnings and profits and the non-U.S. stockholder's adjusted basis in our common stock, if the non-U.S. stockholder otherwise would be subject to tax on gain from the sale or disposition of our common stock, as described below. See Dispositions below. Under FIRPTA (discussed below), we may be required to withhold 10% of any

distribution that exceeds our current and accumulated earnings and profits. Although we intend to withhold at a rate of 30% on the entire amount of any distribution (other than a distribution attributable to a sale of a USRPI), to the extent that we do not do so, we may withhold at a rate of 10% on any portion of a distribution not subject to withholding at a rate of 30%. Because we generally cannot determine at the time we make a distribution whether the distribution will

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exceed our current and accumulated earnings and profits, we may withhold tax on the entire amount of any distribution. However, a non-U.S. stockholder may obtain a refund of amounts that we withhold if we later determine that a distribution in fact exceeded our current and accumulated earnings and profits.

For any year in which we maintain our qualification as a REIT, the Foreign Investment in Real Property Tax Act of 1980, or FIRPTA, may apply to our sale or exchange of a USRPI. A USRPI includes certain interests in real property and stock in corporations at least 50% of whose assets consist of interests in real property. Under FIRPTA, a non-U.S. stockholder is taxed on distributions attributable to gain from sales of USRPIs as if such gain were effectively connected with the conduct of a U.S. trade or business of the non-U.S. stockholder. A non-U.S. stockholder thus would be taxed on such a distribution at the normal capital gains rates applicable to U.S. stockholders, subject to applicable alternative minimum tax and a special alternative minimum tax in the case of a nonresident alien individual. A non-U.S. corporate stockholder not entitled to treaty relief or exemption also may be subject to the 30% branch profits tax on such a distribution.

If shares of our common stock continue to be regularly traded on an established securities market in the United States, capital gain distributions to a non-U.S. stockholder that are attributable to our sale of real property will be treated as ordinary dividends rather than as gain from the sale of a USRPI, as long as such non-U.S. stockholder did not own more than 5% of our outstanding common stock any time during the one-year period preceding the distribution. As a result, non-U.S. stockholders owning 5% or less of our common stock generally would be subject to withholding tax on such capital gain distributions in the same manner as they are subject to withholding tax on other distributions. If shares of our common stock cease to be regularly traded on an established securities market in the United States or if a non-U.S. stockholder owned more than 5% of our common stock any time during the one-year period preceding the distribution, capital gain distributions to such non-U.S. stockholder in respect of our common stock that are attributable to our sales of USRPIs would be subject to tax under FIRPTA, as described in the preceding paragraph.

If a distribution is subject to FIRPTA, we must withhold 35% of such distribution that we could designate as a capital gain dividend. A non-U.S. stockholder may receive a credit against its tax liability for the amount that we withhold. Moreover, if a non-U.S. stockholder disposes of our common stock during the 30-day period preceding a dividend payment, and such non-U.S. stockholder (or a person related to such non-U.S. stockholder) acquires or enters into a contract or option to acquire our stock within 61 days of the first day of the 30-day period described above, and any portion of such dividend payment would, but for the disposition, be treated as a USRPI capital gain to such non-U.S. stockholder, then such non-U.S. stockholder will be treated as having USRPI capital gain in an amount that, but for the disposition, would have been treated as USRPI capital gain.

**Dispositions.** Non-U.S. stockholders may incur tax under FIRPTA with respect to gain realized on a disposition of our common stock since our common stock will constitute a USRPI unless one of the applicable exceptions, as described below, applies. Any gain subject to tax under FIRPTA will be treated in the same manner as it would be in the hands of U.S. stockholders subject to alternative minimum tax, but under a special alternative minimum tax in the case of nonresident alien individuals.

Non-U.S. stockholders generally will not incur tax under FIRPTA with respect to gain on a sale of our common stock, however, as long as, at all times during a specified testing period, we are domestically controlled, i.e., non-U.S. persons hold, directly or indirectly, less than 50% in value of our outstanding stock. We cannot assure you that we will be domestically controlled. In addition, even if a REIT is not domestically controlled, a non-U.S. stockholder that owned, actually or constructively, 5% or less of the outstanding common stock of such REIT at all times during a specified testing period will not incur tax under FIRPTA on gain from a sale of such common stock if shares of such common stock are regularly traded on an established securities market. Because shares of our common stock are regularly traded on an established securities market, we expect that a non-U.S. stockholder that has not owned more

than 5% of our common stock at any time during the five-year period prior to such sale will not incur tax under FIRPTA on gain from a sale of our common stock.

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A non-U.S. stockholder generally will incur tax on gain from a disposition of our common stock not subject to FIRPTA if:

the gain is effectively connected with the conduct of the non-U.S. stockholder's U.S. trade or business, in which case the non-U.S. stockholder will be subject to the same treatment as U.S. stockholders with respect to such gain; or the non-U.S. stockholder is a nonresident alien individual who was present in the U.S. for 183 days or more during the taxable year and certain other conditions are satisfied, in which case the non-U.S. stockholder will incur a 30% tax on its capital gains.

### **Information Reporting Requirements, Backup Withholding and Certain Other Required Withholding**

We will report to our stockholders and to the IRS the amount of distributions that we pay during each calendar year, and the amount of tax that we withhold, if any. Under the backup withholding rules, a stockholder may be subject to backup withholding (at a rate of 28% through 2012 and 31% thereafter, absent Congressional action) with respect to distributions unless the stockholder:

is a corporation or qualifies for certain other exempt categories and, when required, demonstrates this fact; or provides a taxpayer identification number, certifies as to no loss of exemption from backup withholding, and otherwise complies with the applicable requirements of the backup withholding rules.

A stockholder who does not provide us with its correct taxpayer identification number also may be subject to penalties imposed by the IRS. Any amount paid as backup withholding will be creditable against the stockholder's federal income tax liability. In addition, we may be required to withhold a portion of capital gain distributions to any stockholders who fail to certify their non-foreign status to us.

Backup withholding generally will not apply to payments of dividends made by us or our paying agents, in their capacities as such, to a non-U.S. stockholder provided that such non-U.S. stockholder furnishes to us or our paying agent the required certification as to its non-U.S. status, such as providing a valid IRS Form W-8BEN or W-8ECI, or certain other requirements are met. Notwithstanding the foregoing, backup withholding may apply if either we or our paying agent has actual knowledge, or reason to know, that the holder is a U.S. person that is not an exempt recipient. Payments of the proceeds from a disposition or a redemption of our common stock that occurs outside the U.S. by a non-U.S. stockholder made by or through a foreign office of a broker generally will not be subject to information reporting or backup withholding. However, information reporting (but not backup withholding) generally will apply to such a payment if the broker has certain connections with the U.S. unless the broker has documentary evidence in its records that demonstrates that the beneficial owner is a non-U.S. stockholder and specified conditions are met or an exemption is otherwise established. Payment of the proceeds from a disposition of our stock by a non-U.S. stockholder made by or through the U.S. office of a broker generally is subject to information reporting and backup withholding unless the non-U.S. stockholder certifies under penalties of perjury that it is not a U.S. person and satisfies certain other requirements, or otherwise establishes an exemption from information reporting and backup withholding.

Backup withholding is not an additional tax. Any amounts withheld under the backup withholding rules may be refunded or credited against the stockholder's federal income tax liability if certain required information is furnished to the IRS. Stockholders should consult their own tax advisors regarding application of backup withholding to them and the availability of, and procedure for obtaining an exemption from, backup withholding.

For taxable years beginning after December 31, 2013, if certain disclosure requirements related to U.S. accounts or ownership are not satisfied, a U.S. withholding tax at a 30% rate will be imposed on dividends received by (i) U.S.

stockholders that own their common stock through foreign accounts or foreign intermediaries and (ii) certain non-U.S. stockholders. In addition, for taxable years beginning after December 31, 2014, if certain disclosure requirements related to U.S. accounts or ownership are not satisfied, a U.S. withholding tax at a 30% rate will be imposed on proceeds of sale in respect of our common stock

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received by (i) U.S. stockholders that own their common stock through foreign accounts or foreign intermediaries and (ii) certain non-U.S. stockholders. If payment of withholding taxes is required, non-U.S. stockholders that are otherwise eligible for an exemption from, or reduction of, U.S. withholding taxes with respect to such dividends and proceeds will be required to seek a refund from the IRS to obtain the benefit of such exemption or reduction. We will not pay any additional amounts in respect of any amounts withheld.

## **Tax Aspects of Our Investments in Our Operating Partnership and Other Subsidiary Partnerships.**

The following discussion summarizes the material federal income tax considerations that are applicable to our indirect investment in our Operating Partnership and our other subsidiaries that are treated as partnerships for federal income tax purposes, each individually referred to as a Partnership and, collectively, as the Partnerships. The following discussion does not address state or local tax laws or any federal tax laws other than income tax laws.

### **Classification as Partnerships**

We are required to include in our income our distributive share of each Partnership's income and to deduct our distributive share of each Partnership's losses but only if such Partnership is classified for federal income tax purposes as a partnership, rather than as a corporation or an association taxable as a corporation. An unincorporated entity with at least two owners or members, as determined for federal income tax purposes, will be classified as a partnership, rather than as a corporation, for federal income tax purposes if it:

is treated as a partnership under the Treasury Regulations relating to entity classification, or the check-the-box regulations; and

is not a publicly traded partnership.

Under the check-the-box regulations, an unincorporated entity with at least two owners or members may elect to be classified either as an association taxable as a corporation or as a partnership. If such an entity does not make an election, it generally will be treated as a partnership for federal income tax purposes.

A publicly traded partnership is a partnership whose interests are traded on an established securities market or are readily tradable on a secondary market or the substantial equivalent thereof. A publicly traded partnership generally is treated as a corporation for federal income tax purposes, but will not be so treated if, for each taxable year beginning after December 31, 1987 in which it was classified as a publicly traded partnership, at least 90% of the partnership's gross income consisted of specified passive income, including real property rents, gains from the sale or other disposition of real property, interest, and dividends, or the 90% passive income exception. The Treasury Regulations provide limited safe harbors from treatment as a publicly traded partnership. Pursuant to one of those safe harbors, interests in a partnership will not be treated as readily tradable on a secondary market or the substantial equivalent thereof if (1) all interests in the partnership were issued in a transaction or transactions that were not required to be registered under the Securities Act of 1933, as amended, and (2) the partnership does not have more than 100 partners at any time during the partnership's taxable year. In determining the number of partners in a partnership, a person owning an interest in a partnership, grantor trust, or S corporation that owns an interest in the partnership is treated as a partner in such partnership only if (1) substantially all of the value of the owner's interest in the entity is attributable to the entity's direct or indirect interest in the partnership and (2) a principal purpose of the use of the entity is to permit the partnership to satisfy the 100-partner limitation. If any Partnership does not qualify for any safe harbor and is treated as a publicly traded partnership, we believe that such Partnership would have sufficient qualifying income to satisfy the 90% passive income exception and, therefore, would not be treated as a corporation for federal income tax

purposes.

We have not requested, and do not intend to request, a ruling from the IRS that any of the Partnerships is or will be classified as a partnership for federal income tax purposes. If, for any reason, a Partnership were taxable as a corporation, rather than as a partnership, for federal income tax purposes, we may not be able to maintain our qualification as a REIT, unless we qualify for certain statutory relief provisions. See [Gross Income Tests](#) and [Asset Tests](#). In addition, any change in a Partnership's status for tax purposes might be treated as a taxable event, in which case we might incur tax liability without any related cash distribution. See [Annual Distribution Requirements](#). Further, items of income and deduction of such Partnership would not pass through to us, and we would be treated as a stockholder for federal income tax purposes.

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Consequently, such Partnership would be required to pay income tax at corporate rates on its net income, and distributions to us would constitute dividends that would not be deductible in computing such Partnership's taxable income.

## **Income Taxation of the Partnerships and Their Partners**

***Partners, Not the Partnerships, Subject to Tax.*** A partnership is not a taxable entity for federal income tax purposes.

Rather, we are required to take into account our distributive share of each Partnership's income, gains, losses, deductions, and credits for each taxable year of the Partnership ending with or within our taxable year, even if we receive no distribution from the Partnership for that year or a distribution that is less than our share of taxable income. Similarly, even if we receive a distribution, it may not be taxable if the distribution does not exceed our adjusted tax basis in our interest in the Partnership.

***Partnership Allocations.*** Although a partnership agreement generally will determine the allocation of income and losses among partners, such allocations will be disregarded for tax purposes if they do not comply with the provisions of the federal income tax laws governing partnership allocations. If an allocation is not recognized for federal income tax purposes, the item subject to the allocation will be reallocated in accordance with the partners' interests in the partnership, which will be determined by taking into account all of the facts and circumstances relating to the economic arrangement of the partners with respect to such item.

***Tax Allocations With Respect to Contributed Properties.*** Income, gain, loss, and deduction attributable to appreciated or depreciated property that is contributed to a partnership in exchange for an interest in the partnership must be allocated for federal income tax purposes in a manner such that the contributing partner is charged with, or benefits from, respectively, the unrealized gain or unrealized loss associated with the property at the time of the contribution (the 704(c) Allocations). The amount of such unrealized gain or unrealized loss, referred to as built-in gain or built-in loss, at the time of contribution is generally equal to the difference between the fair market value of the contributed property at the time of contribution and the adjusted tax basis of such property at that time, referred to as a book-tax difference. A book-tax difference attributable to depreciable property generally is decreased on an annual basis as a result of the allocation of depreciation deductions to the contributing partner for book purposes, but not for tax purposes. The 704(c) Allocations are solely for federal income tax purposes and do not affect the book capital accounts or other economic or legal arrangements among the partners. The Treasury Regulations require partnerships to use a reasonable method for allocating items with respect to which there is a book-tax difference and outline several reasonable allocation methods.

The carryover basis of any properties actually contributed to our Operating Partnership or another partnership in which we own an interest by an additional partner or member, under certain reasonable methods available to us, including the traditional method, (i) may cause us to be allocated lower amounts of depreciation deductions for tax purposes than would be allocated to us if all contributed properties were to have a tax basis equal to their fair market value at the time of the contribution and (ii) in the event of a sale of such properties, may cause us to be allocated taxable gain in excess of the economic or book gain allocated to us as a result of such sale, with a corresponding tax benefit to the contributing partners. An allocation described in clause (ii) above may cause us to recognize taxable income in excess of cash proceeds in the event of a sale or other disposition of property, which might adversely affect our ability to comply with the REIT distribution requirements and may result in a greater portion of our distributions being taxed as dividends.

***Basis in Partnership Interest.*** Our adjusted tax basis in any partnership interest we own generally will be:

the amount of cash and the basis of any other property we contribute to the partnership;  
increased by our distributive share of the partnership's income (including tax-exempt income) and any increase in our allocable share of indebtedness of the partnership; and  
reduced, but not below zero, by our distributive share of the partnership's loss (excluding any non-deductible items), the amount of cash and the basis of property distributed to us, and any reduction in our allocable share of indebtedness of the partnership.

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Loss allocated to us in excess of our basis in a partnership interest will not be taken into account for federal income tax purposes until we again have basis sufficient to absorb the loss. A reduction of our allocable share of partnership indebtedness will be treated as a constructive cash distribution to us, and will reduce our adjusted tax basis.

Distributions, including constructive distributions, in excess of the basis of our partnership interest will constitute taxable income to us. Such distributions and constructive distributions normally will be characterized as long-term capital gain.

***Sale of a Partnership's Property.*** Generally, any gain realized by a Partnership on the sale of property held for more than one year will be long-term capital gain, except for certain amounts of gain treated as depreciation or cost recovery recapture. Our share of any Partnership's gain from the sale of inventory or other property held primarily for sale to customers in the ordinary course of the Partnership's trade or business will be treated as income from a prohibited transaction subject to a 100% tax. Income from a prohibited transaction may have an adverse effect on our ability to satisfy the gross income tests for REIT status. See Gross Income Tests. We presently do not intend to acquire or hold, or to allow any Partnership to acquire or hold, any property that is likely to be treated as inventory or property held primarily for sale to customers in the ordinary course of our, or any Partnership's, trade or business.

## **Sunset of Reduced Tax Rate Provisions**

Several of the tax considerations described herein are subject to a sunset provision. The sunset provision generally provides that for taxable years beginning after December 31, 2012, certain provisions that currently are in the Code will revert back to an earlier version of those provisions. Those provisions include provisions related to the reduced federal income tax rates for taxpayers taxed at individual rates as to ordinary income, long-term capital gains and qualified dividend income, and certain other tax rate provisions described herein. The impact of this sunset is not discussed in detail herein. Consequently, prospective stockholders should consult their own tax advisors regarding the effect of sunset provisions on an investment in our common stock.

## **State and Local Taxes**

We and/or you may be subject to taxation by various states and localities, including those in which we or a stockholder transacts business, owns property or resides. The state and local tax treatment may differ from the federal income tax treatment described above. Consequently, you should consult your own tax advisors regarding the effect of state and local tax laws on an investment in our common stock.

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## **PLAN OF DISTRIBUTION**

Unless otherwise set forth in an accompanying prospectus supplement to this prospectus, we may offer and sell these securities to or through one or more underwriters, dealers and agents, or directly to purchasers, on a continuous or delayed basis. Any such underwriter, dealer or agent involved in the offer and sale of the securities will be named in the applicable prospectus supplement. If we do not name a firm in the prospectus supplement, the firm may not directly or indirectly participate in any underwriting of those securities, although it may participate in the distribution of securities under circumstances entitling it to a dealer's allowance or agent's commission. In addition, we may sell securities directly to investors on our own behalf in those jurisdictions where we are authorized to do so.

Our common stock may also be sold in one or more of the following transactions: (i) block transactions (which may involve crosses) in which a broker-dealer may sell all or a portion of such shares as agent, but may position and resell all or a portion of the block as principal to facilitate the transaction; (ii) purchases by any such broker-dealer as principal, and resale by such broker-dealer for its own account pursuant to an accompanying prospectus supplement; (iii) a special offering, an exchange distribution or a secondary distribution in accordance with applicable New York Stock Exchange or other stock exchange, quotation system or over-the-counter market rules; (iv) ordinary brokerage transactions and transactions in which any such broker-dealer solicits purchasers; (v) sales at the market to or through a market maker or into an existing trading market, on an exchange or otherwise, for such shares; and (vi) sales in other ways not involving market makers or established trading markets, including direct sales to purchasers.

For each offering of our common stock, preferred stock, debt securities, or depositary shares, the accompanying prospectus supplement or other offering materials will describe the specific plan, including (i) the terms of the offering and the specific plan of distribution; (ii) the name or names of any underwriters, dealers, agents or direct purchasers; (iii) the purchase price of the securities; (iv) any delayed delivery arrangements; (v) any commissions paid to agents and any underwriting discounts, commissions or other items constituting underwriters' compensation; (vi) any discounts or concessions allowed or reallocated or paid to dealers; and (vii) any other applicable terms of the specific offering.

Underwriters may offer and sell the securities at a fixed price or prices which may be changed, at market prices prevailing at the time of sale, at prices related to such prevailing market prices or at negotiated prices. We also may, from time to time, authorize dealers or agents to offer and sell the securities upon such terms and conditions as may be set forth in the accompanying prospectus supplement. In connection with the sale of any of the securities, underwriters may receive compensation from us in the form of underwriting discounts or commissions and may also receive commissions from purchasers of the securities for whom they may act as agent. Underwriters may sell the securities to or through dealers, and such dealers may receive compensation in the form of discounts, concessions or commissions from the underwriters or commissions from the purchasers for whom they may act as agents.

Any underwriting compensation paid by us to underwriters or agents in connection with the offering of the securities, and any discounts or concessions or commissions allowed by underwriters to participating dealers, will be set forth in the accompanying prospectus supplement. Dealers and agents participating in the distribution of the securities may be deemed to be underwriters, and any discounts and commissions received by them and any profit realized by them on resale of the securities may be deemed to be underwriting discounts and commissions.

Underwriters, dealers and agents may be entitled, under agreements entered into with us, to indemnification against and contribution toward certain civil liabilities, including liabilities under the Securities Act. Unless otherwise set forth in an accompanying prospectus supplement, the obligations of any underwriters to purchase any of the securities will be subject to certain conditions precedent, and the underwriters will be obligated to purchase all of such

securities, if any are purchased.

Underwriters, dealers and agents may engage in transactions with, or perform services for, us and our affiliates in the ordinary course of business.

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If indicated in an accompanying prospectus supplement, we may authorize underwriters or other agents to solicit offers by institutions to purchase securities from us pursuant to contracts providing for payment and delivery on a future date. Institutions with which we may make these delayed delivery contracts include commercial and savings banks, insurance companies, pension funds, investment companies, educational and charitable institutions and others. The contracts will be subject only to those conditions set forth in the accompanying prospectus supplement, and the prospectus supplement will set forth any commissions we pay for solicitation of these contracts. The underwriters and other agents will not have any responsibility with regard to the validity or performance of these delayed delivery contracts.

In connection with the offering of the securities hereby, certain underwriters, and selling group members and their respective affiliates may engage in transactions that stabilize, maintain or otherwise affect the market price of the applicable securities. Such transactions may include stabilization transactions effected in accordance with Rule 104 of Regulation M promulgated by the SEC pursuant to which such persons may bid for or purchase securities for the purpose of stabilizing their market price. The underwriters in an offering of securities may also create a short position for their account by selling more securities in connection with the offering than they are committed to purchase from us. In such case, the underwriters could cover all or a portion of such short position by either purchasing securities in the open market following completion of the offering of such securities or by exercising any overallotment option granted to them by us. In addition, the managing underwriter may impose penalty bids under contractual arrangements with other underwriters, which means that they can reclaim from an underwriter (or any selling group member participating in the offering) for the account of the other underwriters, the selling concession with respect to securities that are distributed in the offering but subsequently purchased for the account of the underwriters in the open market. Any of the transactions described in this paragraph or comparable transactions that are described in any accompanying prospectus supplement may result in the maintenance of the price of the securities at a level above that which might otherwise prevail in the open market. None of such transactions described in this paragraph or in an accompanying prospectus supplement are required to be taken by any underwriters and, if they are undertaken, may be discontinued at any time.

We may sell the securities in exchange in whole or part for consideration other than cash. This consideration may consist of services or products, whether tangible or intangible, and including services or products we may use in our business; outstanding debt or equity securities of our company or one or more of its subsidiaries; debt or equity securities or assets of other companies, including in connection with investments, joint ventures or other strategic transactions, or acquisitions; release of claims or settlement of disputes; and satisfaction of obligations, including obligations to make payments to distributors or other suppliers and payment of interest on outstanding obligations. We may sell the securities as part of a transaction in which outstanding debt or equity securities of our company or one or more of our subsidiaries are surrendered, converted, exercised, canceled or transferred.

Our common stock is listed on the New York Stock Exchange under the symbol EDR. Any securities that we issue, other than common stock, will be new issues of securities with no established trading market and may or may not be listed on a national securities exchange, quotation system or over-the-counter market. Any underwriters or agents to or through which securities are sold by us may make a market in such securities, but such underwriters or agents will not be obligated to do so and any of them may discontinue any market making at any time without notice. No assurance can be given as to the liquidity of or trading market for any securities sold by us.

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## LEGAL MATTERS

Certain matters of Maryland law, including the validity of the common stock to be offered by means of this prospectus, will be passed upon for us by Venable LLP, Baltimore, Maryland. Certain federal income tax matters will be passed upon for us by Bass, Berry & Sims PLC, Memphis, Tennessee.

## EXPERTS

The consolidated financial statements incorporated in this prospectus by reference from Education Realty Trust, Inc.'s Annual Report on Form 10-K dated March 8, 2012, and the effectiveness of Education Realty Trust, Inc. and subsidiaries (the Trust) internal control over financial reporting have been audited by Deloitte & Touche LLP, an independent registered public accounting firm, as stated in their report, which is incorporated herein by reference. Such consolidated financial statements have been so incorporated in reliance upon the report of such firm given upon their authority as experts in accounting and auditing.

The statements of certain revenues and certain expenses of University Village Towers in Riverside, California for the years ended December 31, 2010, 2009 and 2008 and of GrandMarc at Westberry Place in Ft. Worth, Texas for the year ended December 31, 2010 have been audited by Dixon Hughes Goodman LLP, independent auditors, as stated in their reports, which are incorporated by reference herein, and which have been so incorporated in reliance upon the reports of such firm given upon their authority as experts in accounting and auditing.

## WHERE YOU CAN FIND MORE INFORMATION

We are a public company and file annual, quarterly and current reports, proxy statements and other information with the SEC. You may read and copy any document we file at the SEC's public reference room at 100 F Street, NE, Washington, D.C. 20549. You may request copies of these documents by writing to the SEC and paying a fee for the copying cost. Please call the SEC at 1-800-SEC-0330 for more information about the operation of the public reference room. Our SEC filings are also available to the public at the SEC's website at <http://www.sec.gov>. In addition, you may read and copy our SEC filings at the office of the New York Stock Exchange at 20 Broad Street, New York, New York 10005. We also make available free of charge through our website our Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K and amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Securities and Exchange Act of 1934, as amended, as well as our definitive proxy statement and Section 16 reports on Forms 3, 4 and 5. Our website address is [www.edrtrust.com](http://www.edrtrust.com). However, the information located on, or accessible from, our website is not, and shall not be deemed to be, except as described below, a part of this prospectus supplement or the accompanying prospectus or incorporated into any other filings that we make with the SEC.

This prospectus is only part of a registration statement on Form S-3 we have filed with the SEC under the Securities Act of 1933 and therefore omits some of the information contained in the registration statement. We have also filed exhibits and schedules to the registration statement which are excluded from this prospectus, and you should refer to the applicable exhibit or schedule for a complete description of any statement referring to any contract or other document. You may inspect or obtain a copy of the registration statement, including the exhibits and schedules, as described in the previous paragraph.



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## **INCORPORATION OF CERTAIN DOCUMENTS BY REFERENCE**

The SEC allows us to incorporate by reference the information we file with it, which means that we can disclose important information to you by referring you to those documents. The information incorporated by reference is considered to be part of this prospectus and any accompanying prospectus and the information we file subsequently with the SEC prior to the completion of this offering will automatically update and supersede this information.

We previously filed the following documents with the SEC and such filings are incorporated by reference into this prospectus:

Annual Report on Form 10-K for the year ended December 31, 2011 (including portions of our definitive Proxy Statement for the 2012 Annual Meeting of Stockholders incorporated therein by reference);

Quarterly Report on Form 10-Q for the quarter ended March 31, 2012;

Quarterly Report on Form 10-Q for the quarter ended June 30, 2012;

Current Report on Form 8-K dated January 6, 2012;

Current Report on Form 8-K dated May 16, 2012;

Current Report on Form 8-K dated May 22, 2012;

Current Report on Form 8-K dated August 14, 2012 (excluding the information furnished under Item 7.01 and Exhibit 99.1);

Current Report on Form 8-K dated September 7, 2012;

The Statements of Certain Revenues and Certain Expenses for the period from January 1, 2011 through June 30, 2011 (unaudited) and the years ended December 31, 2010, 2009 and 2008 for the University Village Towers, included on pages F-9 to F-12 in our Registration Statement on Form S-3 (File No. 333-177422) filed with the SEC on October 21, 2011; and

The description of our common stock contained in our Registration Statement on Form 8-A filed on January 25, 2005.

We also incorporate by reference into this prospectus additional documents that we may file with the SEC under Section 13(a), 13(c), 14 or 15(d) of the Exchange Act, from the date of this prospectus until all of the securities offered by this prospectus have been sold or we otherwise terminate the offering of these securities, including all filings made after the date of the initial filing of the registration statement of which this prospectus is a part and prior to the effectiveness of the registration statement; provided, however, that information furnished under Item 2.02 or Item 7.01 of Form 8-K or other information furnished to the SEC is not deemed filed and not incorporated by reference in this prospectus and any accompanying prospectus. Information that we subsequently file with the SEC will automatically update and may supersede information in this prospectus, any accompanying prospectus and information previously filed with the SEC.

You may request a copy of these filings (other than exhibits, unless the exhibits are specifically incorporated by reference into these documents) at no cost by writing or calling Investor Relations at the following address and telephone number:

Education Realty Trust, Inc.  
999 South Shady Grove Road, Suite 600  
Memphis, Tennessee 38120  
(901) 259-2500



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**Amended and Restated  
Dividend Reinvestment and Direct Stock Purchase  
Plan**

**PROSPECTUS SUPPLEMENT**

**September 7, 2012**

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