

ACADIA REALTY TRUST  
Form 424B5  
April 02, 2013

**Prospectus Supplement**

(To prospectus dated April 6, 2012)

**\$150,000,000**

**Acadia Realty Trust**

***Common Shares of Beneficial Interest***

On April 2, 2013, we entered into an ATM Equity Offering Sales Agreement with Merrill Lynch, Pierce, Fenner & Smith Incorporated, Barclays Capital Inc., Deutsche Bank Securities Inc., Goldman, Sachs & Co. and Wells Fargo Securities, LLC or the Agents, relating to the offering of up to \$150,000,000 of common shares of beneficial interest, par value \$0.001 per share, offered by this prospectus supplement and the accompanying prospectus. In accordance with the terms of the sales agreement, we may offer and sell the common shares offered hereby from time to time through the Agents. Sales of the shares, if any, will be made by means of ordinary brokers' transactions on the New York Stock Exchange, or the NYSE, or otherwise at market prices prevailing at the time of sale, at prices related to prevailing market prices or negotiated transactions, or as otherwise agreed with the applicable Agent. Upon entering into the ATM Equity Offering Sales Agreement, we simultaneously terminated the ATM Equity Offering Sales Agreement we entered into with the same parties in connection with a prior "at-the-market" offering program established in August 2012.

Our common shares are listed on the NYSE under the symbol "AKR." The last reported sale price of our common shares on the NYSE on April 1, 2013 was \$27.93 per share.

Each Agent will receive from us a commission that will not exceed, but may be lower than, 2.0% of the gross sales price of all shares sold through it under the sales agreement. Subject to the terms and conditions of the sales agreement, the Agents will use their commercially reasonable efforts to sell on our behalf any common shares to be offered by us under the sales agreement. The offering of common shares pursuant to the sales agreement will terminate upon the earlier of (1) the sale of all the common shares subject to the sales agreement and (2) the termination of the sales agreement, pursuant to its terms, by either the Agents or us.

Under the terms of the sales agreement, we also may sell shares to each of the Agents, as principal for its own account, at a price per share to be agreed upon at the time of sale. If we sell shares to any Agent, acting as principal, we will enter into a separate agreement with the Agent setting forth the terms of such transaction, and we will describe the agreement in a separate prospectus supplement or pricing supplement.

To preserve our status as a real estate investment trust, or REIT, for federal income tax purposes, among other purposes, our declaration of trust imposes certain restrictions on the ownership of our common shares. See “Restrictions on Ownership Transfers and Takeover Defense Provisions” in the accompanying prospectus.

**Investing in our common shares involves risks. Please refer to “Risk Factors” beginning on page S-5 of this prospectus supplement and the Risk Factors section of our most recent Annual Report on Form 10-K and the information in our other reports filed with the Securities and Exchange Commission that are incorporated by reference herein.**

**Neither the Securities and Exchange Commission nor any state or other securities commission has approved or disapproved of the common shares or determined that this prospectus supplement or the accompanying prospectus is accurate or complete. Any representation to the contrary is a criminal offense.**

**BofA Merrill Lynch**

**Barclays**

**Deutsche Bank Securities**

**Goldman, Sachs & Co.**

**Wells Fargo Securities**

The date of this prospectus supplement is April 2, 2013.

**TABLE OF CONTENTS**

	Page
Prospectus Supplement	
Cautionary Statements Concerning Forward-Looking Information	S-1
Prospectus Supplement Summary	S-3
The Offering	S-4
Risk Factors	S-5
Supplemental Material United States Federal Income Tax Considerations	S-5
Use of Proceeds	S-5
Plan of Distribution	S-6
Legal Matters	S-8
Independent Registered Public Accounting Firm	S-8
Where You Can Find More Information	S-9
 Prospectus	
Prospectus Summary	1
Risk Factors	2
Cautionary Statements Concerning Forward-Looking Information	2
Ratio of Earnings to Fixed Charges	3
Use of Proceeds	3
Description of our Common Shares	4
Description of our Preferred Shares	5
Description of Depositary Shares	7
Description of Warrants	9
Description of Subscription Rights	10
Description of Share Purchase Units or Contracts	11
Description of Units	12
Description of our Debt Securities	12
Global Securities	16
Restrictions on Ownership Transfers and Takeover Defense Provisions	16
Certain Provisions of Maryland Law and Our Declaration of Trust and Bylaws	19
Material United States Federal Income Tax Considerations	20
Plan of Distribution	38
Legal Matters	41
Independent Registered Public Accounting Firm	42
Where You Can Find More Information	42

In making your investment decision, you should rely only on the information contained or incorporated by reference in this prospectus supplement and the accompanying prospectus. We have not, nor has any Agent, authorized anyone to provide you with different or additional information.

Edgar Filing: ACADIA REALTY TRUST - Form 424B5

We and the Agents are offering to sell and seeking offers to buy the common shares only in places where such offers and sales are permitted.

You should not assume that the information contained or incorporated by reference in this prospectus supplement or the accompanying prospectus is accurate as of any date other than its respective date or such other dates as may be specified in these documents. Our business, financial condition, liquidity, results of operations and prospects may have changed since these dates.

## CAUTIONARY STATEMENTS CONCERNING FORWARD-LOOKING INFORMATION

This prospectus supplement, the accompanying prospectus and the documents incorporated by reference herein and therein include “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 Securities Exchange Act of 1934, as amended, or the Exchange Act, and as such may involve known and unknown risks, uncertainties and other factors that may cause our actual results, performance or achievements to be materially different from future results, performance or achievements expressed or implied by these forward-looking statements. Forward-looking statements, which are based on certain assumptions and describe our future plans, strategies and expectations, are generally identifiable by use of the words “may,” “will,” “should,” “expect,” “anticipate,” “estimate,” “believe,” “intend,” “project,” or the negative of these words or other words or terms. Factors which could have a material adverse effect on our operations and future prospects include, but are not limited to:

- general economic, business and political conditions, including the recent global financial crisis;
  - general market factors, including an increase in market interest rates;
    - the ability to maintain rental rates;
    - the financial health of our major tenants;
  - the availability and creditworthiness of prospective tenants;
    - demand for rental space;
    - consumer migration towards internet sales;
- the impact of tenant bankruptcies and the impact of any leases rejected during a tenant’s bankruptcy proceedings;
- access to capital markets and the cost of capital and the application of any proceeds from such activities;
  - the availability of financing;
- our ability to meet our debt service requirements and the continuing viability of our counterparties in interest rate swap transactions;

- adverse changes in our real estate markets;
- competition with other companies;
- risks of real estate development and acquisition, and the risks of holding interests in real property;
- our ability to carry out our growth strategy without compromising our overall performance;
- the performance of our opportunity funds and the ability of our fund partners to contribute capital as needed;
- the performance of our joint venture investments and the financial health of our joint venture partners;
  - the loss of a key executive officer;
  - the risk that our partnership structure adversely affects our ability to manage assets;
  - our Board of Trustees deciding to change our investment policy without shareholder approval;
  - the concentration of ownership of our common shares by certain investors;
- certain provisions of Maryland law that may limit the ability of a third party to acquire control of us;
  - environmental/safety requirements and possible liability;
- changes in laws and regulations (including tax laws and regulations) and agency or court interpretations of such laws and regulations and the related costs of compliance;
- the limited recourse shareholders have against our trustees and officers;
- governmental actions and initiatives;

- requirements that we distribute a certain percentage of our taxable income;
- our ability to maintain our status as a REIT;

local or national political and economic impacts of terrorist attacks, such as those that occurred on September 11, 2001, and civil unrest;

- climate change and risk from natural perils, including severe storms, flooding, and other natural disasters;
- uninsured losses or losses in excess of insured limits;
- disruptions to our information technology systems and services; and

the other risk factors set forth in our most recent Annual Report on Form 10-K and the other documents incorporated into this prospectus supplement and the accompanying prospectus by reference.

These risks and uncertainties should be considered in evaluating any forward-looking statements contained or incorporated by reference in this prospectus supplement and the accompanying prospectus. We caution you that any forward-looking statement reflects only our belief at the time the statement is made. Although we believe that the expectations reflected in the forward-looking statements are reasonable, we cannot guarantee our future results, levels of activity, performance or achievements. Except as required by law, we undertake no obligation to update any of the forward-looking statements to reflect subsequent events or developments.

## **PROSPECTUS SUPPLEMENT SUMMARY**

*The following summary is qualified in its entirety by the more detailed information included elsewhere or incorporated by reference into this prospectus supplement and the accompanying prospectus. Because this is a summary, it may not contain all of the information that is important to you. You should read the entire prospectus supplement and the accompanying prospectus, including the section entitled “Risk Factors” and the documents incorporated by reference herein, including our financial statements and the notes to those financial statements contained in such documents, before making an investment decision.*

### **About this Prospectus Supplement**

This document is in two parts. The first part is this prospectus supplement, which adds to, updates and supersedes, to the extent there are any inconsistencies, the information contained in the accompanying prospectus and the documents incorporated by reference into this prospectus supplement and the accompanying prospectus. The second part is the accompanying prospectus, which gives more general information, some of which may not apply to this offering of common shares. To the extent the information contained in this prospectus supplement differs or varies from the information contained in the accompanying prospectus or any document incorporated by reference, the information in this prospectus supplement shall control. The Securities and Exchange Commission, or the “SEC”, allows us to “incorporate by reference” certain information we file with the SEC, which means that we can disclose important information to you by referring to the other information we have filed with the SEC. The information that we incorporate by reference is considered a part of this prospectus supplement and the accompanying prospectus and information that we file later with the SEC prior to the termination of the offering of the shares will automatically update and supersede the information contained in this prospectus supplement and the accompanying prospectus and in previously incorporated filings. It is important for you to read and consider all information contained and incorporated by reference in this prospectus supplement and the accompanying prospectus in making your investment decision. See “Where You Can Find More Information” in this prospectus supplement.

In this prospectus supplement, unless otherwise stated or the context otherwise requires, the terms “we,” “us,” “our” and other similar terms refer to the consolidated business of Acadia Realty Trust and all of its subsidiaries. The term “you” refers to a prospective investor.



## **Our Company**

We are a fully integrated equity real estate investment trust focused primarily on the ownership, acquisition, redevelopment and management of high-quality retail properties and urban/infill mixed-use properties with a strong retail component located primarily in high-barrier-to-entry, supply constrained, densely-populated metropolitan areas in the United States along the East Coast and in Chicago. We also have private equity investments in other retail real estate related opportunities in which we have a minority equity interest. Our primary business objective is to invest in the above assets to provide cash for distributions to shareholders while also creating the potential for capital appreciation to enhance investor returns.

All of our investments are held by, and all of our operations are conducted through, Acadia Realty Limited Partnership, or the Operating Partnership, and entities in which the Operating Partnership owns an interest. As of December 31, 2012, we controlled approximately 99% of the Operating Partnership as the sole general partner. As the general partner, we are entitled to share, in proportion to our percentage interest, in the cash distributions and profits and losses of the Operating Partnership. The limited partners primarily represent entities or individuals that contributed their interests in certain properties or entities to the Operating Partnership in exchange for common or preferred units of limited partnership interest, or OP Units, and employees who have been awarded restricted OP Units as long-term incentive compensation. Limited partners holding OP Units are generally entitled to exchange their units on a one-for-one basis for our common shares. This structure is referred to as an umbrella partnership real estate investment trust, or UPREIT.

Our executive offices are located at 1311 Mamaroneck Avenue, Suite 260, White Plains, New York 10605 and our telephone number is (914) 288-8100.

## The Offering

*The following summary of the offering contains basic information about the offering and the common shares and is not intended to be complete. It does not contain all the information that may be important to you. For a more complete understanding of the common shares, please refer to the section of the accompanying prospectus entitled “Description of our Common Shares.”*

Issuer	Acadia Realty Trust, a Maryland real estate investment trust.
Common Shares Offered	Up to \$150,000,000 of common shares of beneficial interest, par value \$0.001 per share.
Use of Proceeds	We intend to use the net proceeds of this offering for general corporate purposes, which may include, among other things, repayment of our debt, future acquisitions, directly and through our opportunity funds, and redevelopments of and capital improvements to our properties. An affiliate of Merrill Lynch, Pierce, Fenner & Smith Incorporated, an Agent in this offering, participates in our secured credit facilities. As a result, such affiliate may receive a portion of the net proceeds of this offering through the repayment of those borrowings if we decide to pay down such indebtedness. See “Use of Proceeds.”
Risk Factors	Before deciding to invest in our common shares, you should read carefully the risks set forth under the caption “Risk Factors” beginning on page S-5 of this prospectus supplement and page 2 of the accompanying prospectus, and the risks set forth under the caption “Item 1A. Risk Factors” included in our most recent Annual Report on Form 10-K and the other information that we file with the SEC from time to time and incorporate by reference herein for certain considerations relevant to an investment in our common shares.
Restrictions on Ownership	In order to assist us in maintaining our qualification as a real estate investment trust for federal income tax purposes, among other purposes, actual or constructive ownership, by any person of more than 9.8% in value or number (whichever is more restrictive) of common shares is restricted by our declaration of trust. See “Restrictions on Ownership Transfers and Takeover Defense Provisions” in the accompanying prospectus.

NYSE  
Symbol

“AKR”

Transfer  
Agent and  
Registrar

American Stock Transfer & Trust Company

S-4

## **RISK FACTORS**

You should carefully consider the risks described in the documents incorporated by reference in this prospectus supplement and the accompanying prospectus, including (i) our most recent Annual Report on Form 10-K and (ii) other documents we file with the SEC after the date of this prospectus supplement and that are deemed to be incorporated by reference in this prospectus supplement and the accompanying prospectus, before making an investment decision. These risks are not the only ones facing our company. Additional risks not presently known to us or that we currently deem immaterial may also impair our business operations and future prospects. Our business, financial condition, liquidity, results of operations and prospects could be materially adversely affected by the materialization of any of these risks. The trading price of our common shares could decline due to the materialization of any of these risks, and you may lose all or part of your investment.

## **SUPPLEMENTAL MATERIAL UNITED STATES FEDERAL INCOME TAX CONSIDERATIONS**

*The following is a summary of certain additional material United States federal income tax considerations with respect to the ownership of our common shares. This summary supplements and should be read together with the discussion under “Material United States Federal Income Tax Considerations” in the accompanying prospectus.*

### **Current Tax Rates**

Because we qualify as a REIT, distributions made to our U.S. shareholders out of our earnings and profits will generally constitute dividends taxable as ordinary income except to the extent that such distributions are designated as capital gains. Under current law, the highest marginal individual income tax rate on ordinary income is 39.6% while the highest individual income tax rate on long-term capital gains is generally 20%. In addition, such distributions may be subject to the 3.8% “Medicare Tax.” Please see “Material United States Federal Income Tax Considerations—Taxation of U.S. Shareholders—Medicare Tax” on page 33 of the accompanying prospectus.

**YOU ARE ADVISED TO CONSULT WITH YOUR OWN TAX ADVISOR REGARDING THE IMPACT OF THESE CHANGES ON THE ACQUISITION, OWNERSHIP, SALE OR OTHER DISPOSITION OF OUR COMMON SHARES IN LIGHT OF YOUR SPECIFIC TAX AND INVESTMENT SITUATION.**

## USE OF PROCEEDS

We intend to use the net proceeds of this offering for general corporate purposes, which may include, among other things, repayment of our debt, future acquisitions, directly and through our opportunity funds, and redevelopments of and capital improvements to our properties. Such decisions will depend upon numerous factors including price, discount, and other strategic considerations. Pending such usage, we expect to invest proceeds in short-term instruments.

An affiliate of Merrill Lynch, Pierce, Fenner & Smith Incorporated, an Agent in this offering, participates in our secured credit facilities. As a result, such affiliate may receive a portion of the net proceeds of this offering through the repayment of those borrowings if we decide to pay down such indebtedness. As of December 31, 2012, we had approximately \$113.0 million of outstanding mortgage indebtedness funded by an affiliate of Merrill Lynch, Pierce, Fenner & Smith Incorporated. In addition, as of December 31, 2012, we had interest rate swap agreements with an affiliate of Merrill Lynch, Pierce, Fenner & Smith Incorporated with an aggregate notional principal amount of approximately \$46.7 million. Subsequent to December 31, 2012, we paid-down approximately \$0.4 million of the mortgage indebtedness and the interest rate swap agreements amortized by approximately \$0.1 million. In addition, in January 2013 we finalized a three year \$150 million unsecured credit facility, or the "Facility", with three banks, including affiliates of Merrill Lynch, Pierce, Fenner & Smith Incorporated and Wells Fargo Securities, LLC. As of the date of this prospectus supplement, we have drawn \$15.0 million from the Facility and repaid the same amount so that currently there is no balance due on the Facility as of such date.

## **PLAN OF DISTRIBUTION**

We have entered into an ATM Equity Offering sales agreement, or the sales agreement, with Merrill Lynch, Pierce, Fenner & Smith Incorporated, Barclays Capital Inc., Deutsche Bank Securities Inc., Goldman, Sachs & Co. and Wells Fargo Securities, LLC, or the Agents, under which we may issue and sell over a period of time and from time to time up to \$150,000,000 of our common shares through the Agents. Sales of the shares to which this prospectus supplement and the accompanying prospectus relate, if any, will be made by means of ordinary brokers' transactions on the NYSE, or otherwise at market prices prevailing at the time of sale, at prices related to prevailing prices or negotiated transactions, or as otherwise agreed with the applicable Agent.

The Agents will offer our common shares subject to the terms and conditions of the sales agreement on a daily basis or as otherwise agreed upon by us and the Agents. We will designate the maximum number of common shares to be sold through the Agents on a daily basis or otherwise determine such maximum number together with the Agents. Subject to the terms and conditions of the sales agreement, the Agents will use their commercially reasonable efforts to sell on our behalf all of the common shares so designated or determined. We may instruct the Agents not to sell our common shares if the sales cannot be effected at or above the price designated by us in any such instruction. We or the Agents may suspend the offering of our common shares being made through the Agents under the sales agreement upon proper notice to the other party.

In connection with the sale of the common shares on our behalf, an Agent may be deemed to be an "underwriter" within the meaning of the Securities Act, and the compensation paid to an Agent may be deemed to be an underwriting commission or discount. We have agreed in the sales agreement to provide indemnification and contribution to the Agents against certain civil liabilities, including liabilities under the Securities Act.

If we or any Agent has reason to believe the common shares are no longer an "actively-traded security" as defined under Rule 101(c)(1) of Regulation M under the Exchange Act, that party will promptly so notify the other party, and sales of our common shares under the sales agreement will be suspended until that or other exemptive provisions have been satisfied in the judgment of us and the Agents.

The offering of common shares pursuant to the sales agreement will terminate upon the earlier of (1) the sale of \$150,000,000 of our common shares and (2) the termination of the sales agreement, pursuant to its terms, by either the Agents or us.

## **Commissions and Discounts**

Each Agent will receive from us a commission that will not exceed, but may be lower than, 2.0% of the gross sales price of all shares sold through it under the sales agreement. The remaining sales proceeds, after deducting any expenses payable by us and any transaction fees imposed by any governmental, regulatory, or self-regulatory organization in connection with the sales, will equal our net proceeds for the sale of such shares.

We estimate that the total expenses of the offering payable by us, excluding discounts and commissions payable to the Agents under the sales agreement, will be approximately \$250,000.

To the extent that we have not sold common shares with aggregate gross proceeds in excess of \$15,000,000 by the first anniversary of the sales agreement, we have agreed to reimburse the Agents for their reasonable out of pocket expenses, including the reasonable fees and disbursements of a single counsel retained by such Agents, up to a maximum amount of \$250,000.

#### **Settlement Procedures**

Each Agent will provide written confirmation to us following the close of trading on the NYSE on each day during which our common shares were sold by it for us under the sales agreement. Each confirmation will include the number of shares sold on that day, the gross sales price per share, the compensation payable by us to the Agent and the proceeds to us net of such compensation.

Settlement for sales of common shares will occur, unless the parties agree otherwise, on the third business day following the date on which such sales were made in return for payment of the proceeds to us net of compensation paid by us to the applicable Agent. There is no arrangement for funds to be received in an escrow, trust or similar arrangement.

Under the terms of the sales agreement, we also may sell shares to each of the Agents, as principal for its own account, at a price per share to be agreed upon at the time of sale. If we sell shares to any Agent, as principal, we will enter into a separate agreement with the Agent, as applicable, setting forth the terms of such transaction, and we will describe the agreement in a separate prospectus supplement or pricing supplement.

## **Reporting**

We will deliver to the NYSE copies of this prospectus supplement and the accompanying prospectus pursuant to the rules of the NYSE. Unless otherwise required, we will report at least quarterly the number of common shares sold through the Agents under the sales agreement, the net proceeds to us and the compensation paid by us to the Agents in connection with the sales of common shares.

## **Other Relationships**

As described in “Use of Proceeds,” we may use a portion of the net proceeds of this offering to pay down our indebtedness. An affiliate of Merrill Lynch, Pierce, Fenner & Smith Incorporated, an Agent in this offering, participates in our secured credit facilities. As a result, such affiliate may receive a portion of the net proceeds of this offering through the repayment of those borrowings if we decide to pay down such indebtedness. As of December 31, 2012, we had approximately \$113.0 million of outstanding mortgage indebtedness funded by an affiliate of Merrill Lynch, Pierce, Fenner & Smith Incorporated. In addition, as of December 31, 2012, we had interest rate swap agreements with an affiliate of Merrill Lynch, Pierce, Fenner & Smith Incorporated with an aggregate notional principal amount of approximately \$46.7 million. Subsequent to December 31, 2012, we paid-down approximately \$0.4 million of the mortgage indebtedness and the interest rate swap agreements amortized by approximately \$0.1 million. In addition, in January 2013 we finalized the Facility with three banks, including affiliates of Merrill Lynch, Pierce, Fenner & Smith Incorporated and Wells Fargo Securities, LLC. As of the date of this prospectus supplement, we have drawn \$15.0 million from the Facility and repaid the same amount so that currently there is no balance due on the Facility as of such date.

In the ordinary course of business, the Agents and their affiliates have provided in the past, and may provide from time to time in the future, certain commercial banking, financial advisory, investment banking and other services for us for which they have received or will receive customary fees and commissions.

In addition, in the ordinary course of their business activities, the Agents and their affiliates may make or hold a broad array of investments and actively trade debt and equity securities (or related derivative securities) and financial instruments (including bank loans) for their own account and for the accounts of their customers. The Agents and their affiliates may also make investment recommendations and/or publish or express independent research views in respect



of such securities or financial instruments and may hold, or recommend to clients that they acquire, long and/or short positions to such securities and instruments.

S-7

## **LEGAL MATTERS**

Legal matters, excluding tax matters, relating to this prospectus supplement, will be passed upon for us by Goodwin Procter LLP, New York, New York. The legal matters described under “Material United States Federal Income Tax Considerations” beginning on page 20 of the accompanying prospectus, as supplemented by “Supplemental Material United States Federal Income Tax Considerations” on page S-5 of this prospectus supplement, will be passed upon for us by Seyfarth Shaw LLP, New York, New York. Sidley Austin LLP, New York, New York, will represent the Agents in connection with this offering. Certain matters of Maryland law, including the validity of the common shares offered, will be passed upon for us by Venable LLP, Baltimore, Maryland. With respect to matters of Maryland law, Sidley Austin LLP may rely on the opinion of Venable LLP.

## **INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

The consolidated financial statements and schedule as of December 31, 2012 and 2011 and for each of the years in the three-year period ended December 31, 2012 and the effectiveness of internal control over financial reporting as of December 31, 2012 incorporated by reference in this prospectus supplement and the accompanying prospectus have been so incorporated in reliance on the reports of BDO USA, LLP, an independent registered public accounting firm, incorporated herein by reference, given on the authority of said firm as experts in auditing and accounting.

## WHERE YOU CAN FIND MORE INFORMATION

We have filed with the SEC, a registration statement on Form S-3 under the Securities Act to register the common shares offered by this prospectus supplement and the accompanying prospectus. This prospectus supplement and the accompanying prospectus are part of the registration statement. This prospectus supplement and the accompanying prospectus do not contain all the information contained in the registration statement because we have omitted certain parts of the registration statement in accordance with the rules and regulations of the SEC. We also file annual, quarterly and current reports, proxy statements and other information with the SEC. Our SEC filing number is 1-12002. Our filings with the SEC are available to the public on the Internet at the SEC's website at <http://www.sec.gov>. You may also read and copy any document that we file with the SEC at its Public Reference Room, 100 F Street, N.W., Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information on the Public Reference Room and its copy charges.

The information incorporated by reference herein is an important part of this prospectus supplement and the accompanying prospectus. Any statement contained in a document which is incorporated by reference in this prospectus supplement and the accompanying prospectus is automatically updated and superseded if information contained in a subsequent filing or in this prospectus supplement, or information that we later file with the SEC prior to the termination of this offering, modifies or replaces this information. The following documents filed with the SEC are incorporated by reference into this prospectus supplement and the accompanying prospectus, except for any document or portion thereof "furnished" to the SEC:

- our Annual Report on Form 10-K for the year ended December 31, 2012;
- our Current Reports on Form 8-K filed on February 5, 2013 and February 6, 2013;
- our Definitive Proxy Statement dated April 5, 2012; and

all documents that we file with the SEC pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act, after the date of this prospectus supplement and prior to the termination of this offering.

To receive a free copy of any of the documents incorporated by reference in this prospectus supplement and the accompanying prospectus (other than exhibits, unless they are specifically incorporated by reference in the documents), write us at the following address or call us at the telephone number listed below:

Acadia Realty Trust

**1311 Mamaroneck Avenue**

**Suite 260**

**White Plains, New York 10605**

**Attention: Robert Masters**

**(914) 288-8100**

We maintain an Internet website at <http://www.acadiarealty.com>. We are not incorporating by reference in this prospectus supplement or the accompanying prospectus any material from our website. Information on our website is not and shall not be deemed to be a part of this prospectus supplement or the accompanying prospectus. The reference to our website is an inactive textual reference to the uniform resource locator (URL) and is for your reference only.

S-9

**PROSPECTUS**

**\$500,000,000**

**Acadia Realty Trust**

**Common Shares of Beneficial Interest**

**Preferred Shares of Beneficial Interest**

**Depositary Shares**

**Warrants**

**Subscription Rights**

**Share Purchase Units or Contracts**

**Units**

**Debt Securities**

We may offer to the public and sell from time to time one or more series or classes of (i) common shares of beneficial interest, par value \$0.001 per share, or “common shares,” (ii) preferred shares of beneficial interest, or “preferred shares,” (iii) depositary shares, (iv) warrants, (v) subscription rights, (vi) share purchase units or contracts (vii) units, and (viii) debt securities. The aggregate public offering price of the common shares, preferred shares, depositary shares, warrants, subscription rights, share purchase units or contracts, units, and debt securities covered by this prospectus,

which we refer to collectively as the securities, will not exceed \$500,000,000 (or its equivalent based on the exchange rate at the time of sale). The securities may be offered, separately or together, in separate classes or series, in amounts, at prices and on terms to be determined at the time of the offering and set forth in one or more supplements to this prospectus.

This prospectus describes some of the general terms that may apply to these securities and the general manner in which they may be offered. The specific terms of the securities will be set forth in the applicable prospectus supplement or free writing prospectus. Such specific terms may include limitations on direct or beneficial ownership and restrictions on transfer of the securities, in each case as may be consistent with our declaration of trust or otherwise appropriate to, among other purposes, preserve our status as a Real Estate Investment Trust, a "REIT", for U.S. federal income tax purposes. See "Restrictions on Ownership Transfers and Takeover Defense Provisions" beginning on page 16 of this prospectus.

The applicable prospectus supplement will also contain information, where appropriate, about the risk factors and U.S. federal income tax considerations relating to, and any listing on a securities exchange of, the securities covered by that prospectus supplement or free writing prospectus. We may offer the securities directly, through agents designated by us from time to time, or to or through underwriters or dealers. If any agents or underwriters are involved in the sale of any of the securities, their names, and any applicable purchase price, fee, commission or discount arrangement between or among them will be set forth or will be calculable from the information set forth in the applicable prospectus supplement. See "Plan of Distribution." No securities may be sold without delivery of a prospectus supplement describing the method and terms of the offering of those securities.

Our common shares are traded on the New York Stock Exchange under the symbols "AKR". On April 4, 2012, the last reported sale price of our common shares, as reported on the New York Stock Exchange, was \$22.39 per share.

**Investing in our securities involves risks. Please refer to "Risk Factors" beginning on page 2 of this prospectus as well as the risk factors contained in our filings with the Securities and Exchange Commission, which are incorporated by reference in this prospectus, for a discussion of risk factors that you should consider before investing in our securities.**

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

**The date of this prospectus is April 6, 2012.**

Table of Contents

	Page
<b>PROSPECTUS SUMMARY</b>	1
<b>RISK FACTORS</b>	2
<b>CAUTIONARY STATEMENTS CONCERNING FORWARD-LOOKING INFORMATION</b>	2
<b>RATIO OF EARNINGS TO FIXED CHARGES</b>	3
<b>USE OF PROCEEDS</b>	3
<b>DESCRIPTION OF OUR COMMON SHARES</b>	4
<b>DESCRIPTION OF OUR PREFERRED SHARES</b>	5
<b>DESCRIPTION OF DEPOSITARY SHARES</b>	7
<b>DESCRIPTION OF WARRANTS</b>	9
<b>DESCRIPTION OF SUBSCRIPTION RIGHTS</b>	10
<b>DESCRIPTION OF SHARE PURCHASE UNITS OR CONTRACTS</b>	11
<b>DESCRIPTION OF UNITS</b>	12
<b>DESCRIPTION OF OUR DEBT SECURITIES</b>	12
<b>GLOBAL SECURITIES</b>	16
<b>RESTRICTIONS ON OWNERSHIP TRANSFERS AND TAKEOVER DEFENSE PROVISIONS</b>	16
<b>CERTAIN PROVISIONS OF MARYLAND LAW AND OUR DECLARATION OF TRUST AND BYLAWS</b>	19
<b>MATERIAL UNITED STATES FEDERAL INCOME TAX CONSIDERATIONS</b>	20
<b>PLAN OF DISTRIBUTION</b>	38
<b>LEGAL MATTERS</b>	41
<b>INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM</b>	42
<b>WHERE YOU CAN FIND MORE INFORMATION</b>	42





## PROSPECTUS SUMMARY

### **About This Prospectus**

This prospectus is part of a registration statement that we filed with the Securities and Exchange Commission, which we refer to as the SEC, using a “shelf” registration process or continuous offering process. Under this shelf registration process, we may, from time to time, sell the securities described in this prospectus in one or more offerings. This prospectus provides you with a general description of the securities that may be offered by us. We may also file, from time to time, a prospectus supplement or an amendment to the registration statement of which this prospectus forms a part containing additional information about us and the terms of the offering of the securities. That prospectus supplement or amendment may include additional risk factors or other special considerations applicable to the securities. Any prospectus supplement or amendment may also add, update or supersede information in this prospectus. If there is any supplement or amendment, you should rely on the information in that prospectus supplement or amendment.

This prospectus and any accompanying prospectus supplement do not contain all of the information included in the registration statement. For further information, we refer you to the registration statement and any amendments to such registration statement, including its exhibits. Statements contained in this prospectus and any accompanying prospectus supplement about the provisions or contents of any agreement or other document are not necessarily complete. If the SEC’s rules and regulations require that an agreement or document be filed as an exhibit to the registration statement, please see that agreement or document for a complete description of these matters.

You should read both this prospectus and any prospectus supplement together with additional information described below under the heading “Where You Can Find More Information” on page 42 of this prospectus. Information incorporated by reference with the SEC after the date of this prospectus, or information included in any prospectus supplement or an amendment to the registration statement of which this prospectus forms a part, may add, update or supersede information in this prospectus or any prospectus supplement. You should not assume that the information in this prospectus or any prospectus supplement is accurate as of any date other than the date on the front of each document.

All references to the “Company,” “we” and “us” in this prospectus means Acadia Realty Trust (the “Trust”) and all entities owned or controlled by us except where it is clear that the term means only the Trust. The term “you” refers to a prospective investor.

### **Our Company**

We are a fully integrated, self-managed and self-administered equity REIT focused primarily on the ownership, acquisition, redevelopment and management of retail properties, including neighborhood and community shopping centers and mixed-use properties with retail components. We own or have an ownership interest in properties that are located primarily in high-barrier-to-entry, densely-populated metropolitan areas in the United States along the East Coast and in Chicago. We also have private equity investments in other retail real estate related opportunity funds in which we have a minority equity interest. Our primary business objective is to acquire and manage commercial retail properties that will provide cash for distributions to shareholders while also creating the potential for capital appreciation to enhance investor returns.

All of our investments are held by, and all of our operations are conducted through, Acadia Realty Limited Partnership (the "Operating Partnership") and entities in which the Operating Partnership owns a controlling interest. As of December 31, 2011, the Trust controlled 99% of the Operating Partnership as the sole general partner. As the general partner, the Trust is entitled to share, in proportion to its percentage interest, in the cash distributions and profits and losses of the Operating Partnership. The limited partners generally represent entities or individuals which contributed their interests in certain assets or entities to the Operating Partnership in exchange for common or preferred units of limited partnership interest ("Common OP Units" or "Preferred OP Units", respectively, and collectively, "OP Units") and employees who have been awarded restricted Common OP Units ("LTIP Units") as long-term incentive compensation. Limited partners holding Common OP Units are generally entitled to exchange their units on a one-for-one basis for our common shares of beneficial interest ("Common Shares"). This structure is referred to as an umbrella partnership REIT, or "UPREIT".

Our executive offices are located at 1311 Mamaroneck Avenue, Suite 260, White Plains, New York 10605 and our telephone number is (914) 288-8100.

## RISK FACTORS

Investing in our securities involves risks and uncertainties that could affect us and our business as well as the real estate industry generally. Before you invest in our securities, in addition to the other information in this prospectus and any applicable prospectus supplement, you should carefully consider the risk factors under the heading “Risk Factors” contained in Part I, Item 1A in our most recent Annual Report on Form 10-K, which is incorporated by reference into this prospectus and any accompanying prospectus supplement, as the same may be updated from time to time by our future filings under the Exchange Act. In addition, new risks may emerge at any time and we cannot predict such risks or estimate the extent to which they may affect our financial performance. These risks could result in a decrease in the value of our securities and your investment therein.

## CAUTIONARY STATEMENTS CONCERNING FORWARD-LOOKING INFORMATION

This prospectus and the information incorporated by reference in this prospectus include “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 Securities Exchange Act of 1934, as amended, or the “Exchange Act,” and as such may involve known and unknown risks, uncertainties and other factors that may cause our actual results, performance or achievements to be materially different from future results, performance or achievements expressed or implied by these forward-looking statements. Forward-looking statements, which are based on certain assumptions and describe our future plans, strategies and expectations, are generally identifiable by use of the words “may,” “will,” “should,” “expect,” “anticipate,” “estimate,” “believe,” “intend,” “project,” or the negative of these words or other similar words or terms. Factors which could have a material adverse effect on our operations and future prospects include, but are not limited to:

- general economic and business conditions, including the recent global financial crisis;

- the ability to maintain rental rates;

- the financial health of our major tenants;

- the availability and creditworthiness of prospective tenants;

- demand for rental space;

- the impact of tenant bankruptcies, including the United Retail Group and the Great Atlantic & Pacific Tea Company, Inc., and the impact of any rejected leases;

- access to capital markets and the cost of capital and the application of any proceeds from such activities;
- the availability of financing;
- our ability to meet our debt service requirements and the continuing viability of our counterparts in interest rate swap transactions;
- adverse changes in our real estate markets;
- competition with other companies;
- risks of real estate development and acquisition, and the risks of holding interests in real property;
- our ability to carry out our growth strategy without compromising our overall performance;
- the performance of our opportunity funds and the ability of our fund partners to contribute capital as needed;
- the performance of our joint venture investments and the financial health of our joint venture partners;
- the loss of a key executive officer;

our Board of Trustees deciding to change our investment policy without shareholder approval;

the concentration of ownership of our common shares by certain investors;

certain provisions of Maryland law that may limit the ability of a third part to acquire control of us;

environmental/safety requirements and possible liability;

changes in laws and regulations (including tax laws and regulations) and agency or court interpretations of such laws and regulations and the related costs of compliance;

governmental actions and initiatives;

our ability to maintain our status as a REIT; and

the other risk factors set forth in our Annual Report on Form 10-K for the year ended December 31, 2011 and the other documents incorporated into this prospectus or any prospectus supplement by reference.

These risks and uncertainties should be considered in evaluating any forward-looking statements contained or incorporated by reference in this prospectus. We caution you that any forward-looking statement reflects only our belief at the time the statement is made. Although we believe that the expectations reflected in the forward-looking statements are reasonable, we cannot guarantee our future results, levels of activity, performance or achievements. Except as required by law, we undertake no obligation to update any of the forward-looking statements to reflect events or developments after the date of this prospectus.

#### RATIO OF EARNINGS TO FIXED CHARGES

The following table sets forth our historical ratios of earnings to fixed charges for the periods indicated, we note: that we do not have any outstanding preferred shares and have not had any preferred shares outstanding during the periods indicated, so the following table also sets forth our historical ratios of earnings to combined fixed charges and preferred share dividends for the periods indicated:

Year Ended December 31, 2011				
2011	2010	2009	2008	2007

Ratio of Earnings to Fixed Charges 1.24x 1.96x 1.05x 1.64x 2.25x

The ratios of earnings to fixed charges were computed by dividing earnings by fixed charges. For these purposes, earnings have been calculated by adding minority interest attributable to continuing operations, income or loss from equity investees, fixed charges and distributed income of equity investees to income from continuing operations before income taxes, less capitalized interest and preferred distributions of consolidated subsidiaries. Fixed charges consist of interest costs, whether expensed or capitalized, amortization of deferred financing costs, amortization of discounts or premiums related to indebtedness and preferred distributions of consolidated subsidiaries.

#### USE OF PROCEEDS

Unless otherwise described in the applicable prospectus supplement, we intend to use the net proceeds from our sale of the securities for general corporate purposes, which may include, among other things, repayment of our debt, future acquisitions, directly and through our opportunity funds, and redevelopments of and capital improvements to our properties. Such decisions will depend upon numerous factors including price, discount, and other strategic considerations. Pending such usage, we expect to invest proceeds in short term instruments.

## DESCRIPTION OF OUR COMMON SHARES

*The following summary of the material terms and provisions of our common shares does not purport to be complete and is subject to the detailed provisions of our declaration of trust and our bylaws, each as supplemented, amended or restated, each of which is incorporated by reference into this prospectus. You should carefully read each of these documents in order to fully understand the terms and provisions of our common shares. For information on incorporation by reference, and how to obtain copies of these documents, see the section entitled “Where You Can Find More Information” on page 42 of this prospectus.*

### General

Under our declaration of trust, we may issue 100,000,000 shares of beneficial interest, which may consist of common shares, par value \$0.001 per share, or such other types or classes of securities of the company as the trustees may create and authorize from time to time. All common shares, when issued, are duly authorized, fully paid and nonassessable. This means that the full price for the shares has been paid at the time of issuance and consequently that any holder of such shares will not later be required to pay us any additional money for the same. As of December 31, 2011, 42,586,376 common shares were issued and outstanding, as were 497,574 Common OP Units of the Operating Partnership, which are convertible into the same number of our common shares (subject to anti-dilution adjustments).

A total of 188 Series A Preferred OP Units were outstanding as of December 31, 2011. These Series A Preferred OP Units are convertible into Common OP Units at a conversion price of \$7.50 per unit and are entitled to a preferred quarterly distribution of the greater of (a) \$22.50 per Series A Preferred OP Unit (9% annually) or (b) the quarterly distribution attributable to a Series A Preferred OP Unit if such unit were converted into a Common OP Unit.

Other than the common shares, the Common OP Units, the Series A Preferred OP Units and the Convertible Notes discussed under “Description of Our Debt Securities” on page 12 of this prospectus, as of the date of this prospectus, we have no other securities outstanding.

Our common shares have equal dividend, liquidation and other rights, and have no preference, exchange or appraisal rights. Holders of our common shares have no conversion, sinking fund or redemption rights, or preemptive rights to subscribe for any of our securities.

### Distributions



Holders of our common shares are entitled to receive distributions out of assets that we can legally use to pay distributions, when and if they are authorized and declared by us, and to share ratably in our assets that are legally available for distribution to our shareholders in the event we are liquidated, dissolved or our affairs are wound up.

#### Voting Rights

Holders of common shares have the power to vote on all matters presented to our shareholders, including the election of trustees, except as otherwise provided by Maryland law. Our declaration of trust prohibits us from merging where we are not the surviving entity, or selling all or substantially all of our assets, without the approval of not less than two-thirds of the outstanding shares that are entitled to vote on such matters. Holders of common shares are entitled to one vote per share.

There is no cumulative voting in the election of our trustees, which means that holders of more than 50% of the common shares voting for the election of trustees can elect all of the trustees if they choose to do so and the holders of the remaining shares cannot elect any trustees. See “Certain Provisions of Maryland Law and Our Declaration of Trust and Bylaws” beginning on page 19 of this prospectus.

#### Restrictions on Ownership and Transfer

To qualify as a REIT under the Internal Revenue Code of 1986, as amended, or the Code, we must satisfy certain ownership requirements that may limit the ownership and transferability of our common shares. Our declaration of trust contains provisions aimed at satisfying these requirements. See “Restrictions on Ownership Transfers and Takeover Defense Provisions” beginning on page 16 of this prospectus.

#### Transfer Agent and Registrar

The transfer agent and registrar for our common shares is American Stock Transfer & Trust Company, which has an address at 40 Wall Street, New York, NY 10005.

## DESCRIPTION OF OUR PREFERRED SHARES

*The following summary of the material terms and provisions of our preferred shares does not purport to be complete and is subject to the detailed provisions of our declaration of trust (including any applicable articles supplementary, amendment or annex to our declaration of trust designating the terms of a series of preferred shares) and our bylaws, each as supplemented, amended or restated, each of which is incorporated by reference into this prospectus. You should carefully read each of these documents in order to fully understand the terms and provisions of our preferred shares. For information on incorporation by reference, and how to obtain copies of these documents, see the section entitled "Where You Can Find More Information" on page 42 of this prospectus.*

### General

Subject to limitations prescribed by Maryland law and our declaration of trust, our board of trustees is authorized to issue one or more series of preferred shares from time to time and, with respect to any such series, to fix the designations, numbers, preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends, qualifications and terms or conditions of redemption of such series. As of the date of this prospectus, we do not have any series of preferred shares outstanding.

Reference is made to any supplement to this prospectus relating to the preferred shares offered thereby for specific items, including:

the title and stated value of the preferred shares;

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

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

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

the provisions for a sinking fund, if any, for the preferred shares;

the provisions for redemption, if applicable, of the preferred shares;

any listing of the preferred shares on any securities exchange;

the terms and conditions, if applicable, upon which the preferred shares will be convertible into common shares, including the conversion price (or manner of calculation thereof);

a discussion of material U.S. federal income tax considerations applicable to the preferred shares;

the relative ranking and preferences of the preferred shares as to dividend rights and rights upon our liquidation, dissolution or winding-up of our affairs;

any limitations on issuance of any series of preferred shares ranking senior to or on a parity with the preferred shares as to dividend rights and rights upon our liquidation, dissolution or winding-up of our affairs;

the voting rights of the preferred shares, if any;

any limitations on direct or beneficial ownership of our securities and restrictions on transfer of our securities, in each case as may be appropriate to preserve our status as a REIT under the Code; and

any other specific terms, preferences, rights, limitations or restrictions of the preferred shares.

## Rank

Unless otherwise specified in the applicable prospectus supplement, the preferred shares rank, with respect to dividend rights and rights upon our liquidation, dissolution or winding-up, and allocation of our earnings and losses: (i) senior to all classes or series of our common shares, and to all equity securities ranking junior to the preferred shares; (ii) on a parity with all equity securities issued by us the terms of which specifically provide that such equity securities rank on a parity with the preferred shares; and (iii) junior to all equity securities issued by us the terms of which specifically provide that such equity securities rank senior to the preferred shares. As used in this prospectus, the term “equity securities” does not include convertible debt securities.

## Distributions

Subject to any preferential rights of any outstanding securities or series of securities, the holders of preferred shares will be entitled to receive dividends, when and as authorized by our board of trustees and declared by us, out of legally available funds, and share pro rata the amount to be distributed to such class or series of preferred shares based on the number of preferred shares of the same class or series outstanding. Distributions will be made at such rates and on such dates as will be set forth in the applicable prospectus supplement.

## Voting Rights

Unless otherwise indicated in the applicable prospectus supplement, holders of our preferred shares will not have any voting rights.

## Liquidation Preference

Upon any voluntary or involuntary liquidation, dissolution or winding-up of our affairs, and before any distribution or payment will be made to the holders of any common shares or any other class or series of shares ranking junior to our preferred shares, the holders of our preferred shares will be entitled to receive, after payment or provision for payment of our debts and other liabilities, out of our assets legally available for distribution to shareholders, liquidating distributions in the amount of the liquidation preference per share, if any, set forth in the applicable prospectus supplement, plus an amount equal to all dividends accrued and unpaid thereon (which will not include any accumulation in respect of unpaid noncumulative dividends for prior dividend periods). After payment of the full amount of the liquidating distributions to which they are entitled, the holders of preferred shares will have no right or claim to any of our remaining assets. In the event that, upon any such voluntary or involuntary liquidation, dissolution or winding-up of our affairs, the legally available assets are insufficient to pay the amount of the liquidating distributions on all of our outstanding preferred shares and the corresponding amounts payable on all of our other outstanding equity securities ranking on a parity with the preferred shares in the distribution of assets upon our liquidation, dissolution or winding-up of our affairs, then the holders of our preferred shares and the holders of such other outstanding equity securities will share ratably in any such distribution of assets in proportion to the full liquidating distributions to which they would otherwise be respectively entitled.

If liquidating distributions are made in full to all holders of our preferred shares, our remaining assets will be distributed among the holders of any other classes or series of equity securities ranking junior to the preferred shares in the distribution of assets upon our liquidation, dissolution or winding-up of our affairs, according to their respective rights and preferences and in each case according to their respective number of shares.

If we consolidate or merge with or into, or sell, lease or convey all or substantially all of our assets, property or business to, any corporation, trust or other entity, such transaction will not be deemed to constitute a liquidation, dissolution or winding-up of our affairs.

### Conversion Rights

The terms and conditions, if any, upon which our preferred shares are convertible into common shares will be set forth in the applicable prospectus supplement. Such terms will include the number of common shares into which the preferred shares are convertible, the conversion price (or manner of calculation thereof), the conversion period, provisions as to whether conversion will be at the option of the holders of the preferred shares or at our option, the events requiring an adjustment of the conversion price and provisions affecting conversion in the event of the redemption of such preferred shares.

### Redemption

If so provided in the applicable prospectus supplement, our preferred shares will be subject to mandatory redemption or redemption at our option, in whole or in part, in each case upon the terms, at the times and at the redemption prices set forth in such prospectus supplement.

### Restrictions on Ownership and Transfer

For us to qualify as a REIT under the Code, not more than 50% in value of our outstanding capital shares may be owned, directly or indirectly, by five or fewer individuals (as defined in the Code to include certain entities) during the last half of a taxable year. To assist us in meeting this requirement, we may take certain actions to limit the beneficial ownership, directly or indirectly, by a single person of our outstanding equity securities, including any series of our preferred shares. The applicable prospectus supplement will specify any additional ownership limitation relating to the preferred shares being offered thereby. See “Restrictions on Ownership Transfers and Takeover Defense Provisions” beginning on page 16 of this prospectus.

## Transfer Agent

The registrar and transfer agent for our preferred shares will be set forth in the applicable prospectus supplement.

## DESCRIPTION OF DEPOSITARY SHARES

*The following description contains general terms and provisions of the depositary shares to which any prospectus supplement may relate. 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 debt securities. For more information, please refer to the provisions of the deposit agreement we will enter into with a depositary to be selected, our declaration, including the form of articles supplementary for the applicable series of preferred shares. For information on incorporation by reference, and how to obtain copies of these documents, see the section entitled "Where You Can Find More Information" on page 42 of this prospectus.*

## General

We may, at our option, elect to offer depositary shares rather than full preferred shares. In the event such option is exercised, each of the depositary shares will represent ownership of and entitlement to all rights and preferences of a fraction of a preferred share of a specified series (including dividend, voting, redemption and liquidation rights). The applicable fraction will be specified in a prospectus supplement. The preferred shares represented by the depositary shares will be deposited with a depositary named in the applicable prospectus supplement, under a deposit agreement, among us, the depositary and the holders of the certificates evidencing depositary shares, or depositary receipts. Depositary receipts will be delivered to those persons purchasing depositary shares in the offering. The depositary will be the transfer agent, registrar and dividend disbursing agent for the depositary shares. Holders of depositary receipts agree to be bound by the deposit agreement, which requires holders to take certain actions such as filing proof of residence and paying certain charges.

## Dividends

The depositary will distribute all cash dividends or other cash distributions received in respect of the series of preferred shares represented by the depositary shares to the record holders of depositary receipts in proportion to the number of depositary shares owned by such holders on the relevant record date, which will be the same date as the record date fixed by us for the applicable series of preferred shares. The depositary, however, will distribute only such

amount as can be distributed without attributing to any depositary share a fraction of one cent, and any balance not so distributed will be added to and treated as part of the next sum received by the depositary for distribution to record holders of depositary receipts then outstanding.

In the event of a non-cash distribution, the depositary will distribute property received by it to the record holders of depositary receipts entitled thereto, in proportion, as nearly as may be practicable, to the number of depositary shares owned by such holders on the relevant record date, unless the depositary determines (after consultation with us) that it is not feasible to make such distribution, in which case the depositary may (with our approval) adopt any other method for such distribution as it deems equitable and appropriate, including the sale of such property (at such place or places and upon such terms as it may deem equitable and appropriate) and distribution of the net proceeds from such sale to such holders.

#### Liquidation Preference

In the event of the liquidation, dissolution or winding up of the affairs of the Company, whether voluntary or involuntary, the holders of each depositary share will be entitled to the fraction of the liquidation preference accorded each share of the applicable series of preferred shares as set forth in the prospectus supplement.

#### Redemption

If the series of preferred shares represented by the applicable series of depositary shares is redeemable, such depositary shares will be redeemed from the proceeds received by the depositary resulting from the redemption, in whole or in part, of preferred shares held by the depositary. Whenever we redeem any preferred shares held by the depositary, the depositary will redeem as of the same redemption date the number of depositary shares representing the preferred shares so redeemed. The depositary will mail the notice of redemption promptly upon receipt of such notice from us and not less than 30 nor more than 60 days prior to the date fixed for redemption of the preferred shares and the depositary shares to the record holders of the depositary receipts.

After the date fixed for redemption, the depositary shares called for redemption will no longer be deemed to be outstanding and all rights of the holders of the depositary receipts evidencing the depositary shares called for redemption will cease. However, the holders will have the right to receive any moneys payable upon redemption and any money or other property that the holders of such depositary receipts were entitled to at the time of redemption when they surrender their depositary receipts to the depositary.

## Voting

Promptly upon receipt of notice of any meeting at which the holders of the series of preferred shares represented by the applicable series of depositary shares are entitled to vote, the depositary will mail the information contained in such notice of meeting to the record holders of the depositary receipts as of the record date for such meeting. Each such record holder of depositary receipts will be entitled to instruct the depositary as to the exercise of the voting rights pertaining to the number of preferred shares represented by such record holder's depositary shares. The depositary will endeavor, insofar as practicable, to vote such preferred shares 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 will abstain from voting any of the preferred shares to the extent that it does not receive specific instructions from the holders of depositary receipts.

## Withdrawal of Preferred Shares

Upon surrender of depositary receipts at the principal office of the depositary, upon payment of any unpaid amount due the depositary, and subject to the terms of the deposit agreement, the owner of the depositary shares evidenced thereby is entitled to delivery of the number of whole preferred shares and all money and other property, if any, represented by such depositary shares. Fractional preferred shares will not be issued. If the depositary receipts delivered by the holder evidence a number of depositary shares in excess of the number of depositary shares representing the number of whole preferred shares to be withdrawn, the depositary will deliver to such holder at the same time a new depositary receipt evidencing such excess number of depositary shares. Holders of preferred shares thus withdrawn will not thereafter be entitled to deposit such shares under the deposit agreement or to receive depositary receipts evidencing depositary shares therefor.

## Amendment and Termination of Deposit Agreement

The form of depositary receipt evidencing the depositary shares and any provision of the deposit agreement may at any time and from time to time be amended by agreement between us and the depositary. However, any amendment which materially and adversely alters the rights of the holders (other than any change in fees) 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. No such amendment may impair the right, subject to the terms of the deposit agreement, of any owner of any depositary shares to surrender the depositary receipt evidencing such depositary shares with instructions to the depositary to deliver to the holder of preferred shares and all money and other property, if any, represented thereby, except in order to comply with mandatory provisions of applicable law.



The deposit agreement will be permitted to be terminated by us upon not less than 30 days prior written notice to the applicable depository if (i) such termination is necessary to preserve our qualification as a REIT under the Code or (ii) a majority of each series of preferred shares affected by such termination consents to such termination, whereupon such depository will be required to deliver or make available to each holder of depository receipts, upon surrender of the depository receipts held by such holder, such number of whole or fractional preferred shares as are represented by the depository shares evidenced by such depository receipts together with any other property held by such depository with respect to such depository receipts. We will agree that if the deposit agreement is terminated to preserve our qualification as a REIT under the Code, then we will use our best efforts to list the preferred shares issued upon surrender of the related depository shares on a national securities exchange. In addition, the deposit agreement will automatically terminate if (i) all outstanding depository shares thereunder will have been redeemed, (ii) there has been a final distribution in respect of the related preferred shares in connection with any liquidation, dissolution or winding up of the Trust and such distribution has been distributed to the holders of depository receipts evidencing the depository shares representing such preferred shares or (iii) each preferred share will have been converted into shares of the Trust not so represented by depository shares.

#### Charges of Depository

We will pay all transfer and other taxes and governmental charges arising solely from the existence of the depository arrangements. We will pay charges of the depository in connection with the initial deposit of the preferred shares and initial issuance of the depository shares, and redemption of the preferred shares and all withdrawals of preferred shares by owners of depository shares. Holders of depository receipts will pay transfer, income and other taxes and governmental charges and certain other charges as are provided in the deposit agreement to be for their accounts. In certain circumstances, the depository may refuse to transfer depository shares, may withhold dividends and distributions and sell the depository shares evidenced by such depository receipt if such charges are not paid.

## Miscellaneous

The depositary will forward to the holders of depositary receipts all reports and communications from us which are delivered to the depositary and which we are required to furnish to the holders of the preferred shares. In addition, the depositary will make available for inspection by holders of depositary receipts at the principal office of the depositary, and at such other places as it may from time to time deem advisable, any reports and communications received from us which are received by the depositary as the holder of preferred shares.

Neither we nor the depositary assumes any obligation or will be subject to any liability under the deposit agreement to holders of depositary receipts other than for its negligence or willful misconduct. Neither we nor the depositary 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 Company and the depositary 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 shares unless satisfactory indemnity is furnished. We and the depositary may rely on written advice of counsel or accountants, on information provided by holders of the depositary receipts or other persons believed in good faith to be competent to give such information and on documents believed to be genuine and to have been signed or presented by the proper party or parties. In the event the depositary will receive conflicting claims, requests or instructions from any holders of depositary receipts, on the one hand, and we, on the other hand, the depositary will be entitled to act on such claims, requests or instructions received from us.

## Resignation and Removal of 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 for resignation or removal and must be a bank or trust company having its principal office in the United States of America and having a combined capital and surplus of at least \$150,000,000.

## Restrictions on Ownership and Transfer

For us to qualify as a REIT under the Code, not more than 50% in value of our outstanding capital shares may be owned, directly or indirectly, by five or fewer individuals (as defined in the Code to include certain entities) during the last half of a taxable year. To assist us in meeting this requirement, we may take certain actions to limit the beneficial ownership, directly or indirectly, by a single person of our outstanding equity securities, including any depositary shares. The applicable prospectus supplement will specify any additional ownership limitation relating to the depositary shares being offered thereby. See “Restrictions on Ownership Transfers and Takeover Defense Provisions”

beginning on page 16 of this prospectus.

## DESCRIPTION OF WARRANTS

We may issue warrants for the purchase of debt or equity securities described in this prospectus. Warrants may be issued independently or together with any offered securities and may be attached to or separate from such securities. Each series of warrants will be issued under a separate warrant agreement we will enter into with a warrant agent specified in the agreement. The warrant agent will act solely as our agent in connection with the warrants of that series and will not assume any obligation or relationship of agency or trust for or with any holders or beneficial owners of warrants.

A prospectus supplement relating to any series of warrants being offered will include specific terms relating to the offering. They will include, where applicable:

· the title of the warrants;

· the aggregate number of warrants;

· the price or prices at which the warrants will be issued;

· the currencies in which the price or prices of the warrants may be payable;

· the designation, amount and terms of the offered securities purchasable upon exercise of the warrants;

· the designation and terms of the other offered securities, if any, with which the warrants are issued and the number of warrants issued with the security;

if applicable, the date on and after which the warrants and the offered securities purchasable upon exercise of the warrants will be separately transferable;

the price or prices at which, and currency or currencies in which, the offered securities purchasable upon exercise of the warrants may be purchased;

the date on which the right to exercise the warrants will commence and the date on which the right will expire;

the minimum or maximum amount of the warrants which may be exercised at any one time;

information with respect to book-entry procedures, if any;

any listing of warrants on any securities exchange;

if appropriate, a discussion of material U.S. federal income tax considerations; and

any other material term of the warrants, including terms, procedures and limitations relating to the exchange and exercise of the warrants.

#### Restrictions on Ownership and Transfer

For us to qualify as a REIT under the Code, not more than 50% in value of our outstanding capital shares may be owned, directly or indirectly, by five or fewer individuals (as defined in the Code to include certain entities) during the last half of a taxable year. To assist us in meeting this requirement, we may take certain actions to limit the beneficial ownership, directly or indirectly, by a single person of our outstanding equity securities, including any equity shares that may be purchased pursuant to the warrants. The applicable prospectus supplement will specify any additional ownership limitation relating to the warrants being offered thereby. See “Restrictions on Ownership Transfers and Takeover Defense Provisions” beginning on page 16 of this prospectus.

#### DESCRIPTION OF SUBSCRIPTION RIGHTS

The following is a general description of the terms of the subscription rights we may issue from time to time. Particular terms of any subscription rights we offer will be described in the prospectus supplement relating to such subscription rights.

We may issue subscription rights to purchase our common shares. These subscription rights may be issued independently or together with any other security offered hereby and may or may not be transferable by the shareholder receiving the subscription rights in such offering. 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 applicable prospectus supplement will describe the specific terms of any offering of subscription rights for which this prospectus is being delivered, including the following:

- the price, if any, for the subscription rights;
  - the exercise price payable for each common share upon the exercise of the subscription rights;
  - the number of subscription rights issued to each shareholder;
  - the number and terms of the common shares which may be purchased per each subscription right;
  - the extent to which the subscription rights are transferable;
- 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 will commence, and the date on which the subscription rights will expire;

the extent to which the subscription rights may include an over-subscription privilege with respect to unsubscribed securities;

if appropriate, a discussion of material U.S. federal income tax considerations; 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 applicable 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.

#### Restrictions on Ownership and Transfer

For us to qualify as a REIT under the Code, not more than 50% in value of our outstanding capital shares may be owned, directly or indirectly, by five or fewer individuals (as defined in the Code to include certain entities) during the last half of a taxable year. To assist us in meeting this requirement, we may take certain actions to limit the beneficial ownership, directly or indirectly, by a single person of our outstanding equity securities, including any subscription rights to acquire our equity shares. The applicable prospectus supplement will specify any additional ownership limitation relating to the subscription rights being offered thereby. See “Restrictions on Ownership Transfers and Takeover Defense Provisions” beginning on page 16 of this prospectus.

#### DESCRIPTION OF SHARE PURCHASE UNITS OR CONTRACTS

We may issue share purchase units or contracts. These may include contracts obligating holders to purchase from us and us to sell to the holders, a specified number of common shares, preferred shares or depositary shares at a future date or dates. Alternatively, the share purchase units or contracts may obligate us to purchase from holders, and obligate holders to sell to us, a specified or varying number of common shares, preferred shares or depositary shares. The consideration per common share, preferred share, or depositary share may be fixed at the time the share purchase units or contracts are issued or may be determined by a specific reference to a formula set forth in the share purchase units or contracts. The share purchase units or contracts may provide for settlement by delivery by us or on our behalf of shares of the underlying security, or they may provide for settlement by reference or linkage to the value, performance or trading price of the underlying security. The share purchase units or contracts may be issued separately or as part of share purchase units consisting of a share purchase contract and debt securities, preferred shares or debt obligations of third parties, including U.S. treasury securities, other stock purchase contracts or common stock, or other securities or property, securing the holders' obligations to purchase or sell, as the case may be, the common shares, preferred shares, depositary shares or other security or property under the share purchase units or

contracts. The share purchase units or contracts may require us to make periodic payments to the holders of the share purchase units or vice versa, and such payments may be unsecured or prefunded on some basis and may be paid on a current or on a deferred basis. The share purchase units or contracts may require holders to secure their obligations thereunder in a specified manner and may provide for the prepayment of all or part of the consideration payable by holders in connection with the purchase of the underlying security or other property pursuant to the share purchase units or contracts.

The securities related to the share purchase units or contracts may be pledged to a collateral agent for our benefit pursuant to a pledge agreement to secure the obligations of holders of share purchase units or contracts to purchase the underlying security or property under the related share purchase units or contracts. The rights of holders of share purchase units or contracts to the related pledged securities will be subject to our security interest therein created by the pledge agreement. No holder of share purchase units or contracts will be permitted to withdraw the pledged securities related to such share purchase units or contracts from the pledge arrangement.

#### Restrictions on Ownership and Transfer

For us to qualify as a REIT under the Code, not more than 50% in value of our outstanding capital shares may be owned, directly or indirectly, by five or fewer individuals (as defined in the Code to include certain entities) during the last half of a taxable year. To assist us in meeting this requirement, we may take certain actions to limit the beneficial ownership, directly or indirectly, by a single person of our outstanding equity securities, including any units. The applicable prospectus supplement will specify any additional ownership limitation relating to the units being offered thereby. See “Restrictions on Ownership Transfers and Takeover Defense Provisions” beginning on page 16 of this prospectus.

## DESCRIPTION OF UNITS

As specified in the applicable prospectus supplement, we may issue units consisting of one or more common shares, preferred shares, debt securities, subscription rights, depositary shares, warrants or any combination of such securities.

The applicable prospectus supplement will specify the following terms of any units in respect of which this prospectus is being delivered:

the terms of the units and of any of the common shares, preferred shares, debt securities, warrants, subscription rights or depositary shares comprising the units, including whether and under what circumstances the securities comprising the units may be traded separately;

· a description of the terms of any unit agreement governing the units;

· if appropriate, a discussion of material U.S. federal income tax considerations; and

· a description of the provisions for the payment, settlement, transfer or exchange of the units.

## Restrictions on Ownership and Transfer

For us to qualify as a REIT under the Code, not more than 50% in value of our outstanding capital shares may be owned, directly or indirectly, by five or fewer individuals (as defined in the Code to include certain entities) during the last half of a taxable year. To assist us in meeting this requirement, we may take certain actions to limit the beneficial ownership, directly or indirectly, by a single person of our outstanding equity securities, including any units. The applicable prospectus supplement will specify any additional ownership limitation relating to the units being offered thereby. See “Restrictions on Ownership Transfers and Takeover Defense Provisions” beginning on page 16 of this prospectus.

## DESCRIPTION OF OUR DEBT SECURITIES

*We may issue debt securities from time to time, in one or more series under an indenture dated as of December 11, 2006, as supplemented by a first supplemental indenture dated as of December 11, 2006 between us and U.S. Bank,*



*National Association, as trustee, or under a separate indenture that we will enter into with a trustee to be selected. The following section describes certain of the material terms and conditions of the debt securities we may issue. For a more detailed description of the terms of the debt securities, please refer to the applicable indenture that we will enter into for any debt securities we may issue from time to time, which will be incorporated by reference into this prospectus, and which we will describe in a prospectus supplement.*

*We have filed the indenture and the first supplemental indenture with U.S. Bank, National Association as an exhibit to this prospectus. You should read the indenture, the first supplemental indenture and any other supplemental or separate indenture for additional information before you buy any debt securities. For information on incorporation by reference, and how to obtain a copy of the indenture, the first supplemental indenture, and any other supplemental indenture, see the section entitled "Where You Can Find More Information" on page 42 of this prospectus.*

## General

The debt securities will be our direct obligations and may be either senior debt securities or subordinated debt securities. The debt securities may be secured or unsecured. The indenture will not limit the principal amount of debt securities that we may issue. We may issue debt securities in one or more series. The indenture will set forth the specific terms of each series of debt securities. The material terms of each series of debt securities will also be described in the applicable prospectus supplement. Each prospectus supplement and indenture incorporated by reference therein will describe:

- the title of the debt securities and whether the debt securities are senior or subordinated debt securities;

whether or not the debt securities are secured, and if secured, a description of the collateral securing that series of debt securities;

- any limit upon the aggregate principal amount of a series of debt securities that we may issue;

· the aggregate principal amount of our debt securities being offered and the aggregate principal amount of our debt securities that are then currently outstanding;

· the date or dates on which principal of the debt securities will be payable and the amount of principal that will be payable;

· the date or dates, or the method for determining such date or dates, on which the principal of such debt securities will be payable;

· the rate or rates (which may be fixed or variable) at which the debt securities will bear interest, if any, the basis upon which such interest such interest rate will be calculated, if applicable, as well as the dates from which interest will accrue, the dates on which interest will be payable, the persons to whom interest will be payable (if other than the registered holders on the record date) and the record date for the interest payable on any payment date;

· the currency or currencies in which principal, premium, if any, and interest, if any, will be paid;

· the place or places where principal, premium, if any, and interest, if any, on the debt securities will be payable and where debt securities that are in registered form can be presented for registration of transfer or exchange;

· where notices or demands to or upon us in respect of the debt securities and the applicable indenture may be served;

· a discussion of material U.S. federal income tax considerations applicable to the ownership and disposition of the debt securities;

· any provisions regarding our right to prepay debt securities or of holders to require us to prepay debt securities;

· the right, if any, of holders of the debt securities to convert them into common shares, preferred shares or other securities, the terms upon such conversion may occur, and any provisions intended to prevent dilution of the conversion rights and any provisions limiting the exercise rights of the holders;

· any provisions requiring or permitting us to make payments to a sinking fund that will be used to redeem debt securities or a purchase fund that will be used to purchase debt securities, and the times and prices at which we must redeem, repay or repurchase such securities as a result of such obligation;

· the times, prices and other terms and conditions upon which we may redeem the debt securities;

Edgar Filing: ACADIA REALTY TRUST - Form 424B5

- any index or formula used to determine the required payments of principal, premium, if any, or interest, if any;

the percentage of the principal amount of the debt securities which is payable if maturity of the debt securities is accelerated because of a default;

- any additional or modified events of default or covenants with respect to the debt securities;

whether we will be restricted from incurring any additional indebtedness or any other covenants with respect to a particular series of debt securities;

- whether the debt securities will be guaranteed and, if so, on what terms;

- the trustee, authenticating or paying agent, transfer agent or registrar; and

- any other material terms of the debt securities.

The indenture may contain restrictions on our ability to repurchase our securities or financial covenants.

We may issue debt securities at a discount from their stated principal amount or original issue discount. A prospectus supplement may state whether any such discount exists and may describe certain material U.S. federal income tax considerations and other special considerations applicable to a debt security issued with original issue discount.

If the principal, premium, if any, or interest with regard to any series of debt securities is payable in a foreign currency, we will describe in the prospectus supplement relating to those debt securities any restrictions on currency conversions, material U.S. federal income tax considerations or other material restrictions with respect to that issue of debt securities.

#### Form of Debt Securities

We may issue debt securities in certificated or uncertificated form, in registered form with or without coupons or in bearer form with coupons, if applicable. We may issue debt securities of a series in the form of one or more global certificates evidencing all or a portion of the aggregate principal amount of the debt securities of that series. We may deposit the global certificates with depositaries, and the certificates may be subject to restrictions upon transfer or upon exchange for debt securities in individually certificated form.

#### Events of Default and Remedies

An event of default with respect to each series of debt securities will include:

· our default in the payment of the principal of or premium, if any, on any debt securities of such series at their maturity;

· our default in the payment of any interest due and payable on such series of debt securities and continuance of such default for the period of time set forth in the indenture;

· our default in making any sinking fund payment as required for any debt security of such series;

· our default for the period of time set forth in the indenture after notice by the trustee or the holders of the percentage set forth in the indenture in principal amount of the outstanding debt securities of that series in the observance or performance of any other covenants in the indenture;

· our default on certain of our borrowings in an aggregate principal amount in excess of the amount set forth in the indenture causing the acceleration of that indebtedness; and

· certain events involving our or our significant subsidiaries' bankruptcy, insolvency or reorganization.

The indenture relating to particular series of debt securities may include other events of default with respect to any such series.

The indenture may provide that the trustee may withhold notice to the holders of any series of debt securities of any default (except a default in payment of principal, premium, if any, or interest) if the trustee considers it to be in the interest of the holders of the series to do so.

The indenture may provide that if any event of default has occurred and is continuing, the trustee or the holders of not less than the percentage set forth in the indenture in principal amount of a series of debt securities then outstanding may declare the principal of and accrued interest, if any, on that series of debt securities to be due and payable immediately. However, if we cure all events of default (except the failure to pay principal, premium or interest that became due solely because of the acceleration) and certain other conditions are met, the holders of a majority in principal amount of the applicable series of debt securities may rescind and annul such declaration.

The holders of a majority of the outstanding principal amount of a series of debt securities may have the right to direct the time, method and place of conducting proceedings for any remedy available to the trustee, subject to certain limitations specified in the indenture.

The applicable prospectus supplement and the indenture incorporated by reference therein will describe any additional or modified events of default which apply to any series of debt securities.

#### Modification of the Indenture

We and the trustee may:

without the consent of holders of the outstanding debt securities, modify the indenture to cure errors or clarify ambiguities, add to our covenants and the events of default for the benefit of any particular series of debt securities; and

with the consent of the holders of not less than a majority in principal amount of a particular series of debt securities that are outstanding under the indenture, modify the indenture or the rights of the holders of such series of debt securities.



However, without the consent of the holder of each outstanding debt security affected thereby, we may not:

change the stated maturity of, the principal of, premium, if any, or installment of interest of any debt securities, reduce the rate or extend the time for payment of interest, if any, on any debt securities, reduce the principal amount of any debt securities or the premium, if any, on any debt securities, impair the right of a holder to institute suit for the payment of principal, premium, if any, or interest, if any, with regard to any debt securities on or after the stated maturity or change the currency in which any debt securities are payable; or

reduce the percentage of principal amount of debt securities the holders of which are required to consent to an amendment, supplement or waiver with respect to such series.

#### Governing Law

The indenture, any supplemental indenture and the debt securities issued thereunder will be governed by, and construed in accordance with, the laws of the State of New York.

#### 3.75% Convertible Notes

In December 2006 and January 2007, we issued an aggregate of \$115.0 million of convertible notes with a fixed interest rate of 3.75% due 2026, or the "Convertible Notes," governed by the indenture dated as of December 11, 2006, as supplemented by a first supplemental indenture dated as of December 11, 2006 between us and U.S. Bank, National Association, as trustee. The Convertible Notes were issued at par and require interest payments semi-annually in arrears on June 15th and December 15th of each year. The Convertible Notes are unsecured unsubordinated obligations and rank equally with all other unsecured and unsubordinated indebtedness. As of December 31, 2011 there were outstanding Convertible Notes in the aggregate principal amount of \$930,000.

The Convertible Notes had an initial conversion rate of 32.4002 of our common shares for each \$1,000 principal amount, representing a conversion price of approximately \$30.86 per common share, or a conversion premium of approximately 20.0% based upon our common share price on the date of the issuance of the Convertible Notes. Pursuant to the terms of the Convertible Notes, the conversion rate has been adjusted from time to time with the conversion rate as of December 31, 2011 being 34.1763 common shares per \$1,000 of notes, which is equal to a conversion price of approximately \$29.26 per share.

Upon conversion of the Convertible Notes, we will deliver cash and, in some circumstances, common shares, as specified in the indenture relating to the Convertible Notes. The Convertible Notes may only be converted prior to maturity: (i) during any calendar quarter (and only during such calendar quarter), if, and only if, the closing sale price of our common shares for at least 20 trading days (whether consecutive or not) in the period of 30 consecutive trading days ending on the last trading day of the preceding calendar quarter is greater than 130% of the conversion price per common share in effect on the applicable trading day; (ii) during the five consecutive trading-day period following any five consecutive trading-day period in which the trading price of the notes was less than 98% of the product of the closing sale price of our common shares multiplied by the applicable conversion rate; (iii) if the Convertible Notes have been called for redemption, at any time prior to the close of business on the second business day prior to the redemption date; or (iv) if our common shares are not listed on a United States national or regional securities exchange for 30 consecutive trading days.

Prior to December 20, 2011, we did not have the right to redeem Convertible Notes, except to preserve our status as a REIT under the Code. We now have the right to redeem the notes, in whole or in part, at any time and from time to time, for cash equal to 100% of the principal amount of the notes plus any accrued and unpaid interest to, but not including, the redemption date. The holders of notes may again require us to repurchase their notes, in whole or in part, on December 15, 2016, and December 15, 2021 for cash equal to 100% of the principal amount of the notes to be repurchased plus any accrued and unpaid interest to, but not including, the repurchase date.

Upon a conversion of notes, we will deliver cash and, at our election, common shares, with an aggregate value, which we refer to as the “conversion value,” equal to the conversion rate multiplied by the average price of our common shares as follows: (i) an amount in cash which we refer to as the “principal return,” equal to the lesser of (a) the principal amount of the converted notes and (b) the conversion value; and (ii) if the conversion value is greater than the principal return, an amount with a value equal to the difference between the conversion value and the principal return, which we refer to as the “new amount.” The net amount may be paid, at our option, in cash, common shares or a combination of cash and common shares.



## GLOBAL SECURITIES

We may issue some or all of our securities of any series as global securities. We will register each global security in the name of a depositary identified in the applicable prospectus supplement. The global securities will be deposited with a depositary or nominee or custodian for the depositary and will bear a legend regarding restrictions on exchanges and registration of transfer as discussed below and any other matters to be provided pursuant to the indenture.

As long as the depositary or its nominee is the registered holder of a global security, that person will be considered the sole owner and holder of the global security and the securities represented by it for all purposes under the securities and the indenture. Except in limited circumstances, owners of a beneficial interest in a global security:

- will not be entitled to have the global security or any securities represented by it registered in their names;

- will not receive or be entitled to receive physical delivery of certificated securities in exchange for the global security; and

- will not be considered to be the owners or holders of the global security or any securities represented by it for any purposes under the securities or the indenture.

We will make all payments of principal and any premium and interest on a global security to the depositary or its nominee as the holder of the global security. The laws of some jurisdictions require that certain purchasers of securities take physical delivery of securities in definitive form. These laws may impair the ability to transfer beneficial interests in a global security.

Ownership of beneficial interests in a global security will be limited to institutions having accounts with the depositary or its nominee, called “participants” for purposes of this discussion, and to persons that hold beneficial interests through participants. When a global security is issued, the depositary will credit on its book-entry, registration and transfer system the principal amounts of securities represented by the global security to the accounts of its participants. Ownership of beneficial interests in a global security will be shown only on, and the transfer of those ownership interests will be effected only through, records maintained by:

- the depositary, with respect to participants’ interests; or

any participant, with respect to interests of persons held by the participants on their behalf.

Payments by participants to owners of beneficial interests held through the participants will be the responsibility of the participants. The depositary may from time to time adopt various policies and procedures governing payments, transfers, exchanges and other matters relating to beneficial interests in a global security. None of the following will have any responsibility or liability for any aspect of the depositary's or any participant's records relating to, or for payments made on account of, beneficial interests in a global security, or for maintaining, supervising or reviewing any records relating to those beneficial interests:

us or our affiliates;

the trustee under any indenture; or

any agent of any of the above.

#### RESTRICTIONS ON OWNERSHIP TRANSFERS AND TAKEOVER DEFENSE PROVISIONS

*This summary does not purport to be complete and is qualified in its entirety by reference to our declaration of trust and bylaws, each as supplemented, amended or restated, the Internal Revenue Code, and Maryland law. See "Where You Can Find More Information" on page 42 of this prospectus.*

#### Declaration of Trust

***Restrictions on Ownership and Transfer of Our Shares*** . To qualify as a REIT under the Internal Revenue Code of 1986, as amended, or the Code, we must satisfy certain ownership requirements. Specifically, not more than 50% in value of our outstanding common shares may be owned, directly or indirectly, by five or fewer individuals (as defined in the Code to include certain entities) during the last half of a taxable year, and the common shares must be beneficially owned by 100 or more persons during at least 335 days of a taxable year of twelve months or during a proportionate part of a shorter taxable year.

In order for us to continue to qualify as a REIT under the Code, our declaration of trust contains provisions aimed at satisfying the requirements described above. In regard to the ownership requirements, the declaration of trust prohibits any person from owning, directly or indirectly (by virtue of (i) the attribution rules of the Code or (ii) being a beneficial owner as defined in Rule 13d-3 promulgated under the Securities Exchange Act of 1934, as amended), more than 9.8% in value or number of the issued and outstanding shares of any class or series of our shares of beneficial interest, subject to certain exceptions. The trustees may waive this limitation if such ownership will not jeopardize our status as a REIT. As a condition of such waiver, the trustees may require opinions of counsel satisfactory to them and/or an undertaking from the applicant with respect to preserving our REIT status under the Code.

Our declaration of trust also provides that any purported transfer or issuance of any class or series of our shares of beneficial interest or our securities transferable into such shares that would (i) violate the 9.8% limitation described above, (ii) result in shares being owned by fewer than 100 persons for purposes of the REIT provisions of the Code, (iii) result in our being “closely held” within the meaning of Section 856(h) of the Code, or (iv) otherwise jeopardize our REIT status under the Code will be null and void ab initio (from the beginning).

Moreover, shares of beneficial interest transferred, or proposed to be transferred, in contravention of the 9.8% limitation described above or in a manner that would otherwise jeopardize our status as a REIT will be subject to purchase by us at a price equal to the fair market value of such shares (determined in accordance with the rules set forth in our declaration of trust). From and after the date fixed for purchase, and so long as payment of the purchase price for the shares to be redeemed shall have been made or duly provided for, the holder of any shares in violation of the 9.8% limitation described above so called for purchase shall cease to be entitled to dividends, distributions, voting rights and other benefits with respect to such shares, excepting only the right to payment of the purchase price. Any dividend or distribution paid to a proposed transferee on such shares prior to the discovery by the company that such shares have been transferred in violation 9.8% limitation described above shall be repaid to us upon demand.

All certificates representing the common shares bear a legend referring to the restrictions described above.

The ownership limitations described above could have the effect of delaying, deferring or preventing a takeover or other transaction in which holders of some, or a majority, of common shares might receive a premium for their shares over the then prevailing market price or which such holders might believe to be otherwise in their best interest.

#### Maryland Law

**Control Share Acquisitions.** The Maryland General Corporation Law (“MGCL”) provides that a holder of “control shares” of a Maryland corporation (which is defined for purposes of the Maryland Control Share Acquisition Act to

include a real estate investment trust formed under the Maryland REIT law) acquired in a “control share acquisition” has no voting rights with respect to those shares except to the extent approved by a vote of two-thirds of the votes entitled to be cast on the matter, excluding shares owned by the acquirer, by officers or by directors who are employees of the corporation. “Control Shares” are voting shares of stock which, if aggregated with all other such shares of stock previously acquired by the acquirer, or in respect of which the acquirer is able to exercise or direct the exercise of voting power (except solely by virtue of a revocable proxy), would entitle the acquirer 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 which 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 the board of directors of the corporation 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 acquirer 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 acquirer 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 acquirer in the control share acquisition, and certain limitations and restrictions otherwise applicable to the exercise of dissenters’ rights do not apply in the context of a control share acquisition.

The foregoing does not apply to shares acquired in a merger, consolidation or share exchange, if the corporation is a party to the transaction, or to acquisitions approved or exempted by the declaration of trust or bylaws of the corporation. Pursuant to the MGCL, we have opted out of the control share statute and, therefore, it is not currently applicable to acquisitions of our common shares.

**Business Combinations.** Section 8-301(14) of the Maryland REIT Law permits a Maryland REIT to enter into a business combination (including a merger, consolidation, share exchange or, in certain circumstances, an asset transfer or issuance or reclassification of equity securities) on the same terms as a Maryland corporation under the MGCL. Under the MGCL, certain business combinations between a Maryland corporation and any person who beneficially owns 10% or more of the voting power of such corporation's then-outstanding voting shares, or an affiliate of such corporation who, at any time within the two-year period immediately prior to the date in question, was the beneficial owner of 10% or more of the voting power of the then-outstanding voting shares of such corporation (an "Interested Stockholder") or an affiliate thereof, are prohibited for five years after the most recent date on which the Interested Stockholder becomes an Interested Stockholder. Thereafter, any such business combination must be recommended by the board of directors of such corporation and approved by the affirmative vote of at least (a) 80% of the votes entitled to be cast by holders of outstanding shares of voting stock of such corporation and (b) two-thirds of the votes entitled to be cast by holders of shares of voting stock of such corporation other than the shares held by the Interested Stockholder with whom (or with whose affiliate) the business combination is to be effected, unless, among other conditions, the corporation's common shareholders receive a minimum price (as defined in the MGCL) for their shares and the consideration is received in cash or in the same form as previously paid by the Interested Stockholder for its shares.

We have not elected to opt-out of the business combination statute. The business combination statute may have effect of inhibiting a third party from making an acquisition proposal for us or of delaying, deferring or preventing a change of control of us under circumstances that otherwise could provide our shareholders with the opportunity to realize a premium over the then-current market price or that our shareholders may otherwise believe is in their best interests.

**Certain Elective Provisions of Maryland Law.** Maryland law also permits publicly-held Maryland statutory REITs to elect to be governed by all or any part of Maryland law provisions relating to unsolicited takeovers, as described below. The election to be governed by one or more of these provisions can be made by a publicly-held Maryland REIT in its declaration of trust or bylaws ("charter documents") or by resolution adopted by its board of trustees so long as it has at least three trustees who, at the time of electing to be subject to the provisions, are not officers or employees, are not persons seeking to acquire control of the REIT, are not trustees, officers, affiliates or associates of any person seeking to acquire control, and were not nominated or designated as trustees by a person seeking to acquire control. Our charter documents do not contain any such provisions.

However, if the charter documents do not already contain these provisions, a REIT may adopt one or more of these additional provisions by a board resolution or an amendment to its charter documents, following which it must file articles supplementary to its declaration of trust with the State Department of Assessments and Taxation of Maryland. Shareholder approval is not required for the filing of these articles supplementary. Our board of trustees has not passed any such resolution or amendment to our charter documents and we have not filed such articles supplementary.

A Maryland REIT may elect to be subject to all or any portion of the following provisions of Maryland law, notwithstanding any contrary provisions in the REIT's charter documents:

Classified Board : A REIT may divide its board into three classes which, to the extent possible, will have the same number of trustees, the terms of which will expire at the third annual meeting of shareholders after the election of each class, with the first class term expiring one year after adoption, the second class term expiring two years later and the third class term expiring three years later. We do not have a classified board.

Two-thirds Shareholder Vote to Remove Trustees : If the REIT has a classified board, the shareholders may remove any trustee only by the affirmative vote of at least two-thirds of all votes entitled to be cast by the shareholders generally in the election of trustees, but a trustee may not be removed without cause. If the REIT does not have a classified board, the shareholders may remove any trustee only by the affirmative vote of at least two-thirds of all votes entitled to be cast by the shareholders generally in the election of trustees, with or without cause.

Size of Board Fixed by Vote of Board : The number of trustees will be fixed only by resolution of the board.

Board Vacancies Filled by the Board for the Remaining Term : Vacancies that result from an increase in the size of the board, or the death, resignation, or removal of a trustee, may be filled only by the affirmative vote of a majority of the remaining trustees even if they do not constitute a quorum. Trustees elected to fill vacancies will hold office for the remainder of the full term of the class of trustees in which the vacancy occurred, as opposed to until the next annual meeting of shareholders, and until a successor is elected and qualified.

Shareholder Calls of Special Meetings : Special meetings of shareholders may be called by the secretary of a REIT only upon the written request of shareholders entitled to cast at least a majority of all votes entitled to be cast at the meeting and only in accordance with procedures set out in the MGCL.

As we have stated above, we have not elected to be subject to any of the foregoing provisions. Through provisions in our declaration of trust and bylaws unrelated to the above statutory provisions, we already (i) require the affirmative vote of the holders of not less than two-thirds of all of the votes entitled to be cast on the matter for the removal of any trustee from the board, with or without cause, and (ii) vest in the board the exclusive power to fix the number of trusteeships.

#### CERTAIN PROVISIONS OF MARYLAND LAW AND OUR DECLARATION OF TRUST AND BYLAWS

*This summary does not purport to be complete and is qualified in its entirety by reference to our declaration of trust and bylaws, each as supplemented, amended or restated. See “Where You Can Find More Information” on page 42 of this prospectus.*

***Number of Trustees; Election of Trustees, Removal of Trustees, the Filling of Vacancies.*** Our declaration of trust provides that the board of trustees will consist of not less than two nor more than fifteen persons, and that the number of trustees will be set by the trustees then in office. Our board currently consists of seven trustees, each of whom serves until the next annual meeting of shareholders and until his successor is duly elected and qualified. Each trustee shall be elected by the vote of the majority of the votes cast by the holders of common shares; provided that if the number of nominees exceeds the number of trustees to be elected, the trustees shall be elected by the vote of a plurality of the votes cast by the holders of common shares. A majority of the votes cast means that the number of shares voted “for” a nominee must exceed 50% of the votes cast “against” or “withheld” with respect to that nominee. If a nominee that is already serving as a trustee is not elected, such trustee shall offer to tender his or her resignation to the board of trustees. The nominating and governance committee will make a recommendation to the board of trustees on whether to accept or reject the resignation, or whether other action should be taken.

Our declaration of trust provides that the shareholders may, at any time, remove any trustee, with or without cause, by the affirmative vote of two-thirds of all the votes entitled to be cast on the matter and our bylaws provide that the shareholders may elect by majority vote a successor to fill any resulting vacancy for the balance of the term of the removed trustee. Any vacancy (including a vacancy created by an increase in the number of trustees) will be filled, at any regular meeting or at any special meeting called for that purpose, by a majority of the trustees.

***Limitation of Liability and Indemnification of Trustees and Officers.*** Our bylaws and declaration of trust authorize us, to the maximum extent permitted under Maryland law, to indemnify our trustees and officers in their capacity as such. Section 8-301(15) of the Corporations and Associates Article of the Annotated Code of Maryland permits a Maryland REIT to indemnify or advance expenses to trustees and officers to the same extent as is permitted for directors and officers of a Maryland corporation under the MGCL. The MGCL requires a Maryland corporation (unless its charter provides otherwise, which our declaration of trust does not) to indemnify a director or officer who has been successful, on the merits or otherwise against reasonable expenses, in the defense of any proceeding to which he is made a party by reason of his service in that capacity, or in the defense of any claim, issue or matter in the

proceeding. The MGCL permits a Maryland 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 (a) the act or omission of the director or officer was material to the matter giving rise to the proceeding and (i) was committed in bad faith or (ii) was the result of active and deliberate dishonesty, (b) the director or officer actually received an improper personal benefit in money, property or services or (c) in the case of any criminal proceeding, the director or officer had reasonable cause to believe that the act or omission was unlawful. However, a Maryland corporation may 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 a 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 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 such director or officer or on his or her behalf to repay the amount paid or reimbursed by the corporation if it will ultimately be determined that the standard of conduct was not met.

Our declaration of trust authorizes us, and our bylaws require us, to the maximum extent permitted by Maryland law, to indemnify (i) any present or former trustee or officer or (ii) any individual who, while serving as our trustee and at our request, serves or has served another corporation, partnership, joint venture, trust, employee benefit plan or any other enterprise as a director, officer, partner or trustee, from and against any claim or liability to which such person may become subject or which such person may incur by reason of his or her service in such capacity or capacities, and to pay or reimburse his or her reasonable expenses in advance of final disposition of such a proceeding.

Our bylaws also permit us, subject to the approval of our board of trustees, to indemnify and advance expenses to any person who served as predecessor of ours in any of the capacities described above and to any employee or agent of us or a predecessor of us.



In addition to the above, we have purchased and maintain insurance on behalf of all of our trustees and executive officers against liability asserted against or incurred by them in their official capacities with us, whether or not we are required or have the power to indemnify them against the same liability.

***Amendments to our Declaration of Trust.*** In general, the declaration of trust may be amended by the affirmative vote of the holders of not less than a majority of the common shares then outstanding and entitled to vote thereon. However, amendments with respect to certain provisions relating to the ownership requirements, reorganizations and certain mergers or consolidations or the sale of substantially all of our assets, require the affirmative vote of the holders of not less than two-thirds of the common shares then outstanding and entitled to vote thereon. Our trustees, by a two-thirds vote, may amend the provisions of the declaration of trust from time to time to effect any change deemed necessary by our trustees to allow us to qualify and continue to qualify as a REIT.

***Termination of Operations or our REIT Status.*** The declaration of trust permits the termination and the discontinuation of our operations by the affirmative vote of the holders of not less than two-thirds of the outstanding shares entitled to vote at a meeting of shareholders called for that purpose. In addition, the declaration of trust permits the trustees to terminate our REIT status at any time.

***Anti-Takeover Effect of Certain Provisions of the Declaration of Trust.*** The limitation on ownership of shares of beneficial interest set forth in our declaration of trust could have the effect of discouraging offers to acquire us or of hampering the consummation of a contemplated acquisition. See “Restrictions on Ownership Transfers and Takeover Defense Provisions” beginning on page 16 of this prospectus.

## MATERIAL UNITED STATES FEDERAL INCOME TAX CONSIDERATIONS

The following discussion describes certain of the material U.S. federal income tax considerations relating to our taxation as a REIT under the Code, and the ownership and disposition of our common shares.

If we offer one or more additional series of common shares or preferred shares, debt securities, depositary shares, warrants to purchase debt or equity securities, subscription rights to purchase our common shares or units consisting of one or more common shares, debt securities, subscription rights, depositary shares, warrants or any combination of the foregoing securities, the prospectus supplement would include information about certain material U.S. federal income tax consequences to holders of any of the offered securities.

Because this summary is only intended to address certain of the material U.S. federal income tax considerations relating to the ownership and disposition of our common shares, it may not contain all of the information that may be important to you. As you review this discussion, you should keep in mind that:

the tax consequences to you may vary depending on your particular tax situation;

you may be a person that is subject to special tax treatment or special rules under the Code (e.g., regulated investment companies, insurance companies, tax-exempt entities, financial institutions or broker-dealers, expatriates, persons subject to the alternative minimum tax and partnerships, trusts, estates or other pass through entities) that the discussion below does not address;

the discussion below does not address any state, local or non-U.S. tax considerations; and

the discussion below deals only with shareholders that hold our common shares as a “capital asset,” within the meaning of Section 1221 of the Code.

We urge you to consult with your own tax advisors regarding the specific tax consequences to you of acquiring, owning and selling our common shares, including the federal, state, local and foreign tax consequences of acquiring, owning and selling our common shares in your particular circumstances and potential changes in applicable laws.

The information contained in this section is based on the Code, final, temporary and proposed Treasury Regulations promulgated thereunder, the legislative history of the Code, current administrative interpretations and practices of the Internal Revenue Service (the “IRS”) (including in private letter rulings and other non-binding guidance issued by the IRS), as well as court decisions all as of the date hereof. No assurance can be given that future legislation, Treasury Regulations, administrative interpretations and court decisions will not significantly change current law or adversely affect existing interpretations of current law, or that any such change would not apply retroactively to transactions or events preceding the date of the change. We have not obtained, and do not intend to obtain, any rulings from the IRS concerning the U.S. federal income tax treatment of the matters discussed below. Furthermore, neither the IRS nor any court is bound by any of the statements set forth herein and no assurance can be given that the IRS will not assert any position contrary to statements set forth herein or that a court will not sustain such position.

*Taxation of Acadia Realty Trust as a REIT*

Seyfarth Shaw LLP, which has acted as our tax counsel, has reviewed the following discussion and is of the opinion that it fairly summarizes the material U.S. federal income tax considerations relevant to our status as a REIT under the Code and to investors in our common shares. The following summary of certain U.S. federal income tax considerations is based on current law, is for general information only, and is not intended to be (and is not) tax advice.

It is the opinion of Seyfarth Shaw LLP that we have been organized and operated in conformity with the requirements for qualification and taxation as a REIT under the Code, commencing with our taxable year ended December 31, 2001, the Company qualified and will qualify to be taxed as a REIT pursuant to sections 856 through 860 of the Code, and that our current and proposed method of operation will enable us to continue to meet the requirements for qualification and taxation as a REIT under the Code. We must emphasize that this opinion of Seyfarth Shaw LLP is based on various assumptions, certain representations and statements made by us as to factual matters and is conditioned upon such assumptions, representations and statements being accurate and complete. Seyfarth Shaw LLP is not aware of any facts or circumstances that are not consistent with these representations, assumptions and statements. Potential purchasers of our common shares should be aware, however, that opinions of counsel are not binding upon the IRS or any court. In general, our qualification and taxation as a REIT depends upon our ability to satisfy, through actual operating results, distribution, diversity of share ownership, and other requirements imposed under the Code, none of which has been, or will be, reviewed by Seyfarth Shaw LLP. Accordingly, while we intend to continue to qualify to be taxed as a REIT under the Code no assurance can be given that the actual results of our operations for any particular taxable year has satisfied, or will satisfy, the requirements for REIT qualification.

Commencing with our taxable year ended December 31, 1993, we elected to be taxed as a REIT under the Code. We believe that commencing with our taxable year ended December 31, 1993, we have been organized and have operated in such a manner so as to qualify as a REIT under the Code, and we intend to continue to operate in such a manner. However, we cannot assure you that we will, in fact, continue to operate in such a manner or continue to so qualify as a REIT under the Code.

If we qualify for taxation as a REIT under the Code, we generally will not be subject to a corporate-level tax on our net income that we distribute currently to our shareholders. This treatment substantially eliminates the “double taxation” (i.e., a corporate-level tax and shareholder-level tax) that generally results from investment in a regular subchapter C corporation. However, we will be subject to U.S. federal income tax as follows:

First, we would be taxed at regular corporate rates on any of our undistributed REIT taxable income, including our undistributed net capital gains (although, to the extent so designated by us, shareholders would receive an offsetting credit against their own U.S. federal income tax liability for U.S. federal income taxes paid by us with respect to any such gains).

Second, under certain circumstances, we may be subject to the “corporate alternative minimum tax” on our items of tax preference.

Third, if we have (a) net income from the sale or other disposition of “foreclosure property,” which is, in general, property acquired on foreclosure or otherwise on default on a loan secured by such real property or a lease of such property, which is held primarily for sale to customers in the ordinary course of business or (b) other nonqualifying income from foreclosure property, we will be subject to tax at the highest corporate rate on such income.

Fourth, if we have net income from prohibited transactions such income will be subject to a 100% tax. Prohibited transactions are, in general, certain sales or other dispositions of property held primarily for sale to customers in the ordinary course of business other than foreclosure property.

Fifth, if we should fail to satisfy the annual 75% gross income test or 95% gross income test (as discussed below), but nonetheless maintain our qualification as a REIT under the Code because certain other requirements have been met, we will have to pay a 100% tax on an amount equal to (a) the gross income attributable to the greater of (i) 75% of our gross income over the amount of gross income that is qualifying income for purposes of the 75% test, and (ii) 95% of our gross income (90% for taxable years beginning on or before October 22, 2004) over the amount of gross income that is qualifying income for purposes of the 95% test, multiplied by (b) a fraction intended to reflect our profitability.

Sixth, if we should fail to distribute during each calendar year at least the sum of (i) 85% of our REIT ordinary income for such year, (ii) 95% of our REIT capital gain net income for such year, and (iii) any undistributed taxable income required to be distributed from prior years, we would be subject to a 4% excise tax on the excess of such required distribution over the amount actually distributed by us.

Seventh, if we were to acquire an asset from a corporation that is or has been a subchapter C corporation in a transaction in which the basis of the asset in our hands is determined by reference to the basis of the asset in the hands of the subchapter C corporation, and we subsequently recognize gain on the disposition of the asset within the ten-year period beginning on the day that we acquired the asset, then we will have to pay tax on the built-in gain at the highest regular corporate rate. The results described in this paragraph assume that no election will be made under Treasury Regulations Section 1.337(d)-7 for the subchapter C corporation to be subject to an immediate tax when the asset is acquired.

Eighth, for taxable years beginning after December 31, 2000, we could be subject to a 100% tax on certain payments that we receive from one of our taxable REIT subsidiaries, (each, a "TRS"), or on certain expenses deducted by one of our TRSs, if the economic arrangement between us, the TRS and the tenants at our properties are not comparable to similar arrangements among unrelated parties.

Ninth, if we fail to satisfy a REIT asset test, as described below, during our 2005 and subsequent taxable years, due to reasonable cause and we nonetheless maintain our REIT qualification under the Code because of specified cure provisions, we will generally be required to pay a tax equal to the greater of \$50,000 or the highest corporate tax rate multiplied by the net income generated by the nonqualifying assets that caused us to fail this test.

Tenth, if we fail to satisfy any provision of the Code that would result in our failure to qualify as a REIT (other than a violation of the REIT gross income tests or a violation of the asset tests described below) during our 2005 and subsequent taxable years and the violation is due to reasonable cause, we may retain our REIT qualification but will be required to pay a penalty of \$50,000 for each such failure.

Eleventh, we may be required to pay monetary penalties to the IRS in certain circumstances, including if we fail to meet record-keeping requirements intended to monitor our compliance with rules relating to the composition of a REIT's shareholders.

Finally, the earnings of our lower-tier entities that are subchapter C corporations, including TRSs but excluding our QRSs (as defined below), 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 could also be subject to tax in situations and on transactions not presently contemplated.

*Requirements for REIT Qualification—In General*

To qualify as a REIT under the Code, we must elect to be treated as a REIT and must satisfy the annual gross income tests, the quarterly asset tests, distribution requirements, diversity of share ownership and other requirements imposed under the Code. In general, the Code defines a REIT as a corporation, trust or association:

- (1) that is managed by one or more trustees or directors;
- (2) the beneficial ownership of which is evidenced by transferable shares, or by transferable certificates of beneficial interest;
- (3) that would otherwise be taxable as a domestic corporation, but for Sections 856 through 859 of the Code;
- (4) that is neither a financial institution nor an insurance company to which certain provisions of the Code apply;
- (5) the beneficial ownership of which is held by 100 or more persons;
- (6) during the last half of each taxable year, not more than 50% in value of the outstanding stock of which is owned, directly or constructively, by five or fewer individuals, as defined in the Code to include certain entities;
- (7) that uses a calendar year for U.S. federal income tax purposes and complies with the recordkeeping requirements of the U.S. federal income tax laws; and

(8) that meets certain other tests, described below, regarding the nature of its income and assets.

The Code provides that the requirements (1)-(4), (7) and (8) above must be met during the entire taxable year and that requirements (5) and (6) above do not apply to the first taxable year for which a REIT election is made and, thereafter, requirement (5) must be met during at least 335 days of a taxable year of 12 months, or during a proportionate part of a taxable year of less than 12 months. For purposes of requirement (6) above, generally (although subject to certain exceptions that should not apply with respect to us), any stock held by a trust described in Section 401(a) of the Code and exempt from tax under Section 501(a) of the Code is treated as not held by the trust itself but directly by the trust beneficiaries in proportion to their actuarial interests in the trust.

We believe that we have satisfied the requirements above for REIT qualification. In addition, our charter currently includes restrictions regarding the ownership and transfer of our common shares, which restrictions are intended to assist us in satisfying some of these requirements (and, in particular requirements (5) and (6) above). The ownership and transfer restrictions pertaining to our common shares are described in the prospectus under the heading “Description of Shares of Beneficial Interest—Restrictions on Ownership and Transfer.”

In applying the REIT gross income and asset tests, all of the assets, liabilities and items of income, deduction and credit of a corporate subsidiary of a REIT that is a “qualified REIT subsidiary” (as defined in Section 856(i)(2) of the Code) (“QRS”) are treated as the assets, liabilities and items of income, deduction and credit of the REIT itself. Moreover, the separate existence of a QRS is disregarded for U.S. federal income tax purposes and the QRS is not subject to U.S. federal corporate income tax (although it may be subject to state and local tax in some states and localities). In general, a QRS is any corporation if all of its stock is held by the REIT, except that it does not include any corporation that is a TRS of the REIT. Thus, for U.S. federal income tax purposes, our QRSs are disregarded, and all assets, liabilities and items of income, deduction and credit of these QRSs are treated as our assets, liabilities and items of income, deduction and credit.

A TRS is any corporation in which a REIT directly or indirectly owns stock, provided that the REIT and that corporation make a joint election to treat that corporation as a TRS. The election can be revoked at any time as long as the REIT and the TRS revoke such election jointly. In addition, if a TRS holds, directly or indirectly, more than 35% of the securities of any other corporation other than a REIT (by vote or by value), then that other corporation is also treated as a TRS. A TRS is subject to U.S. federal income tax at regular corporate rates (currently a maximum rate of 35%), and may also be subject to state and local tax. Any dividends paid or deemed paid to us by any one of our TRSs will also be taxable, either (1) to us to the extent the dividend is retained by us, or (2) to our shareholders to the extent the dividends received from the TRS are paid to our shareholders. We may hold more than 10% of the stock of a TRS without jeopardizing our qualification as a REIT under the Code notwithstanding the rule described below under “REIT Asset Tests” that generally precludes ownership of more than 10% of any issuer’s securities. However, as noted below, in order to qualify as a REIT, the securities of all of our TRSs in which we have invested either directly or indirectly may not represent more than 25% (20% for taxable years ending on or before December 31, 2008) of the total value of our assets. We expect that the aggregate value of all of our interests in TRSs will represent less than 25% (20% for taxable years ending on or before December 31, 2008) of the total value of our assets; however, we

cannot assure that this will always be true.

A TRS may generally engage in any business including the provision of customary or non-customary services to tenants of its parent REIT, which, if performed by the REIT itself, could cause rents received by the REIT to be disqualified as “rents from real property.” However, a TRS may not directly or indirectly operate or manage any hotels or health care facilities or provide rights to any brand name under which any hotel or health care facility is operated, unless such rights are provided to an “eligible independent contractor” to operate or manage a hotel if such rights are held by the TRS as a franchisee, licensee, or in a similar capacity and such hotel is either owned by the TRS or leased to the TRS by its parent REIT. However, for taxable years beginning after July 30, 2008, a TRS may provide rights to a brand name under which a health care facility is operated, if such rights are provided to an “eligible independent contractor” to operate or manage the health care facility and such health care facility is either owned by the TRS or leased to the TRS by its parent REIT. A TRS will not be considered to operate or manage a qualified health care property or a qualified lodging facility solely because the TRS (i) directly or indirectly possesses a license, permit, or similar instrument enabling it to do so, or (ii) employs individuals working at such facility or property located outside the U.S., but only if an “eligible independent contractor” is responsible for the daily supervision and direction of such individuals on behalf of the TRS pursuant to a management agreement or similar service contract. However, the Code contains several provisions which address the arrangements between a REIT and its TRSs which are intended to ensure that a TRS recognizes an appropriate amount of taxable income and is subject to an appropriate level of U.S. federal income tax. For example, a TRS is limited in its ability to deduct interest payments made to the REIT. In addition, a REIT would be subject to a 100% penalty on some payments that it receives from a TRS, or on certain expenses deducted by the TRS if the economic arrangements between the REIT, the REIT’s tenants and the TRS are not comparable to similar arrangements among unrelated parties. We have several TRSs and will endeavor to structure any arrangement between ourselves, our TRSs and our tenants so as to minimize the risk of disallowance of interest expense deductions or of the 100% penalty being imposed. Notwithstanding, however, it cannot be assured that the IRS would not challenge any such arrangement.



Also, a REIT that is a partner in a partnership is deemed to own its proportionate share of each of the assets of the partnership and is deemed to be entitled to income of the partnership attributable to such proportionate share. For purposes of Section 856 of the Code, the interest of a REIT in the assets of a partnership of which it is a partner is determined in accordance with the REIT's capital interest in the partnership and the character of the assets and items of gross income of the partnership retain the same character in the hands of the REIT. For example, if the partnership holds any property primarily for sale to customers in the ordinary course of its trade or business, the REIT is treated as holding its proportionate share of such property primarily for such purpose. Thus, our proportionate share (based on our capital interest) of the assets, liabilities and items of income of any partnership in which we are a partner, including the Operating Partnership (and our indirect share of the assets, liabilities and items of income of each lower-tier partnership), will be treated as our assets, liabilities and items of income for purposes of applying the requirements described in this section. For purposes of the 10% Value Test (described under "REIT Asset Tests" below) our proportionate share is based on our proportionate interest in the equity interests and certain debt securities issued by a partnership. Also, actions taken by the Operating Partnership or other lower-tier partnerships can affect our ability to satisfy the REIT gross income and asset tests and the determination of whether we have net income from a prohibited transaction. For purposes of this section any reference to "partnership" will refer to and include any partnership, limited liability company, joint venture and other entity or arrangement that is treated as a partnership for U.S. federal income tax purposes, and any reference to "partner" will refer to and include a partner, member, joint venturer and other beneficial owner of any such partnership, limited liability company, joint venture and other entity or arrangement.

*REIT Gross Income Tests* : In order to maintain our qualification as a REIT under the Code, we must satisfy, on an annual basis, two gross income tests.

First, at least 75% of our gross income, excluding gross income from prohibited transactions and certain "hedging transactions" entered into after July 30, 2008, for each taxable year must be derived directly or indirectly from investments relating to real property or mortgages on real property, including "rents from real property," gains on the disposition of real estate, dividends paid by another REIT and interest on obligations secured by mortgages on real property or on interests in real property, or from some types of temporary investments.

Second, at least 95% of our gross income, excluding gross income from prohibited transactions and, commencing with our 2005 taxable year, certain "hedging transactions," for each taxable year must be derived from any combination of income qualifying under the 75% test and dividends, interest, and gain from the sale or disposition of stock or securities.

For this purpose the term "rents from real property" includes: (a) rents from interests in real property; (b) charges for services customarily furnished or rendered in connection with the rental of real property, whether or not such charges are separately stated; and (c) rent attributable to personal property which is leased under, or in connection with, a lease of real property, but only if the rent attributable to such personal property for the taxable year does not exceed 15% of the total rent for the taxable year attributable to both the real and personal property leased under, or in connection with, such lease. For purposes of (c), the rent attributable to personal property is equal to that amount which bears the same ratio to total rent for the taxable year as the average of the fair market values of the 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

property and the personal property at the beginning and at the end of such taxable year.

However, in order for rent received or accrued, directly or indirectly, with respect to any real or personal property, to qualify as “rents from real property,” the following conditions must be satisfied:

such rent must not be based in whole or in part on the income or profits derived by any person from the property (although the rent may be based on a fixed percentage of receipts or sales);

such rent may not be received or accrued, directly or indirectly, from any person if the REIT owns, directly or indirectly (including by attribution, upon the application of certain attribution rules): (i) in the case of any person which is a corporation, at least 10% of such person’s voting stock or at least 10% of the value of such person’s stock; or (ii) in the case of any person which is not a corporation, an interest of at least 10% in the assets or net profits of such person, except that under certain circumstances, rents received from a TRS will not be disqualified as “rents from real property” even if we own more than 10% of the TRS; and

the portion of such rent that is attributable to personal property for a taxable year that is leased under, or in connection with, a lease of real property may not exceed 15% of the total rent received or accrued under the lease for the taxable year.

In addition, all amounts (including rents that would otherwise qualify as “rents from real property”) received or accrued during a taxable year directly or indirectly by a REIT with respect to a property, will constitute “impermissible tenant services income” (and, thus, will not qualify as “rents from real property”) if the amount received or accrued directly or indirectly by the REIT for: (x) noncustomary services furnished or rendered by the REIT to tenants of the property; or (y) managing or operating the property ((x) and (y) collectively, “Impermissible Services”) exceeds 1% of all amounts received or accrued during such taxable year directly or indirectly by the REIT with respect to the property. For this purpose, however, the following services and activities are not treated as Impermissible Services: (i) services furnished or rendered, or management or operation provided, through an independent contractor from whom the REIT itself does not derive or receive any income or through a TRS; and (ii) services usually or customarily rendered in connection with the rental of space for occupancy (such as, for example, the furnishing of heat and light, the cleaning of public entrances, and the collection of trash), as opposed to services rendered primarily to a tenant for the tenant’s convenience. If the amount treated as being received or accrued for Impermissible Services does not exceed the 1% threshold, then only the amount attributable to the Impermissible Services (and not, for example, all tenant rents received or accrued that otherwise qualify as “rents from real property”) will fail to qualify as “rents from real property.” For purposes of the 1% threshold, the amount that we will be deemed to have received for performing Impermissible Services will be the greater of the actual amounts so received or 150% of the direct cost to us of providing those services.

We (through the Operating Partnership and other affiliated entities) provide some services at our properties, which services we believe do not constitute Impermissible Services or, otherwise, do not cause any rents or other amounts received that otherwise qualify as “rents from real property” to fail to so qualify. If we or the Operating Partnership or other affiliated entities were to consider offering services in the future which could cause any such rents or other amounts to fail to qualify as “rents from real property” then we would endeavor to arrange for such services to be provided through one or more independent contractors and/or TRSs or, otherwise, in such a manner so as to minimize the risk of such services being treated as Impermissible Services.

In addition, we (through the Operating Partnership and other affiliated entities) receive or may receive fees for property management and administrative services provided with respect to certain properties not owned, either directly or indirectly, entirely by us and/or the Operating Partnership. These fees do not constitute qualifying income for purposes of either the 75% gross income test or 95% gross income test. We (through the Operating Partnership and other affiliated entities) also receive or may receive other types of income that do not constitute qualifying income for purposes of either of these two gross income tests. We believe that our share of the aggregate amount of these fees and other non-qualifying income so received or accrued has not caused us to fail to satisfy either of the gross income tests. We anticipate that we will continue to receive or accrue a certain amount of non-qualifying fees and other income. In the event that our share of the amount of such fees and other income could jeopardize our ability to satisfy these gross income tests, then we would endeavor to arrange for the services in respect of which such fees and other income are received to be provided by one or more independent contractors and/or TRSs or, otherwise, in such manner so as to minimize the risk of failing either of the gross income tests.

Interest income constitutes qualifying mortgage interest for purposes of the 75% gross income test (as described above) to the extent that the obligation is secured by a mortgage on real property. If we receive interest income with respect to a mortgage loan that is secured by both real property and other property, and the highest principal amount of

the loan outstanding during a taxable year exceeds the fair market value of the real property on the date that we have a binding commitment to acquire or originate the mortgage loan, the interest income will be apportioned between the real property and the other collateral, and its income from the arrangement will qualify for purposes of the 75% gross income test only to the extent that the interest is allocable to the real property. Even if a loan is not secured by real property, or is undersecured, the income that it generates may nonetheless qualify for purposes of the 95% gross income test.

To the extent that the terms of a loan provide for contingent interest that is based on the cash proceeds realized upon the sale of the property securing the loan (a “shared appreciation provision”), income attributable to the participation feature will be treated as gain from sale of the underlying property, which generally will be qualifying income for purposes of both the 75% and 95% gross income tests provided that the property is not inventory or dealer property in the hands of the borrower or the REIT.

To the extent that a REIT derives interest income from a mortgage loan or income from the rental of real property where all or a portion of the amount of interest or rental income payable is contingent, such income generally will qualify for purposes of the gross income tests only if it is based upon the gross receipts or sales, and not the net income or profits, of the borrower or lessee. This limitation does not apply, however, where the borrower or lessee leases substantially all of its interest in the property to tenants or subtenants, to the extent that the rental income derived by the borrower or lessee, as the case may be, would qualify as rents from real property had it been earned directly by a REIT.

We and our affiliates or subsidiaries have or may originate and acquire mezzanine loans, which are loans secured by equity interests in an entity that directly or indirectly owns real property, rather than by a direct mortgage of such real property. 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 in the section entitled “REIT Asset Tests,” 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 REITs may rely, it does not prescribe rules of substantive tax law. Moreover, not all of the mezzanine loans in which we invest meet or will meet each of the requirements for reliance on this safe harbor. To the extent that mezzanine loans do not qualify for the safe harbor described above, the interest income from such loans will be qualifying income for purposes of the 95% gross income test, but there is a risk that such interest income will not be qualifying income for purposes of the 75% gross income test and that such loans will not constitute real estate assets for purposes of the REIT asset tests. We have invested, and will continue to invest, in mezzanine loans in a manner that will enable us to continue to satisfy the REIT gross income and asset tests.

From time to time, we may enter into hedging transactions with respect to one or more of our assets or liabilities. Prior to our 2005 taxable year, any periodic income or gain from the disposition of any financial instrument for transactions to hedge indebtedness we incurred to acquire or carry “real estate assets” was qualifying income for purposes of the 95% gross income test, but not the 75% gross income test. To the extent we hedged in other situations, it is not entirely clear how the income from those transactions should have been treated for the gross income tests. Commencing with our 2005 taxable year, income and gain from “hedging transactions” will be excluded from gross income for purposes of the 95% gross income test, but not the 75% gross income test. For hedging transactions entered into after July 30, 2008, income and gain from “hedging transactions” will be excluded from gross income for purposes of both the 75% and 95% gross income tests. For this purpose, a “hedging transaction” means either (1) any transaction entered into in the normal course of our 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) for transactions entered into after July 30, 2008, 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 will be 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 status as a REIT under the Code.

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. We believe that none of our assets are held primarily for sale to customers and that a sale of any of our assets will not be in the ordinary course of our business. Whether a REIT holds an asset “primarily for sale to customers in the ordinary course of a trade or business” depends, however, on the facts and circumstances in effect 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 100% prohibited transaction tax is available if the following requirements are met:

- the REIT has held the property for not less than two years (or, for sales made before July 31, 2008, four years);

- the aggregate capital expenditures made by the REIT, or any partner of the REIT, during the two-year period (or, for sales made before July 31, 2008, four-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;

- either (1) during the year in question, the REIT did not make more than seven sales of property other than foreclosure property or sales to which Section 1033 of the Internal Revenue 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) for sales made on or after July 31, 2008, 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 (or, for sales made before July 31, 2008, four years) for the production of rental income; and

if the REIT has made more than seven sales of non-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 safe-harbor provision in the U.S. 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 provision or that we will avoid owning property that may be characterized as property that we hold “primarily for sale to customers in the ordinary course of a trade or business.” The 100% tax will not apply to gains from the sale of property that is held through a TRS or other taxable corporation, although such income will be taxed to such corporation at regular corporate income tax rates.

We will be subject to tax at the maximum corporate rate on any income from foreclosure property, which includes certain foreign currency gains and related deductions recognized subsequent to July 30, 2008, 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. However, gross income from foreclosure property will qualify under the 75% and 95% gross income tests. 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 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.

We have no foreclosure property as of the date of this prospectus supplement. 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 Treasury. However, this grace period 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

· 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.

To the extent that we or our subsidiaries hold or acquire investments in foreign countries, taxes that we pay in foreign jurisdictions may not be passed through to, or used by, our shareholders as a foreign tax credit or otherwise. Any foreign investments may also generate foreign currency gains and losses. Certain foreign currency gains recognized after July 30, 2008 will be excluded from gross income for purposes of one or both of the gross income tests. "Real estate foreign exchange gain" will be excluded from gross income for purposes of the 75% and the 95% gross income tests. Real estate foreign exchange gain generally includes foreign currency gain attributable to any item of income or

gain that is qualifying income for purposes of the 75% gross income test, foreign currency gain attributable to the acquisition or ownership of (or becoming or being the obligor under) obligations secured by mortgages on real property or interests in real property and certain foreign currency gains attributable to certain “qualified business units” of a REIT. “Passive foreign exchange gain” will be excluded from gross income only for purposes of the 95% gross income test. Passive foreign exchange gain generally includes real estate foreign exchange gain as described above, and also includes foreign currency gain attributable to any item of income or gain that is qualifying income for purposes of the 95% gross income test and foreign currency gain attributable to the acquisition or ownership of (or becoming or being the obligor under) obligations secured by mortgages on real property or interests in real property. Because passive foreign exchange gain includes real estate foreign exchange gain, real estate foreign exchange gain is excluded from gross income for purposes of both the 75% and 95% gross income tests. These exclusions for real estate foreign exchange gain and passive foreign exchange gain do not apply to any foreign currency gain derived from dealing, or engaging in substantial and regular trading, in securities. Such gain is treated as nonqualifying income for purposes of both the 75% and 95% gross income tests.

Notwithstanding the foregoing, for taxable years beginning after July 30, 2008, the Secretary of the Treasury may determine that any item of income or gain not otherwise qualifying for purposes of the 75% and 95% gross income tests may be considered as not constituting gross income for purposes of those tests, and that any item of income or gain that otherwise constitutes nonqualifying income may be considered as qualifying income for purposes of such tests.



If we fail to satisfy either or both of the 75% or 95% gross income tests for any taxable year, we may nevertheless qualify as a REIT for that year pursuant to a special relief provision of the Code which may be available to us if:

- our failure to meet these tests was due to reasonable cause and not due to willful neglect;
- we attach a schedule of the nature and amount of each item of income to our U.S. federal income tax return; and
- for our 2004 and prior taxable years, the inclusion of any incorrect information on the schedule is not due to fraud with intent to evade tax.

We cannot state whether in all circumstances, if we were to fail to satisfy either of the gross income tests, we would still be entitled to the benefit of this relief provision. Even if this relief provision were to apply, we would nonetheless be subject to a 100% tax on the gross income attributable to the greater of (1) the amount by which we fail the 75% gross income test and (2) the amount by which 95% (or 90% for our 2004 and prior taxable years) of our income exceeds the amount of qualifying income under the 95% gross income test, in each case, multiplied by a fraction intended to reflect our profitability.

*REIT Asset Tests* : At the close of each quarter of our taxable year, we must also satisfy the following tests relating to the nature and diversification of our assets (collectively, the “Asset Tests”):

at least 75% of the value of our total assets must be represented by “real estate assets” (which also includes any property attributable to the temporary investment of new capital, but only if such property is stock or a debt instrument and only for the 1-year period beginning on the date the REIT receives such proceeds), cash and cash items (including receivables) and government securities (“75% Value Test”);

not more than 25% of the value of our total assets may be represented by securities other than securities that constitute qualifying assets for purposes of the 75% Value Test;

except with respect to securities of a TRS or QRS and securities that constitute qualifying assets for purposes of the 75% Value Test:

not more than 5% of the value of our total assets may be represented by securities of any one issuer (the “5% Value Test”);

we may not hold securities possessing more than 10% of the total voting power of the outstanding securities of any one issuer (the “10% Vote Test”);

we may not hold securities having a value of more than 10% of the total value of the outstanding securities of any one issuer (“10% Value Test”); and

not more than 20% (25% for our 2009 taxable year and thereafter) of the value of our total assets may be represented by securities of one or more TRSs.

After initially meeting the Asset Tests at the close of any quarter of our taxable year, we would not lose our status as a REIT under the Code for failure to satisfy these tests at the end of a later quarter solely by reason of changes in asset values. If the failure to satisfy the Asset Tests results from an acquisition of securities or other property during a quarter, we can cure the failure by disposing of a sufficient amount of non-qualifying assets within 30 days after the close of that quarter. We intend to maintain adequate records of the value of our assets to facilitate compliance with the Asset Tests and to take such other actions within 30 days after the close of any quarter as necessary to cure any noncompliance.

In applying the Asset Tests, we are treated as owning all of the assets held by any of our QRSs and our proportionate share of the assets held by the Operating Partnership (including the Operating Partnership’s share of the assets held by any lower-tier partnership in which the Operating Partnership holds a direct or indirect interest).

For purposes of the 5% Value Test, the 10% Vote Test or 10% Value Test, the term “securities” does not include shares in another REIT, equity or debt securities of a QRS or TRS, mortgage loans that constitute real estate assets, or equity interests in a partnership. Securities, for purposes of the Asset Tests, may include debt that we hold in other issuers. However, the Code specifically provides that the following types of debt will not be taken into account as securities for purposes of the 10% Value Test: (1) securities that meet the “straight debt” safe harbor; (2) loans to individuals or estates; (3) obligations to pay rents from real property; (4) rental agreements described in Section 467 of the Code (other than such agreements with related party tenants); (5) securities issued by other REITs; (6) debt issued by partnerships that derive at least 75% of their gross income from sources that constitute qualifying income for purposes of the 75% gross income test; (7) any debt not otherwise described in this paragraph that is issued by a partnership, but only to the extent of our interest as a partner in the partnership; (8) certain securities issued by a state, the District of Columbia, a foreign government, or a political subdivision of any of the foregoing, or the Commonwealth of Puerto Rico; and (9) any other arrangement described in future Treasury Regulations. For purposes of the 10% Value Test, our proportionate share of the assets of a partnership is our proportionate interest in any securities issued by the partnership, without regard to the securities described in (6) and (7) above.

For taxable years beginning after July 30, 2008, for purposes of the 75% Value Test, cash includes any foreign currency used by the REIT or its qualified business unit as its “functional currency” (as defined in section 985(b) of the Internal Revenue Code), provided that the foreign currency (a) is held by the REIT or its qualified business unit in the normal course of activities which give rise to qualifying income under the 75% or 95% gross income tests or which are related to acquiring or holding assets described in section 856(c)(4) of the Internal Revenue Code and (b) is not held in connection with dealing, or engaging in substantial and regular trading, in securities

Based on our regular quarterly asset tests, we believe that we have not violated any of the Asset Tests. However, we cannot provide any assurance that the IRS would concur with our beliefs in this regard.

If we fail to satisfy the Asset Tests at the end of a calendar quarter, we will not lose our REIT qualification 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 wholly or partly caused by the acquisition of one or more non-qualifying assets.

If we did not satisfy the condition described in the second item above, we still could avoid disqualification by eliminating any discrepancy within 30 days after the close of the calendar quarter in which it arose.

If at the end of any calendar quarter commencing with our 2005 taxable year, we violate the 5% Value Test or the 10% Vote or Value Tests described above, we will not lose our REIT qualification 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 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 the Asset Tests (other than de minimis failures described in the preceding sentence), as long as the failure was due to reasonable cause and not to willful neglect, we will not lose our REIT status if we (1) dispose of assets or otherwise comply with the Asset Tests within six months after the last day of the quarter in which we identify the failure, (2) we file a description of each asset causing the failure with the Internal Revenue Service and (3) 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.

*REIT Distribution Requirements* : To qualify for taxation as a REIT, we must, each year, make distributions (other than capital gain distributions) to our shareholders in an amount at least equal to (1) the sum of: (A) 90% of our “REIT taxable income,” computed without regard to the dividends paid deduction and our net capital gain, and (2) 90% of the net income, after tax, from foreclosure property, minus (2) the sum of certain specified items of noncash income. In addition, if we were to dispose of any asset acquired from a subchapter C corporation in a “carryover basis” transaction

within ten years of the acquisition, we would be required to distribute at least 90% of the after-tax "built-in gain" recognized on the disposition of such asset.

We must pay dividend distributions in the taxable year to which they relate. Dividends paid in the subsequent year, however, will be treated as if paid in the prior year for purposes of the prior year's distribution requirement if one of the following two sets of criteria are satisfied:

the dividends are declared in October, November or December and are made payable to shareholders of record on a specified date in any of these months, and such dividends are actually paid during January of the following year; or

the dividends are declared before we timely file our U.S. federal income tax return for such year, the dividends are paid in the 12-month period following the close of the year and not later than the first regular dividend payment after the declaration, and we elect on our U.S. federal income tax return for such year to have a specified amount of the subsequent dividend treated as if paid in such year.

Internal Revenue Service Revenue Procedure 2010-12, 2010-3 I.R.B, permits us to make taxable distributions of our stock (in lieu of cash) if (i) any such distribution is declared on or before December 31, 2012 with respect to a taxable year ending on or before December 31, 2011, and (y) each of our stockholders is permitted to elect to receive its entire entitlement under such declaration in either cash or shares of equivalent value subject to a limitation in the amount of cash to be distributed in the aggregate; provided that (i) the amount of cash that we set aside for distribution is not less than 10 percent of the aggregate distribution so declared, and (ii) if too many of our stockholders elect to receive cash, a pro rata amount of cash will be distributed to each such stockholder electing to receive cash, but in no event will any such stockholder receive less than its entire entitlement under such declaration.

Even if we satisfy our distribution requirements for maintaining our REIT status, we will nonetheless be subject to a corporate-level tax on any of our net capital gain or REIT taxable income that we do not distribute to our shareholders. In addition, we will be subject to a 4% excise tax to the extent that we fail to distribute during any 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 3 months of the calendar year) an amount at least equal to the sum of:

- 85% of our ordinary income for such year;

- 95% of our capital gain net income for such year; and

- any u