

DCT Industrial Trust Inc.  
Form 10-K  
February 25, 2011  
Table of Contents

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

## Form 10-K

(Mark one)

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES

EXCHANGE ACT OF 1934

For the fiscal year ended December 31, 2010

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES

EXCHANGE ACT OF 1934

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission File Number 001-33201

## DCT INDUSTRIAL TRUST INC.

(Exact name of registrant as specified in its charter)

**Maryland**

(State or other jurisdiction of

incorporation or organization)

**518 17<sup>th</sup> Street, Suite 800**

**Denver, Colorado**

(Address of principal executive offices)

Registrant's Telephone Number, Including Area Code: (303) 597-2400

**82-0538520**

(I.R.S. Employer

Identification No.)

**80202**

(Zip Code)

Securities Registered Pursuant to Section 12(b) of the Act:

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<b>Title of Each Class</b>	<b>Name of Each Exchange on Which Registered</b>
Common Stock	New York Stock Exchange
Securities Registered Pursuant to Section 12(g) of the Act: none	

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined by Rule 405 of the Securities Act. Yes  No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes  No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes  No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer

Accelerated filer

Non-accelerated filer  (do not check if smaller reporting company)

Smaller reporting company

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes  No

As of June 30, 2010, the aggregate market value of the 208.6 million shares of voting and non-voting common stock held by non-affiliates of the registrant was \$0.9 billion based on the closing sale price of \$4.52 as reported on the New York Stock Exchange on June 30, 2010. (For this computation, the registrant has excluded the market value of all shares of Common Stock reported as beneficially owned by executive officers and directors of the registrant; such exclusion shall not be deemed to constitute an admission that any such person is an affiliate of the registrant.) As of February 22, 2011 there were 245,408,282 shares of Common Stock outstanding.

### Documents Incorporated by Reference

Portions of the registrant's definitive proxy statement to be issued in conjunction with the registrant's annual meeting of stockholders to be held April 28, 2011 are incorporated by reference into Part III of this Annual Report.

**Table of Contents**

**DCT INDUSTRIAL TRUST INC.**

**TABLE OF CONTENTS**

**ANNUAL REPORT ON FORM 10-K**

**For the Fiscal Year Ended December 31, 2010**

	Page
<b>PART I</b>	
Item 1. <u>Business</u>	2
Item 1A. <u>Risk Factors</u>	6
Item 1B. <u>Unresolved Staff Comments</u>	26
Item 2. <u>Properties</u>	27
Item 3. <u>Legal Proceedings</u>	31
Item 4. <u>Removed and Reserved</u>	31
<b>PART II</b>	
Item 5. <u>Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities</u>	32
Item 6. <u>Selected Financial Data</u>	35
Item 7. <u>Management's Discussion and Analysis of Financial Condition and Results of Operations</u>	39
Item 7A. <u>Quantitative and Qualitative Disclosure about Market Risk</u>	61
Item 8. <u>Financial Statements and Supplementary Data</u>	61
Item 9. <u>Changes in and Disagreements with Accountants on Accounting and Financial Disclosure</u>	61
Item 9A. <u>Controls and Procedures</u>	62
Item 9B. <u>Other Information</u>	64
<b>PART III</b>	
Item 10. <u>Directors, Executive Officers and Corporate Governance</u>	65
Item 11. <u>Executive Compensation</u>	65
Item 12. <u>Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters</u>	65
Item 13. <u>Certain Relationships and Related Transactions, and Director Independence</u>	65
Item 14. <u>Principal Accountant Fees and Services</u>	65
<b>PART IV</b>	
Item 15. <u>Exhibits and Financial Statement Schedules</u>	66

**Table of Contents**

**FORWARD-LOOKING STATEMENTS**

We make statements in this Annual Report on Form 10-K ( Annual Report ) that are considered 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, which are usually identified by the use of words such as anticipates, believes, estimates, expects, intends, plans, projects, seeks, should, will, and variations of such words or similar expressions. We intend these forward-looking statements to be covered by the safe harbor provisions for forward-looking statements contained in the Private Securities Litigation Reform Act of 1995 and are including this statement for purposes of complying with those safe harbor provisions. These forward-looking statements reflect our current views about our plans, intentions, expectations, strategies and prospects, which are based on the information currently available to us and on assumptions we have made. Although we believe that our plans, intentions, expectations, strategies and prospects as reflected in or suggested by those forward-looking statements are reasonable, we can give no assurance that the plans, intentions, expectations or strategies will be attained or achieved. Furthermore, actual results may differ materially from those described in the forward-looking statements and will be affected by a variety of risks and factors that are beyond our control including, without limitation:

national, international, regional and local economic conditions, including, in particular, the continuing impact of the economic recession that began in 2007 and the strength of the economic recovery;

the general level of interest rates and the availability of capital;

the competitive environment in which we operate;

real estate risks, including fluctuations in real estate values and the general economic climate in local markets and competition for tenants in such markets;

decreased rental rates or increasing vacancy rates;

defaults on or non-renewal of leases by tenants;

acquisition and development risks, including failure of such acquisitions and development projects to perform in accordance with projections;

the timing of acquisitions and dispositions;

natural disasters such as fires, hurricanes and earthquakes;

energy costs;

the terms of governmental regulations that affect us and interpretations of those regulations, including the costs of compliance with those regulations, changes in real estate and zoning laws and increases in real property tax rates;

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financing risks, including the risk that our cash flows from operations may be insufficient to meet required payments of principal, interest and other commitments;

lack of or insufficient amounts of insurance;

litigation, including costs associated with prosecuting or defending claims and any adverse outcomes;

the consequences of future terrorist attacks or civil unrest;

environmental liabilities, including costs, fines or penalties that may be incurred due to necessary remediation of contamination of properties presently owned or previously owned by us; and

other risks and uncertainties detailed in the section entitled Risk Factors.

In addition, our current and continuing qualification as a real estate investment trust, or REIT, involves the application of highly technical and complex provisions of the Internal Revenue Code of 1986, or the Code, and depends on our ability to meet the various requirements imposed by the Code through actual operating results, distribution levels and diversity of stock ownership.

We assume no obligation to update publicly any forward-looking statements, whether as a result of new information, future events or otherwise. The reader should carefully review our financial statements and the notes thereto, as well as the section entitled Risk Factors in this Annual Report.

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**Table of Contents**

**PART I**

**ITEM 1. BUSINESS**

**The Company**

DCT Industrial Trust Inc. is a leading industrial real estate company that owns, operates and develops high-quality bulk distribution and light industrial properties in high-volume distribution markets in the U.S. and Mexico. We were formed as a Maryland corporation in April 2002 and have elected to be treated as a real estate investment trust ( REIT ) for United States ( U.S. ) federal income tax purposes. We are structured as an umbrella partnership REIT under which substantially all of our current and future business is, and will be, conducted through a majority owned and controlled subsidiary, DCT Industrial Operating Partnership LP (the operating partnership ), a Delaware limited partnership, for which DCT Industrial Trust Inc. is the sole general partner. DCT Industrial Trust Inc. owns our properties through our operating partnership and its subsidiaries and owned approximately 90% of the outstanding equity interests in our operating partnership as of December 31, 2010. As used herein, DCT Industrial Trust, DCT, the Company, we, our and us refer to DCT Industrial Trust Inc. and its consolidated subsidiaries and partnerships except where the context otherwise requires.

**Available Information**

Our Annual Report on Form 10-K, our Quarterly Reports on Form 10-Q, our Current Reports on Form 8-K and any amendments to any of those reports that we file with the Securities and Exchange Commission are available free of charge as soon as reasonably practicable through our website at [www.dctindustrial.com](http://www.dctindustrial.com). The information contained on our website is not incorporated into this Annual Report. Our Common Stock is listed on the New York Stock Exchange under the symbol DCT .

**Business Overview**

Our portfolio primarily consists of high-quality functional bulk distribution warehouses and light industrial properties. The properties we target for acquisition or development are generally characterized by convenient access to major transportation arteries, proximity to densely populated markets and quality design standards that allow our customers efficient and flexible use of the buildings. In the future, we intend to continue to focus on properties that exhibit these characteristics in U.S. markets as well as Mexico, where we believe we can achieve favorable returns and leverage our expertise. We seek long-term earnings growth primarily through increasing rents and operating income at existing properties and acquiring and developing high-quality properties located in major distribution markets. In addition, we may recycle our capital by disposing of existing assets and reinvesting the capital into assets when we believe the returns will be more favorable over time.

As of December 31, 2010, the Company owned interests in, managed or had under development approximately 76.3 million square feet of properties leased to more than 840 customers, including:

56.7 million consolidated square feet comprising 390 properties owned in our operating portfolio which was 88.9% occupied;

14.6 million square feet comprising 45 unconsolidated and managed properties and one managed property on behalf of three institutional capital management joint venture partners;

1.0 million consolidated square feet comprising seven properties under development and one property in redevelopment;

3.2 million unconsolidated square feet comprising seven properties under development; and

0.8 million square feet comprising three operating properties in one of our unconsolidated joint ventures.

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As of December 31, 2010, our total consolidated portfolio consisted of 398 properties, each averaging approximately 145,000 square feet and having an average age of 19.5 years.

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**Table of Contents**

During the year ended December 31, 2010, we acquired five bulk industrial buildings comprising 0.8 million square feet, five light industrial buildings comprising 0.2 million square feet, and ownership interests in two bulk industrial properties totaling 0.5 million square feet, which are consolidated in our financial statements. We also acquired 19.3 acres of land held for development through a newly formed consolidated joint venture. These acquisitions were completed for a total cost of approximately \$111.9 million, including the noncontrolling interests' share of \$14.0 million and acquisition costs of \$0.4 million.

During the year ended December 31, 2010, we sold eight operating properties totaling approximately 0.5 million square feet to third parties. The properties were sold for combined gross proceeds of approximately \$21.6 million. Two property sales resulted in gains of approximately \$2.1 million. Prior to the closing of the remainder of the property sales, we incurred impairment losses totaling \$3.5 million, which represented the difference between the carrying value and the fair value of the assets sold, net of sales costs.

We have a broadly diversified tenant base. As of December 31, 2010, our consolidated operating properties had leases with more than 760 customers with no single customer accounting for more than 1.9% of the total annualized base rents for these properties. Our ten largest customers occupy 13.5% of our consolidated properties based on square feet and account for 13.8% of the annualized base rent for these properties. We intend to maintain a well-diversified mix of tenants to limit our exposure to any single tenant or industry. We believe that our broad national presence in the top U.S. distribution markets provides geographic diversity and is attractive to users of distribution space which allows us to build strong relationships with our tenants. Furthermore, we are actively engaged in meeting our tenants' expansion and relocation requirements.

Our primary business objectives are to maximize long-term growth in Funds From Operations, or FFO (see definition in Selected Financial Data ), and to maximize the value of our portfolio and the total return to our stockholders.

Our principal executive office is located at 518 Seventeenth Street, Suite 800, Denver, Colorado 80202; our telephone number is (303) 597-2400. We also maintain regional offices in Atlanta, Georgia; Cincinnati, Ohio; Dallas, Texas; Houston, Texas; Moonachie, New Jersey; Newport Beach, California; Orlando, Florida; and Monterey, Mexico. Our website address is [www.dctindustrial.com](http://www.dctindustrial.com).

*Business Strategy*

Our primary business objectives are to maximize long-term growth in FFO, and to maximize the value of our portfolio and the total return to our stockholders. The strategies we intend to execute to achieve these objectives include:

**Maximizing Cash Flows From Existing Properties.** We intend to maximize the cash flows from our existing properties by active leasing and management, maintaining strong customer relationships, controlling operating expenses and physically maintaining the quality of our properties. Renewing tenants, leasing space and effectively managing expenses are critical in the current market environment and are the day to day focus of our operations team.

**Effectively Deploying Capital.** We seek to acquire properties that meet our asset, location and financial criteria at prices and potential returns which we believe are attractive. We have identified certain markets and sub-markets where we focus our efforts on identifying buildings to acquire. Acquisitions may include fully-leased buildings or properties where we think our leasing and development expertise can add value. During 2010, we acquired five bulk industrial buildings comprising 0.8 million square feet, five light industrial buildings comprising 0.2 million square feet, and ownership interests in two bulk industrial properties totaling 0.5 million square feet, which are consolidated in our financial statements. We also acquired 19.3 acres of land held for development through a newly formed consolidated joint venture. These acquisitions were completed for a total cost of approximately \$111.9 million, including the noncontrolling interests' share of \$14.0 million and acquisition costs of \$0.4 million.



## **Table of Contents**

**Managing Our Development Pipeline.** In anticipation of the deteriorating demand for industrial space, we ceased entering into new development commitments early in 2008, and have remained focused on leasing the existing pipeline of properties under development. During the year, we signed 2.3 million square feet of leases in our development and redevelopment pipeline. As markets permit, we will consider developing new buildings where we believe the risk-adjusted returns represent an attractive investment in order to capitalize upon our customer and market relationships.

**Recycling Capital.** We intend to selectively dispose of assets in order to maximize total return to our stockholders by redeploying proceeds from asset sales into new acquisition and development opportunities. Important to managing our balance sheet as well as increasing our overall return on assets is the on-going effort to sell non-strategic assets for redeployment into new, higher growth opportunities. Given our solid balance sheet, strong team of real estate professionals and excellent relationships with investors and brokers, we believe we are well positioned to identify and take advantage of those opportunities. During 2010, we sold eight operating properties totaling approximately 0.5 million square feet to third parties for combined gross proceeds of approximately \$21.6 million.

**Conservatively Managing Our Balance Sheet.** We plan to maintain financial metrics, including leverage and coverage ratios, to be consistent with our investment grade peers. This strategy has provided protection from turmoil in the capital markets during the economic downturn and should keep us well positioned to finance acquisition opportunities as they arise. In addition, we believe that a conservatively managed balance sheet provides a competitive long-term cost of capital by lowering borrowing costs over time.

### *Our Competitive Strengths*

We believe that we distinguish ourselves from other owners, operators, acquirers and developers of industrial properties. Although our business strategy reflects current market conditions, we believe our long-term success is supported through the following competitive strengths:

**High-Quality Industrial Property Portfolio.** Our portfolio of industrial properties primarily consists of high-quality bulk distribution facilities specifically designed to meet the needs of distribution and supply companies. As of December 31, 2010, approximately 86% of our consolidated operating portfolio based on square footage was comprised of bulk distribution properties while approximately 12% of our portfolio was comprised of light industrial properties. The majority of our properties is specifically designed for use by major distribution users and are readily divisible to meet re-tenanting opportunities. We believe that our concentration of high-quality bulk distribution properties provides us with a competitive advantage in attracting and retaining distribution users and tenants across the markets in which we operate.

**Experienced and Committed Management Team.** Our executive management team collectively has an average of 25 years of commercial real estate experience. Additionally, our executive management team has extensive public company operating experience with all of our senior executives having held senior positions at real estate companies for an average of over 10 years.

**Strong Operating Platform.** We have a team of 57 experienced transaction and property management professionals working in nine market offices to maximize market opportunities effectively through leveraging local expertise, presence and relationships. We believe successfully meeting the needs of our customers and anticipating and responding to market opportunities will result in achieving superior returns from our properties.

**Proven Acquisition and Disposition Capabilities.** Beginning with our first acquisition in June 2003, we have completed approximately \$3.6 billion in industrial real estate acquisitions as of December 31, 2010. Excluding our three major portfolio acquisitions that were each in excess of \$200 million, our

## **Table of Contents**

average acquisition transaction cost was approximately \$20.2 million demonstrating our ability to access a significant pipeline of smaller acquisitions. Further, consistent with our capital recycling strategy, we have disposed of a cumulative \$833.5 million of real estate investments since inception. Our ability to source and sell real estate is driven by the experience of our transaction personnel and our extensive network of industry relationships within the brokerage, development and investor communities.

**Access to Institutional Co-Investment Capital.** DCT has established five joint ventures with three institutional capital partners and our senior management team has broad long-term relationships within the institutional investor community that provide access to capital for both traditional joint ventures and funds or other commingled investment vehicles. These institutions include domestic pension plans, insurance companies, private trusts and international investors. We believe these relationships will allow us to identify sources of institutional demand and appropriately match institutional capital with investment opportunities in our target markets when conditions warrant.

**Strong Industry Relationships.** We believe that our extensive network of industry relationships with the brokerage, development and investor communities will allow us to execute successfully our acquisition and development growth strategies and our institutional capital management strategy. These relationships augment our ability to source acquisitions in off-market transactions outside of competitive marketing processes, capitalize on development opportunities and capture repeat business and transaction activity. Our strong relationships with the tenant and leasing brokerage communities aid in attracting and retaining tenants.

**Capital Structure.** Our capital structure and business plan provides us with sufficient financial capacity to fund future growth. As of December 31, 2010 we had \$249.0 million available under our senior unsecured revolving credit facility and 271 of our consolidated properties with a gross book value of \$2.0 billion were unencumbered.

### *Operating Segments*

During the second quarter of 2010, we finalized the reorganization of the Company to a regionally organized structure with regional managing directors. As a result, management now measures operating performance and allocates resources by region rather than by individual operating property or building type (bulk distribution, light industrial and other). We manage our operations based on four operating segments and have aggregated our operations into two reportable segments (East and West) in accordance with GAAP. See additional information in Item 2. Properties and in Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations and Notes to Consolidated Financial Statements, Note 15 Segment Information.

### *Competition*

We believe the current market for industrial real estate acquisitions to be extremely competitive. We compete for real property investments with pension funds and their advisors, bank and insurance company investment accounts, other real estate investment companies, real estate limited partnerships, individuals and other entities engaged in real estate investment activities, some of which have greater financial resources than we do.

In addition, we believe the leasing of real estate to be highly competitive. We experience competition for customers from owners and managers of competing properties. As a result, we may have to provide free rental periods, incur charges for tenant improvements or offer other inducements, all of which may have an adverse impact on our results of operations.

### *Employees*

As of December 31, 2010, we had 108 full-time employees.

## **Table of Contents**

### **ITEM 1A. RISK FACTORS RISKS RELATED TO RECENT ECONOMIC CONDITIONS**

*Adverse economic conditions will negatively affect our returns and profitability.*

Our operating results may be affected by market and economic challenges, which may result from continued weakness in the national economy as a whole, in the local economies where our properties are located or in the real estate industry including the following:

poor economic conditions may result in tenant defaults under leases;

re-leasing may require concessions or reduced rental rates under the new leases due to reduced demand;

adverse capital and credit market conditions may restrict our development and redevelopment activities; and

constricted access to credit may result in tenant defaults, non-renewals under leases or inability of potential buyers to acquire our properties held for sale, including properties held through joint ventures.

Also, to the extent we purchase real estate in an unstable market, we are subject to the risk that if the real estate market ceases to attract the same level of capital investment in the future that it attracts at the time of our purchases, or the number of companies seeking to acquire properties decreases, the value of our investments may not appreciate or may decrease significantly below the amount we pay for these investments. The length and severity of any economic slowdown or downturn cannot be predicted. Our operations could be negatively affected to the extent that an economic slowdown or downturn is prolonged or becomes more severe.

*Constrained credit markets and real estate markets could have a material adverse effect on our results of operations, financial condition and ability to pay distributions to you.*

Domestic and international financial markets continue to be constrained, which have impacted the availability of credit and contributed to rising costs associated with obtaining credit. If debt financing is not available on terms and conditions we find acceptable, we may not be able to obtain financing for investments. If the credit markets continue to be constrained, our ability to borrow monies to finance the purchase of, or other activities related to, real estate assets will be negatively impacted. If we are unable to borrow monies on terms and conditions that we find acceptable, we likely will have to reduce the number of properties we can purchase, and the return on the properties we do purchase may be lower. If interest rates are higher when the properties are refinanced, we may not be able to finance the properties and our income could be reduced. In addition, if we pay fees to lock-in a favorable interest rate, falling interest rates or other factors could require us to forfeit these fees. Also, if the value of our properties decline we may we may be unable to refinance all of our debt as it matures. All of these events would have a material adverse effect on our results of operations, financial condition and ability to pay distributions.

### **RISKS RELATED TO OUR BUSINESS AND OPERATIONS**

*Our investments are concentrated in the industrial real estate sector, and our business would be adversely affected by an economic downturn in that sector.*

Our investments in real estate assets are primarily concentrated in the industrial real estate sector. This concentration may expose us to the risk of economic downturns in this sector to a greater extent than if our business activities included a more significant portion of other sectors of the real estate industry.

*We depend on key personnel.*

Our success depends to a significant degree upon the continued contributions of certain key personnel including, but not limited to, our management group, each of whom would be difficult to replace. If any of our key personnel were to cease employment with us, our operating results could suffer. Our ability to retain our



## **Table of Contents**

management group or to attract suitable replacements should any member of the management group leave is dependent on the competitive nature of the employment market. The loss of services from key members of the management group or a limitation in their availability could adversely impact our financial condition and cash flows. Further, such a loss could be negatively perceived in the capital markets. We have not obtained and do not expect to obtain key man life insurance on any of our key personnel.

We also believe that, as we expand, our future success depends, in large part, upon our ability to hire and retain highly skilled managerial, investment, financing, operational and marketing personnel. Competition for such personnel is intense, and we cannot assure our stockholders that we will be successful in attracting and retaining such skilled personnel.

***Our operating results and financial condition could be adversely affected if we do not continue to have access to capital on favorable terms.***

As a REIT, we must meet certain annual distribution requirements. Consequently, we are largely dependent on external capital to fund our development and acquisition activities. Further, in order to maintain our REIT status and avoid the payment of income and excise taxes, we may need to borrow funds on a short-term basis to meet the REIT distribution requirements even if the then-prevailing market conditions are not favorable for these borrowings. These short-term borrowing needs could result from differences in timing between the actual receipt of cash and inclusion of income for U.S. federal income tax purposes or the effect of non-deductible capital expenditures, the creation of reserves or required debt or amortization payments. Alternatively, under recent IRS guidance that is effective through 2011, we may elect to distribute taxable dividends that are up to 90% payable in the form of our common stock (with the remainder payable in cash). In this event, stockholders will be required to include the full amount of the dividends in income, and stockholders' tax liability could exceed the cash portion of their dividend. Additionally, our ability to access capital is dependent upon a number of factors, including general market conditions and competition from other real estate companies. To the extent that capital is not available to acquire or develop properties, profits may not be realized or their realization may be delayed, which could result in an earnings stream that is less predictable than some of our competitors and result in us not meeting our projected earnings and distributable cash flow levels in a particular reporting period. Failure to meet our projected earnings and distributable cash flow levels in a particular reporting period could have an adverse effect on our financial condition and on the market price of our common stock.

***Our long-term growth will partially depend upon future acquisitions of properties, and we may be unable to consummate acquisitions on advantageous terms or acquisitions may not perform as we expect.***

We acquire and intend to continue to acquire primarily high-quality generic bulk distribution warehouses and light industrial properties. The acquisition of properties entails various risks, including the risks that our investments may not perform as we expect, that we may be unable to integrate our new acquisitions into our existing operations quickly and efficiently and that our cost estimates for bringing an acquired property up to market standards may prove inaccurate. Further, we face significant competition for attractive investment opportunities from other well-capitalized real estate investors, including both publicly-traded REITs and private institutional investment funds, and these competitors may have greater financial resources than us and a greater ability to borrow funds to acquire properties. This competition increases as investments in real estate become increasingly attractive relative to other forms of investment. As a result of competition, we may be unable to acquire additional properties as we desire or the purchase price may be significantly elevated. In addition, we expect to finance future acquisitions through a combination of borrowings under our senior unsecured credit facility, proceeds from equity or debt offerings by us or our operating partnership or its subsidiaries and proceeds from property contributions and divestitures which may not be available and which could adversely affect our cash flows. Any of the above risks could adversely affect our financial condition, results of operations, cash flows and ability to pay distributions on, and the market price of, our common stock.

***We may be unable to source off-market deal flow in the future.***

A key component of our growth strategy is to continue to acquire additional industrial real estate assets. Properties that are acquired off-market are typically more attractive to us as a purchaser because of the absence

## **Table of Contents**

of a formal sales process, which could lead to higher prices. If we cannot obtain off-market deal flow in the future, our ability to locate and acquire additional properties at attractive prices could be adversely affected.

### ***Our real estate development strategies may not be successful.***

We are involved in the construction and expansion of distribution facilities and we intend to continue to pursue development and renovation activities as opportunities arise. In addition, we have entered into joint ventures to develop, or will self-develop, additional warehouse/distribution buildings on land we already own or control, and we have rights under master development agreements to acquire additional acres of land for future development activities. We will be subject to risks associated with our development and renovation activities that could adversely affect our financial condition, results of operations, cash flows and ability to pay distributions on, and the market price of, our common stock, including, but not limited to:

the risk that development projects in which we have invested may be abandoned and the related investment will be impaired;

the risk that we may not be able to obtain, or may experience delays in obtaining, all necessary zoning, land-use, building, occupancy and other governmental permits and authorizations;

the risk that we may not be able to obtain additional land on which to develop;

the risk that we may not be able to obtain financing for development projects on favorable terms;

the risk that construction costs of a project may exceed the original estimates or that construction may not be concluded on schedule, making the project less profitable than originally estimated or not profitable at all (including the possibility of contract default, the effects of local weather conditions, the possibility of local or national strikes and the possibility of shortages in materials, building supplies or energy and fuel for equipment);

the risk that, upon completion of construction, we may not be able to obtain, or obtain on advantageous terms, permanent financing for activities that we have financed through construction loans; and

the risk that occupancy levels and the rents that can be charged for a completed project will not be met, making the project unprofitable.

### ***Our institutional capital management strategy of contributing properties to joint ventures we manage may not allow us to expand our business and operations as quickly or as profitably as we desire.***

In general, our ability to contribute properties to joint ventures that are part of our institutional capital management program on advantageous terms will be dependent upon competition from other managers of similar joint ventures, current capital market conditions, including the yield expectations for industrial properties, and other factors beyond our control. Our ability to develop and timely lease properties will impact our ability to contribute these properties. Continued access to private and public debt and equity capital by these joint ventures is necessary in order for us to pursue our strategy of contributing properties to the joint ventures. Should we not have sufficient properties available that meet the investment criteria of current or future joint ventures, or should the joint ventures have limited or no access to capital on favorable terms, then these contributions could be delayed resulting in adverse effects on our liquidity and on our ability to meet projected earnings levels in a particular reporting period. Failure to meet our projected earnings levels in a particular reporting period could have an adverse effect on our results of operations, distributable cash flows and on the value of our common stock. Further, our inability to redeploy the proceeds from our divestitures in accordance with our investment strategy could have an adverse effect on our results of operations, distributable cash flows, and our ability to meet our debt obligations in a timely manner and the value of our common stock in subsequent periods.

*Actions of our joint venture partners could negatively impact our performance.*

Our organizational documents do not limit the amount of available funds that we may invest in partnerships, limited liability companies or joint ventures, and we intend to continue to develop and acquire properties through

## **Table of Contents**

joint ventures, limited liability companies and partnerships with other persons or entities when warranted by the circumstances. Such partners may share certain approval rights over major decisions. Such investments may involve risks not otherwise present with other methods of investment in real estate, including, but not limited to:

that our co-member, co-venturer or partner in an investment might become bankrupt, which would mean that we and any other remaining general partners, members or co-venturers would generally remain liable for the partnership's, limited liability company's or joint venture's liabilities;

that such co-member, co-venturer or partner may at any time have economic or business interests or goals which are or which become inconsistent with our business interests or goals;

that such co-member, co-venturer or partner may be in a position to take action contrary to our instructions or requests or contrary to our policies or objectives, including our current policy with respect to maintaining our qualification as a REIT;

that, if our partners fail to fund their share of any required capital contributions, we may be required to contribute such capital;

that joint venture, limited liability company and partnership agreements often restrict the transfer of a co-venturer's, member's or partner's interest or may otherwise restrict our ability to sell the interest when we desire or on advantageous terms;

that our relationships with our partners, co-members or co-venturers are contractual in nature and may be terminated or dissolved under the terms of the agreements and, in such event, we may not continue to own or operate the interests or assets underlying such relationship or may need to purchase such interests or assets at an above-market price to continue ownership;

that disputes between us and our partners, co-members or co-venturers may result in litigation or arbitration that would increase our expenses and prevent our officers and directors from focusing their time and effort on our business and result in subjecting the properties owned by the applicable partnership, limited liability company or joint venture to additional risk; and

that we may in certain circumstances be liable for the actions of our partners, co-members or co-venturers.

We generally seek to maintain sufficient control of our partnerships, limited liability companies and joint ventures to permit us to achieve our business objectives; however, we may not be able to do so, and the occurrence of one or more of the events described above could adversely affect our financial condition, results of operations, cash flows and ability to pay distributions on, and the market price of, our common stock.

### ***If we invest in a limited partnership as a general partner we could be responsible for all liabilities of such partnership.***

In some joint ventures or other investments we may make, if the entity in which we invest is a limited partnership, we may acquire all or a portion of our interest in such partnership as a general partner. As a general partner, we could be liable for all the liabilities of such partnership. Additionally, we may be required to take our interests in other investments as a non-managing general partner. Consequently, we would be potentially liable for all such liabilities without having the same rights of management or control over the operation of the partnership as the managing general partner or partners may have. Therefore, we may be held responsible for all of the liabilities of an entity in which we do not have full management rights or control, and our liability may far exceed the amount or value of the investment we initially made or then had in the partnership.

### ***Investment in us may be subject to additional risks relating to our international investments.***



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We have expanded our operations into markets in Mexico and may expand our operations into additional selected international markets in the future. Our foreign operations could be affected by factors peculiar to the laws and business practices of the jurisdictions in which the properties are located. These laws may expose us to risks that

**Table of Contents**

are different from and in addition to those commonly found in the United States. Foreign operations could be subject to the following risks:

changing governmental rules and policies, including changes in land use and zoning laws;

enactment of laws relating to the foreign ownership of real property or mortgages and laws restricting the ability of foreign persons or companies to remove profits earned from activities within the country to the person's or company's country of origin;

variations in currency exchange rates;

adverse market conditions caused by terrorism, civil unrest and changes in national or local governmental or economic conditions;

the willingness of domestic or foreign lenders to make mortgage loans in certain countries and changes in the availability, cost and terms of mortgage funds resulting from varying national economic policies;

the imposition of income and other taxes in those jurisdictions and changes in real estate and other tax rates and other operating expenses in particular countries;

general political and economic instability;

our limited experience and expertise in foreign countries relative to our experience and expertise in the United States; and

more stringent environmental laws or changes in such laws, or environmental consequences of less stringent environmental management practices in foreign countries relative to the United States.

***The availability and timing of cash distributions is uncertain.***

We expect to continue to pay quarterly distributions to our stockholders. However, we bear all expenses incurred by our operations, and our funds generated by operations, after deducting these expenses, may not be sufficient to cover desired levels of distributions to our stockholders. In addition, our board of directors, in its discretion, may retain any portion of such cash for working capital. We cannot assure our stockholders that sufficient funds will be available to pay distributions.

***We may have difficulty funding our distributions with our available cash flows.***

To date we have funded our quarterly distributions to investors with available cash flows and, to a lesser extent, with borrowings under our senior credit facility and other borrowings. Our corporate strategy is to fund the payment of quarterly distributions to our stockholders entirely from available cash flows. However, we may continue to fund our quarterly distributions to investors from a combination of available cash flows and proceeds from borrowings. In the event we are unable to consistently fund future quarterly distributions to investors entirely from available cash flows, net of recurring capital expenditures, the value of our shares may be negatively impacted.

***Adverse economic and geopolitical conditions could negatively affect our returns and profitability.***

Among others, the following market and economic challenges may adversely affect our operating results:

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poor economic times may result in tenant defaults under our leases and reduced demand for industrial space;

overbuilding may increase vacancies; and

maintaining occupancy levels may require increased concessions, tenant improvement expenditures or reduced rental rates. Our operations could be negatively affected to the extent that an economic downturn is prolonged or becomes more severe.

## **Table of Contents**

### ***Events or occurrences that affect areas in which our properties are geographically concentrated may impact financial results.***

In addition to general, regional, national and international economic conditions, our operating performance is impacted by the economic conditions of the specific markets in which we have concentrations of properties. We have significant holdings in the following markets of our consolidated portfolio: Atlanta, Cincinnati, Columbus, Dallas, Southern California and Memphis. Our operating performance could be adversely affected if conditions become less favorable in any of the markets in which we have a concentration of properties.

### ***Our business could be adversely impacted if we have deficiencies in our disclosure controls and procedures or internal control over financial reporting.***

The design and effectiveness of our disclosure controls and procedures and internal control over financial reporting may not prevent all errors, misstatements or misrepresentations. While management will continue to review the effectiveness of our disclosure controls and procedures and internal control over financial reporting, there can be no guarantee that our internal control over financial reporting will be effective in accomplishing all control objectives all of the time. Deficiencies, including any material weakness, in our internal control over financial reporting which may occur in the future could result in misstatements of our results of operations, restatements of our financial statements, a decline in our stock price, or otherwise materially adversely affect our business, reputation, results of operations, financial condition or liquidity.

## **RISKS RELATED TO CONFLICTS OF INTEREST**

### ***Our UPREIT structure may result in potential conflicts of interest.***

As of December 31, 2010, we owned 90% of the units of limited partnership interest in our operating partnership, or OP Units, certain unaffiliated limited partners owned 8% of the OP Units and certain of our officers and directors, owned the remaining 2% of the OP Units. Persons holding OP Units in our operating partnership have the right to vote on certain amendments to the limited partnership agreement of our operating partnership, as well as on certain other matters. Persons holding such voting rights may exercise them in a manner that conflicts with the interests of our stockholders. Furthermore, circumstances may arise in the future when the interest of limited partners in our operating partnership may conflict with the interests of our stockholders. For example, the timing and terms of dispositions of properties held by our operating partnership may result in tax consequences to certain limited partners and not to our stockholders.

## **GENERAL REAL ESTATE RISKS**

### ***Our performance and value are subject to general economic conditions and risks associated with our real estate assets.***

The investment returns available from equity investments in real estate depend on the amount of income earned and capital appreciation generated by the properties, as well as the expenses incurred in connection with the properties. If our properties do not generate income sufficient to meet operating expenses, including debt service and capital expenditures, then our ability to pay distributions to our stockholders could be adversely affected. In addition, there are significant expenditures associated with an investment in real estate (such as mortgage payments, real estate taxes and maintenance costs) that generally do not decline when circumstances reduce the income from the property. Income from and the value of our properties may be adversely affected by:

changes in general or local economic climate;

the attractiveness of our properties to potential tenants;

changes in supply of or demand for similar or competing properties in an area;

bankruptcies, financial difficulties or lease defaults by our tenants;



**Table of Contents**

changes in interest rates and availability of permanent mortgage funds that may render the sale of a property difficult or unattractive or otherwise reduce returns to stockholders;

changes in operating costs and expenses and our ability to control rents;

changes in or increased costs of compliance with governmental rules, regulations and fiscal policies, including changes in tax, real estate, environmental and zoning laws, and our potential liability thereunder;

our ability to provide adequate maintenance and insurance;

changes in the cost or availability of insurance, including coverage for mold or asbestos;

unanticipated changes in costs associated with known adverse environmental conditions or retained liabilities for such conditions;

periods of high interest rates and tight money supply;

tenant turnover;

general overbuilding or excess supply in the market areas; and

disruptions in the global supply chain caused by political, regulatory or other factors including terrorism.

In addition, periods of economic slowdown or recession, rising interest rates or declining demand for real estate, or public perception that any of these events may occur, would result in a general decrease in rents or an increased occurrence of defaults under existing leases, which would adversely affect our financial condition and results of operations. Future terrorist attacks may result in declining economic activity, which could reduce the demand for, and the value of, our properties. To the extent that future attacks impact our tenants, their businesses similarly could be adversely affected, including their ability to continue to honor their existing leases.

For these and other reasons, we cannot assure our stockholders that we will be profitable or that we will realize growth in the value of our real estate properties.

***Actions by our competitors may decrease or prevent increases in the occupancy and rental rates of our properties.***

We compete with other developers, owners and operators of real estate, some of which own properties similar to ours in the same markets and submarkets in which our properties are located. If our competitors offer space at rental rates below current market rates or below the rental rates we currently charge our tenants, we may lose potential tenants, and we may be pressured to reduce our rental rates below those we currently charge in order to retain tenants when our tenants' leases expire. As a result, our financial condition, cash flows, cash available for distribution, trading price of our common stock and ability to satisfy our debt service obligations could be materially adversely affected.

***We are dependent on tenants for our revenues.***

Our operating results and distributable cash flows would be adversely affected if a significant number of our tenants were unable to meet their lease obligations. In addition, certain of our properties are occupied by a single tenant. As a result, the success of those properties will depend on the financial stability of a single tenant. Lease payment defaults by tenants could cause us to reduce the amount of distributions to stockholders. A default by a tenant on its lease payments could force us to find an alternative source of revenues to pay any mortgage loan on the property. In

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the event of a tenant default, we may experience delays in enforcing our rights as landlord and may incur substantial costs, including litigation and related expenses, in protecting our investment and re-leasing our property. If a lease is terminated, we may be unable to lease the property for the rent previously received or sell the property without incurring a loss.

## **Table of Contents**

### ***Our ability to renew leases or re-lease space on favorable terms as leases expire significantly affects our business.***

Our results of operations, distributable cash flows and the value of our common stock would be adversely affected if we are unable to lease, on economically favorable terms, a significant amount of space in our operating properties. The number of vacant or partially vacant industrial properties in a market or submarket could adversely affect both our ability to re-lease the space and the rental rates that can be obtained.

### ***A property that incurs a vacancy could be difficult to sell or re-lease.***

A property may incur a vacancy either by the continued default of a tenant under its lease or the expiration of one of our leases. In addition, certain of the properties we acquire may have some level of vacancy at the time of closing. Certain of our properties may be specifically suited to the particular needs of a tenant. We may have difficulty obtaining a new tenant for any vacant space we have in our properties. If the vacancy continues for a long period of time, we may suffer reduced revenues resulting in less cash available to be distributed to stockholders. In addition, the resale value of a property could be diminished because the market value of a particular property will depend principally upon the value of the leases of such property.

### ***We may not have funding for future tenant improvements.***

When a tenant at one of our properties does not renew its lease or otherwise vacates its space in one of our buildings, it is likely that, in order to attract one or more new tenants, we will be required to expend funds to construct new tenant improvements in the vacated space. Although we intend to manage our cash position or financing availability to pay for any improvements required for re-leasing, we cannot assure our stockholders that we will have adequate sources of funding available to us for such purposes in the future.

### ***If our tenants are highly leveraged, they may have a higher possibility of filing for bankruptcy or insolvency.***

Of our tenants that experience downturns in their operating results due to adverse changes to their business or economic conditions, those that are highly leveraged may have a higher possibility of filing for bankruptcy or insolvency. In bankruptcy or insolvency, a tenant may have the option of vacating a property instead of paying rent. Until such a property is released from bankruptcy, our revenues would be reduced and could cause us to reduce distributions to stockholders. We may have highly leveraged tenants in the future.

### ***The fact that real estate investments are not as liquid as other types of assets may reduce economic returns to investors.***

Real estate investments are not as liquid as other types of investments, and this lack of liquidity may limit our ability to react promptly to changes in economic or other conditions. In addition, significant expenditures associated with real estate investments, such as mortgage payments, real estate taxes and maintenance costs, are generally not reduced when circumstances cause a reduction in income from the investments. In addition, our ability at any time to sell assets or contribute assets to property funds or other entities in which we have an ownership interest may be restricted by the potential for the imposition of the 100% prohibited transactions tax on gains from certain dispositions of property by REITs, unless a safe harbor exception applies. This lack of liquidity may limit our ability to vary our portfolio promptly in response to changes in economic or other conditions and, as a result, could adversely affect our financial condition, results of operations, cash flows and our ability to pay distributions on, and the market price of, our common stock.

### ***Delays in acquisition and development of properties may have adverse effects.***

Delays we encounter in the selection, acquisition and development of properties could adversely affect our returns. Where properties are acquired prior to the start of construction, it will typically take 12 to 18 months to complete construction and lease available space. Therefore, there could be delays in the payment of cash distributions attributable to those particular properties.



## **Table of Contents**

### ***Development and construction of properties may incur delays and increased costs and risks.***

In connection with our development strategy, we may acquire raw land upon which we will develop and construct improvements at a fixed contract price. In any such projects we will be subject to risks relating to the builder's ability to control construction costs or to build in conformity with plans, specifications and timetables. The builder's failure to perform may result in legal action by us to rescind the purchase or construction contract or to enforce the builder's obligations. Performance may also be affected or delayed by conditions beyond the builder's control. Delays in completion of construction could also give tenants the right to terminate preconstruction leases for space at a newly developed project. We may incur additional risks when we make periodic progress payments or other advances to such builders prior to completion of construction. Each of these factors could result in increased costs of a project or loss of our investment. In addition, we will be subject to normal lease-up risks relating to newly constructed projects if they are not fully leased prior to the commencement of construction. Furthermore, the price we agree to for the land will be based on projections of rental income and expenses and estimates of construction costs as well as the fair market value of the property upon completion of construction. If our projections are inaccurate, we may pay too much for the land and fail to achieve our forecast of returns due to the factors discussed above.

### ***Acquired properties may be located in new markets where we may face risks associated with investing in an unfamiliar market.***

We have acquired, and may continue to acquire, properties in markets that are new to us. When we acquire properties located in these markets, we may face risks associated with a lack of market knowledge or understanding of the local economy, forging new business relationships in the area and unfamiliarity with local government and permitting procedures. We work to mitigate such risks through extensive diligence and research and associations with experienced partners; however, there can be no guarantee that all such risks will be eliminated.

### ***Uninsured losses relating to real property may adversely affect our returns.***

We attempt to ensure that all of our properties are adequately insured to cover casualty losses. However, there are certain losses, including losses from floods, earthquakes, acts of war, acts of terrorism or riots, that are not generally insured against or that are not generally fully insured against because it is not deemed economically feasible or prudent to do so. In addition, changes in the cost or availability of insurance could expose us to uninsured casualty losses. In the event that any of our properties incurs a casualty loss that is not fully covered by insurance, the value of our assets will be reduced by the amount of any such uninsured loss, and we could experience a significant loss of capital invested and potential revenues in these properties and could potentially remain obligated under any recourse debt associated with the property. Moreover, as the general partner of our operating partnership, we generally will be liable for all of our operating partnership's unsatisfied recourse obligations, including any obligations incurred by our operating partnership as the general partner of joint ventures. Any such losses could adversely affect our financial condition, results of operations, cash flows and ability to pay distributions on, and the market price of, our common stock. In addition, we may have no source of funding to repair or reconstruct the damaged property, and we cannot assure that any such sources of funding will be available to us for such purposes in the future.

A number of our consolidated operating properties are located in areas that are known to be subject to earthquake activity. Properties located in active seismic areas include properties in Northern California, Southern California, Memphis, Seattle and Mexico. We carry replacement-cost earthquake insurance on all of our properties located in areas historically subject to seismic activity, subject to coverage limitations and deductibles that we believe are commercially reasonable. We evaluate our earthquake insurance coverage annually in light of current industry practice through an analysis prepared by outside consultants.

A number of our properties are located in Miami and Orlando, which are areas that are known to be subject to hurricane and/or flood risk. We carry replacement-cost hurricane and flood hazard insurance on all of our

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**Table of Contents**

properties located in areas historically subject to such activity, subject to coverage limitations and deductibles that we believe are commercially reasonable. We evaluate our insurance coverage annually in light of current industry practice through an analysis prepared by outside consultants.

***Contingent or unknown liabilities could adversely affect our financial condition.***

We have acquired, and may in the future acquire, properties, or may have previously owned properties, subject to liabilities and without any recourse, or with only limited recourse, with respect to unknown liabilities. As a result, if a liability were asserted against us based upon ownership of any of these entities or properties, then we might have to pay substantial sums to settle it, which could adversely affect our cash flows. Unknown liabilities with respect to entities or properties acquired might include:

liabilities for clean-up or remediation of adverse environmental conditions;

accrued but unpaid liabilities incurred in the ordinary course of business;

tax liabilities; and

claims for indemnification by the general partners, officers and directors and others indemnified by the former owners of the properties.

***Environmentally hazardous conditions may adversely affect our operating results.***

Under various federal, state and local environmental laws, a current or previous owner or operator of real property may be liable for the cost of removing or remediating hazardous or toxic substances on such property. Such laws often impose liability whether or not the owner or operator knew of, or was responsible for, the presence of such hazardous or toxic substances. Even if more than one person may have been responsible for the contamination, each person covered by the environmental laws may be held responsible for all of the clean-up costs incurred. In addition, third parties may sue the owner or operator of a site for damages based on personal injury, natural resources or property damage or other costs, including investigation and clean-up costs, resulting from the environmental contamination. The presence of hazardous or toxic substances on one of our properties, or the failure to properly remediate a contaminated property, could give rise to a lien in favor of the government for costs it may incur to address the contamination, or otherwise adversely affect our ability to sell or lease the property or borrow using the property as collateral. Environmental laws also may impose restrictions on the manner in which property may be used or businesses may be operated. A property owner who violates environmental laws may be subject to sanctions which may be enforced by governmental agencies or, in certain circumstances, private parties. In connection with the acquisition and ownership of our properties, we may be exposed to such costs. The cost of defending against environmental claims, of compliance with environmental regulatory requirements or of remediating any contaminated property could materially adversely affect our business, assets or results of operations and, consequently, amounts available for distribution to our stockholders.

Environmental laws in the U.S. also require that owners or operators of buildings containing asbestos properly manage and maintain the asbestos, adequately inform or train those who may come into contact with asbestos and undertake special precautions, including removal or other abatement, in the event that asbestos is disturbed during building renovation or demolition. These laws may impose fines and penalties on building owners or operators who fail to comply with these requirements and may allow third parties to seek recovery from owners or operators for personal injury associated with exposure to asbestos. Some of our properties may contain asbestos-containing building materials.

We invest in properties historically used for industrial, manufacturing and commercial purposes. Some of these properties contain, or may have contained, underground storage tanks for the storage of petroleum products and other hazardous or toxic substances. All of these operations create a potential for the release of petroleum products or other hazardous or toxic substances. Some of our properties are adjacent to or near other properties that have contained or currently contain underground storage tanks used to store petroleum products or other hazardous or toxic substances. In addition, certain of our properties are on or are adjacent to or near other



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**Table of Contents**

properties upon which others, including former owners or tenants of our properties, have engaged, or may in the future engage, in activities that may release petroleum products or other hazardous or toxic substances.

We maintain a portfolio environmental insurance policy that provides coverage for potential environmental liabilities, subject to the policy's coverage conditions and limitations, for most of our properties. From time to time, we may acquire properties, or interests in properties, with known adverse environmental conditions where we believe that the environmental liabilities associated with these conditions are quantifiable and that the acquisition will yield a superior risk-adjusted return. In such an instance, we underwrite the costs of environmental investigation, clean-up and monitoring into the cost. Further, in connection with property dispositions, we may agree to remain responsible for, and to bear the cost of, remediating or monitoring certain environmental conditions on the properties.

All of our properties were subject to a Phase I or similar environmental assessment by independent environmental consultants at the time of acquisition. Phase I assessments are intended to discover and evaluate information regarding the environmental condition of the surveyed property and surrounding properties. Phase I assessments generally include a historical review, a public records review, an investigation of the surveyed site and surrounding properties, and preparation and issuance of a written report, but do not include soil sampling or subsurface investigations and typically do not include an asbestos survey. While some of these assessments have led to further investigation and sampling, none of our environmental assessments of our properties have revealed an environmental liability that we believe would have a material adverse effect on our business, financial condition or results of operations taken as a whole. However, we cannot give any assurance that such conditions do not exist or may not arise in the future. Material environmental conditions, liabilities or compliance concerns may arise after the environmental assessment has been completed. Moreover, there can be no assurance that (i) future laws, ordinances or regulations will not impose any material environmental liability or (ii) the current environmental condition of our properties will not be affected by tenants, by the condition of land or operations in the vicinity of our properties (such as releases from underground storage tanks), or by third parties unrelated to us.

***Costs of complying with governmental laws and regulations may adversely affect our income and the cash available for any distributions.***

All real property and the operations conducted on real property are subject to federal, state and local laws and regulations relating to environmental protection and human health and safety. Tenants' ability to operate and to generate income to pay their lease obligations may be affected by permitting and compliance obligations arising under such laws and regulations. Some of these laws and regulations may impose joint and several liability on tenants, owners or operators for the costs to investigate or remediate contaminated properties, regardless of fault or whether the acts causing the contamination were legal. Leasing properties to tenants that engage in industrial, manufacturing, and commercial activities will cause us to be subject to the risk of liabilities under environmental laws and regulations. In addition, the presence of hazardous or toxic substances, or the failure to properly remediate these substances, may adversely affect our ability to sell, rent or pledge such property as collateral for future borrowings.

Some of these laws and regulations have been amended so as to require compliance with new or more stringent standards as of future dates. Compliance with new or more stringent laws or regulations or stricter interpretation of existing laws may require us to incur material expenditures. Future laws, ordinances or regulations may impose material environmental liability. Additionally, our tenants' operations, the existing condition of land when we buy it, operations in the vicinity of our properties, such as the presence of underground storage tanks, or activities of unrelated third parties may affect our properties. In addition, there are various local, state and federal fire, health, life-safety and similar regulations with which we may be required to comply and which may subject us to liability in the form of fines or damages for noncompliance. Any material expenditures, fines or damages we must pay will reduce our ability to make distributions and may reduce the value of our common stock.

## **Table of Contents**

In addition, changes in these laws and governmental regulations, or their interpretation by agencies or the courts, could occur.

***Compliance or failure to comply with the Americans with Disabilities Act and other similar regulations could result in substantial costs.***

Under the Americans with Disabilities Act, places of public accommodation must meet certain federal requirements related to access and use by disabled persons. Noncompliance could result in the imposition of fines by the federal government or the award of damages to private litigants. If we are required to make unanticipated expenditures to comply with the Americans with Disabilities Act, including removing access barriers, then our cash flows and the amounts available for distributions to our stockholders may be adversely affected. While we believe that our properties are currently in material compliance with these regulatory requirements, the requirements may change or new requirements may be imposed that could require significant unanticipated expenditures by us that will affect our cash flows and results of operations.

***We own several of our properties subject to ground leases that expose us to the loss of such properties upon breach or termination of the ground leases and may limit our ability to sell these properties.***

We own several of our properties through leasehold interests in the land underlying the buildings and we may acquire additional buildings in the future that are subject to similar ground leases. As lessee under a ground lease, we are exposed to the possibility of losing the property upon termination, or an earlier breach by us, of the ground lease, which may have a material adverse effect on our business, financial condition and results of operations, our ability to make distributions to our stockholders and the trading price of our common stock.

Our ground leases contain certain provisions that may limit our ability to sell certain of our properties. In order to assign or transfer our rights and obligations under certain of our ground leases, we generally must obtain the consent of the landlord which, in turn, could adversely impact the price realized from any such sale.

***We may be unable to sell a property if or when we decide to do so, including as a result of uncertain market conditions, which could adversely affect the return on an investment in our common stock.***

We expect to hold the various real properties in which we invest until such time as we decide that a sale or other disposition is appropriate given our investment objectives. Our ability to dispose of properties on advantageous terms depends on factors beyond our control, including competition from other sellers and the availability of attractive financing for potential buyers of our properties. We cannot predict the various market conditions affecting real estate investments which will exist at any particular time in the future. Due to the uncertainty of market conditions which may affect the future disposition of our properties, we cannot assure our stockholders that we will be able to sell our properties at a profit in the future. Accordingly, the extent to which our stockholders will receive cash distributions and realize potential appreciation on our real estate investments will be dependent upon fluctuating market conditions.

Furthermore, we may be required to expend funds to correct defects or to make improvements before a property can be sold. We cannot assure our stockholders that we will have funds available to correct such defects or to make such improvements.

In acquiring a property, we may agree to restrictions that prohibit the sale of that property for a period of time or impose other restrictions, such as a limitation on the amount of debt that can be placed or repaid on that property. These provisions would restrict our ability to sell a property.

***If we sell properties and provide financing to purchasers, defaults by the purchasers would adversely affect our cash flows.***

If we decide to sell any of our properties, we presently intend to use our best efforts to sell them for cash. However, in some instances we may sell our properties by providing financing to purchasers. If we provide financing to purchasers, we will bear the risk that the purchaser may default, which could negatively impact our

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## **Table of Contents**

cash distributions to stockholders and result in litigation and related expenses. Even in the absence of a purchaser default, the distribution of the proceeds of sales to our stockholders, or their reinvestment in other assets, will be delayed until the promissory notes or other property we may accept upon a sale are actually paid, sold, refinanced or otherwise disposed of.

*We may acquire properties with lock-out provisions which may affect our ability to dispose of the properties.*

We may acquire properties through contracts that could restrict our ability to dispose of the property for a period of time. These lock-out provisions could affect our ability to turn our investments into cash and could affect cash available for distributions to our stockholders. Lock-out provisions could also impair our ability to take actions during the lock-out period that would otherwise be in the best interest of our stockholders and, therefore, may have an adverse impact on the value of our common stock relative to the value that would result if the lock-out provisions did not exist.

## **RISKS RELATED TO OUR DEBT FINANCINGS**

*Our operating results and financial condition could be adversely affected if we are unable to make required payments on our debt.*

Our charter and bylaws do not limit the amount or percentage of indebtedness that we may incur, and we are subject to risks normally associated with debt financing, including the risk that our cash flows will be insufficient to meet required payments of principal and interest. There can be no assurance that we will be able to refinance any maturing indebtedness, that such refinancing would be on terms as favorable as the terms of the maturing indebtedness or that we will be able to otherwise obtain funds by selling assets or raising equity to make required payments on maturing indebtedness.

In particular, loans obtained to fund property acquisitions may be secured by first mortgages on such properties. If we are unable to make our debt service payments as required, a lender could foreclose on the property or properties securing its debt. This could cause us to lose part or all of our investment, which in turn could cause the value of our common stock and distributions payable to stockholders to be reduced. Certain of our existing and future indebtedness is and may be cross-collateralized and, consequently, a default on this indebtedness could cause us to lose part or all of our investment in multiple properties.

*Increases in interest rates could increase the amount of our debt payments and adversely affect our ability to make distributions to our stockholders.*

We have incurred and may continue to incur variable rate debt whereby increases in interest rates raise our interest costs, which reduces our cash flows and our ability to make distributions to our stockholders. If we are unable to refinance our indebtedness at maturity or meet our payment obligations, the amount of our distributable cash flows and our financial condition would be adversely affected, and we may lose the property securing such indebtedness. In addition, if we need to repay existing debt during periods of rising interest rates, we could be required to liquidate one or more of our investments in properties at times which may not permit realization of the maximum return on such investments.

*Covenants in our credit agreements could limit our flexibility and adversely affect our financial condition.*

The terms of our senior credit facility and other indebtedness require us to comply with a number of customary financial and other covenants, such as covenants with respect to consolidated leverage, net worth and unencumbered assets. These covenants may limit our flexibility in our operations, and breaches of these covenants could result in defaults under the instruments governing the applicable indebtedness even if we have satisfied our payment obligations. As of December 31, 2010, we had certain non-recourse, secured loans which are cross-collateralized by multiple properties. If we default on any of these loans we may then be required to repay such indebtedness, together with applicable prepayment charges, to avoid foreclosure on all cross-collateralized properties within the applicable pool. In addition, our senior credit facility contains certain cross-

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## **Table of Contents**

default provisions which are triggered in the event that our other material indebtedness is in default. These cross-default provisions may require us to repay or restructure the senior credit facility in addition to any mortgage or other debt that is in default. If our properties were foreclosed upon, or if we are unable to refinance our indebtedness at maturity or meet our payment obligations, the amount of our distributable cash flows and our financial condition would be adversely affected.

*If we enter into financing arrangements involving balloon payment obligations, it may adversely affect our ability to make distributions.*

Some of our financing arrangements require us to make a lump-sum or balloon payment at maturity. Our ability to make a balloon payment at maturity is uncertain and may depend upon our ability to obtain additional financing or our ability to sell the property. At the time the balloon payment is due, we may or may not be able to refinance the existing financing on terms as favorable as the original loan or sell the property at a price sufficient to make the balloon payment. The effect of a refinancing or sale could affect the rate of return to stockholders and the projected time of disposition of our assets. In addition, payments of principal and interest made to service our debts may leave us with insufficient cash to pay the distributions that we are required to pay to maintain our qualification as a REIT.

*High interest rates may make it difficult for us to finance or refinance properties, which could reduce the number of properties we can acquire and the amount of cash distributions we can make.*

If debt is unavailable at reasonable rates, we may not be able to finance the purchase of properties. If we place mortgage debt on properties, we run the risk of being unable to refinance such debt when the loans come due or of being unable to refinance such debt on favorable terms. If interest rates are higher when we refinance such debt, our income could be reduced. We may be unable to refinance such debt at appropriate times, which may require us to sell properties on terms that are not advantageous to us or could result in the foreclosure of such properties. If any of these events occur, our cash flows would be reduced. This, in turn, would reduce cash available for distribution to our stockholders and may hinder our ability to raise more capital by issuing more stock or by borrowing more money.

*Our hedging strategies may not be successful in mitigating our risks associated with interest rates and could reduce the overall returns on investment in our common stock.*

We use various derivative financial instruments to provide a level of protection against interest rate risks, but no hedging strategy can protect us completely. These instruments involve risks, such as the risk that the counterparties may fail to honor their obligations under these arrangements, that these arrangements may not be effective in reducing our exposure to interest rate changes and that a court could rule that such agreements are not legally enforceable. These instruments may also generate income that may not be treated as qualifying REIT income for purposes of the 75% or 95% REIT income tests. In addition, the nature and timing of hedging transactions may influence the effectiveness of our hedging strategies. Poorly designed strategies or improperly executed transactions could actually increase our risk and losses. Moreover, hedging strategies involve transaction and other costs. We cannot assure our stockholders that our hedging strategy and the derivatives that we use will adequately offset the risk of interest rate volatility or that our hedging transactions will not result in losses that may reduce the overall return on investment in our common stock.

## **RISKS RELATED TO OUR CORPORATE STRUCTURE**

*Our charter and Maryland law contain provisions that may delay, defer or prevent a change of control transaction.*

*Our charter contains a 9.8% ownership limit.*

Our charter, subject to certain exceptions, authorizes our directors to take such actions as are necessary and desirable to preserve our qualification as a REIT and to limit any person to actual or constructive ownership of no more than 9.8% by value or number of shares, whichever is more restrictive, of any class or series of our

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**Table of Contents**

outstanding shares of our capital stock. Our board of directors, in its sole discretion, may exempt, subject to the satisfaction of certain conditions, any person from the ownership limit. However, our board of directors may not grant an exemption from the ownership limit to any person whose ownership, direct or indirect, in excess of 9.8% by value or number of shares of any class or series of our outstanding shares of our capital stock could jeopardize our status as a REIT. These restrictions on transferability and ownership will not apply if our board of directors determines that it is no longer in our best interests to attempt to qualify, or to continue to qualify, as a REIT. The ownership limit may delay or impede a transaction or a change of control that might involve a premium price for our common stock or otherwise be in the best interest of our stockholders.

*We could authorize and issue stock without stockholder approval.*

Our board of directors could, without stockholder approval, issue authorized but unissued shares of our common stock or preferred stock and amend our charter to increase or decrease the aggregate number of shares of stock or the number of shares of stock of any class or series that we have authority to issue. In addition, our board of directors could, without stockholder approval, classify or reclassify any unissued shares of our common stock or preferred stock and set the preferences, rights and other terms of such classified or reclassified shares. Our board of directors could establish a series of stock that could, depending on the terms of such series, delay, defer or prevent a transaction or change of control that might involve a premium price for our common stock or otherwise be in the best interest of our stockholders.

*Majority stockholder vote may discourage changes of control.*

If declared advisable by our board of directors, our stockholders may take some actions, including approving amendments to our charter, by a vote of a majority or, in certain circumstances, two thirds of the shares outstanding and entitled to vote. If approved by the holders of the appropriate number of shares, all actions taken would be binding on all of our stockholders. Some of these provisions may discourage or make it more difficult for another party to acquire control of us or to effect a change in our operations.

*Provisions of Maryland law may limit the ability of a third party to acquire control of our company.*

Certain provisions of Maryland law may have the effect of inhibiting a third party from making a proposal to acquire us or of impeding a change of control under certain circumstances that otherwise could provide the holders of shares of our common stock with the opportunity to realize a premium over the then prevailing market price of such shares, including:

business combination provisions that, subject to limitations, prohibit certain business combinations between us and an interested stockholder (defined generally as any person who beneficially owns 10% or more of the voting power of our shares or an affiliate thereof) for five years after the most recent date on which the stockholder becomes an interested stockholder and thereafter would require the recommendation of our board of directors and impose special appraisal rights and special stockholder voting requirements on these combinations; and

control share provisions that provide that control shares of our company (defined as shares which, when aggregated with other shares controlled by the stockholder, entitle the stockholder to exercise one of three increasing ranges of voting power in electing directors) acquired in a control share acquisition (defined as the direct or indirect acquisition of ownership or control of control shares ) have no voting rights except to the extent approved by our stockholders by the affirmative vote of at least two-thirds of all the votes entitled to be cast on the matter, excluding all interested shares.

We have opted out of these provisions of Maryland law with respect to any person, provided, in the case of business combinations, that the business combination is first approved by our board of directors. However, our board of directors may opt in to the business combination provisions and the control share provisions of Maryland law in the future.

Additionally, Title 8, Subtitle 3 of the Maryland General Corporation Law, or MGCL, permits our board of directors, without stockholder approval and regardless of what is currently provided in our charter or our bylaws,



## **Table of Contents**

to implement takeover defenses, some of which (for example, a classified board) we do not currently have. These provisions may have the effect of inhibiting a third party from making an acquisition proposal for our company or of delaying, deferring or preventing a change in control of our company under circumstances that otherwise could provide the holders of our common stock with the opportunity to realize a premium over the then-current market price.

Our charter, our bylaws, the limited partnership agreement of our operating partnership and Maryland law also contain other provisions that may delay, defer or prevent a transaction or a change of control that might involve a premium price for our common stock or otherwise be in the best interest of our stockholders.

### ***Our board of directors can take many actions without stockholder approval.***

Our board of directors has overall authority to oversee our operations and determine our major corporate policies. This authority includes significant flexibility. For example, our board of directors can do the following:

within the limits provided in our charter, prevent the ownership, transfer and/or accumulation of shares in order to protect our status as a REIT or for any other reason deemed to be in the best interests of us and our stockholders;

issue additional shares without obtaining stockholder approval, which could dilute the ownership of our then-current stockholders;

amend our charter to increase or decrease the aggregate number of shares of stock or the number of shares of stock of any class or series, without obtaining stockholder approval;

classify or reclassify any unissued shares of our common stock or preferred stock and set the preferences, rights and other terms of such classified or reclassified shares, without obtaining stockholder approval;

employ and compensate affiliates;

direct our resources toward investments that do not ultimately appreciate over time;

change creditworthiness standards with respect to third-party tenants; and

determine that it is no longer in our best interests to attempt to qualify, or to continue to qualify, as a REIT.

Any of these actions could increase our operating expenses, impact our ability to make distributions or reduce the value of our assets without giving our stockholders the right to vote.

### ***We may change our investment and financing strategies and enter into new lines of business without stockholder consent, which may result in riskier investments than our current investments.***

We may change our investment and financing strategies and enter into new lines of business at any time without the consent of our stockholders, which could result in our making investments and engaging in business activities that are different from, and possibly riskier than, the investments and businesses described in this prospectus. A change in our investment strategy or our entry into new lines of business may increase our exposure to interest rate and other risks of real estate market fluctuations.

### ***Our rights and the rights of our stockholders to take action against our directors and officers are limited.***

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Maryland law provides that a director or officer has no liability in that capacity if he or she performs his or her duties in good faith, in a manner he or she reasonably believes to be in our best interests and with the care that an ordinarily prudent person in a like position would use under similar circumstances. In addition, our charter eliminates our directors and officers liability to us and our stockholders for money damages except for liability resulting from actual receipt of an improper benefit or profit in money, property or services or active and deliberate dishonesty established by a final judgment and which is material to the cause of action. Our bylaws

## **Table of Contents**

require us to indemnify our directors and officers to the maximum extent permitted by Maryland law for liability actually incurred in connection with any proceeding to which they may be made, or threatened to be made, a party, except to the extent that the act or omission of the director or officer was material to the matter giving rise to the proceeding and was either committed in bad faith or was the result of active and deliberate dishonesty, the director or officer actually received an improper personal benefit in money, property or services, or, in the case of any criminal proceeding, the director or officer had reasonable cause to believe that the act or omission was unlawful. As a result, we and our stockholders may have more limited rights against our directors and officers than might otherwise exist under common law. In addition, we may be obligated to fund the defense costs incurred by our directors and officers.

## **RISKS RELATED TO OUR COMMON STOCK**

### ***Our distributions to stockholders may change.***

Distributions will be authorized and determined by our board of directors in its sole discretion from time to time and will depend upon a number of factors, including:

cash available for distribution;

our results of operations;

our financial condition, especially in relation to our anticipated future capital needs of our properties;

the distribution requirements for REITs under the Code;

our operating expenses; and

other factors our board of directors deems relevant.

Consequently, we may not continue our current level of distributions to stockholders, and our distribution levels may fluctuate.

***Future offerings of debt securities, which would be senior to our common stock upon liquidation, or equity securities, which would dilute our existing stockholders and may be senior to our common stock for the purposes of distributions, may adversely affect the market price of our common stock.***

In the future, we may attempt to increase our capital resources by making additional offerings of debt or equity securities, including commercial paper, medium-term notes, senior or subordinated notes and classes of preferred or common stock. Upon liquidation, holders of our debt securities and shares of preferred stock and lenders with respect to other borrowings will receive a distribution of our available assets prior to the holders of our common stock. Additional equity offerings may dilute the holdings of our existing stockholders or reduce the market price of our common stock or both. Because our decision to issue securities in any future offering will depend on market conditions and other factors beyond our control, we cannot predict or estimate the amount, timing or nature of our future offerings. Thus, our stockholders bear the risk of our future offerings reducing the market price of our common stock and diluting their proportionate ownership.

## **FEDERAL INCOME TAX RISKS**

### ***Failure to qualify as a REIT could adversely affect our operations and our ability to make distributions.***

We operate in a manner so as to qualify as a REIT for U.S. federal income tax purposes. Our qualification as a REIT will depend on our satisfaction of numerous requirements (some on an annual and quarterly basis) established under highly technical and complex provisions of the Code for which there are only limited judicial or administrative interpretations, and involves the determination of various factual matters and

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circumstances not entirely within our control. The fact that we hold substantially all of our assets through our operating partnership and its subsidiaries further complicates the application of the REIT requirements for us. No assurance can be given that we will qualify as a REIT for any particular year. If we were to fail to qualify as a REIT in any taxable

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**Table of Contents**

year for which a REIT election has been made, we would not be allowed a deduction for dividends paid to our stockholders in computing our taxable income and would be subject to federal income tax (including any applicable alternative minimum tax) on our taxable income at corporate rates unless certain relief provision apply. As a consequence, we would not be compelled to make distributions under the Code. Moreover, unless we were to obtain relief under certain statutory provisions, we would also be disqualified from treatment as a REIT for the four taxable years following the year during which qualification is lost. This treatment would reduce our net earnings available for investment or distribution to our stockholders because of the additional tax liability to us for the years involved. As a result of the additional tax liability, we might need to borrow funds or liquidate certain investments on terms that may be disadvantageous to us in order to pay the applicable tax. If we fail to qualify as a REIT but are eligible for certain relief provisions, then we may retain our status as a REIT but may be required to pay a penalty tax, which could be substantial.

***To qualify as a REIT, we must meet annual distribution requirements.***

To obtain the favorable tax treatment accorded to REITs, among other requirements, we normally will be required each year to distribute to our stockholders at least 90% of our REIT taxable income, determined without regard to the deduction for dividends paid and by excluding net capital gains. We may distribute taxable dividends that are payable in our stock. Under the Internal Revenue Service, or IRS, Revenue Procedure 2010-12, up to 90% of any such taxable dividend for taxable years ending on or before December 31, 2011 could be payable in shares of our common stock. Taxable stockholders receiving such dividends will be required to include the full amount of the dividend as ordinary income to the extent of our current and accumulated earnings and profits for United States federal income tax purposes. As a result, a U.S. stockholder may be required to pay tax with respect to such dividends in excess of the cash received. If a U.S. stockholder sells the shares of common stock it receives as a dividend in order to pay this tax, the sales proceeds may be less than the amount included in income with respect to the dividend, depending on the market price of our common stock at the time of the sale. Furthermore, with respect to non-U.S. stockholders, we may be required to withhold U.S. tax with respect to such dividends, including in respect of all or a portion of such dividend that is payable in shares of our common stock. In addition, if a significant number of our stockholders determine to sell shares of our stock in order to pay taxes owed on dividends, it may put downward pressure on the trading price of our stock. We will be subject to federal income tax on our undistributed taxable income and net capital gain. In addition, if we fail to distribute during each calendar year at least the sum of (a) 85% of our ordinary income for such year, (b) 95% of our capital gain net income for such year, and (c) any undistributed taxable income from prior periods, we will be subject to a 4% excise tax on the excess of the required distribution over the sum of (i) the amounts actually distributed by us, plus (ii) retained amounts on which we pay income tax at the corporate level. We intend to make distributions to our stockholders to comply with the requirements of the Code for REITs and to minimize or eliminate our corporate income tax obligation. However, differences between the recognition of taxable income and the actual receipt of cash could require us to sell assets or borrow funds on a short-term or long-term basis or partially pay dividends in shares of our commons stock to meet the distribution requirements of the Code. Certain types of assets generate substantial mismatches between taxable income and available cash. Such assets include rental real estate that has been financed through financing structures which require some or all of available cash flows to be used to service borrowings. As a result, the requirement to distribute a substantial portion of our taxable income could cause us to: (1) sell assets in adverse market conditions, (2) borrow on unfavorable terms or (3) distribute amounts that would otherwise be invested in future acquisitions, capital expenditures or repayment of debt, in order to comply with REIT requirements. Further, amounts distributed will not be available to fund our operations.

***Legislative or regulatory action could adversely affect our stockholders.***

In recent years, numerous legislative, judicial and administrative changes have been made to the federal income tax laws applicable to investments in REITs and similar entities. Additional changes to tax laws are likely to continue to occur in the future, and we cannot assure our stockholders that any such changes will not adversely affect the taxation of a stockholder. Any such changes could have an adverse effect on an investment in our

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## **Table of Contents**

common stock. All stockholders are urged to consult with their tax advisor with respect to the status of legislative, regulatory or administrative developments and proposals and their potential effect on an investment in common stock.

***Distributions payable by REITs do not qualify for the reduced tax rates that apply to certain other corporate distributions.***

Tax legislation enacted in 2006 and 2010 generally reduces the maximum tax rate for distributions payable by corporations to individuals to 15% through 2012. Distributions payable by REITs, however, generally continue to be taxed at the normal rate applicable to the individual recipient rather than the 15% preferential rate. Although this legislation does not adversely affect the taxation of REITs or dividends paid by REITs, the more favorable rates applicable to regular corporate distributions could cause investors who are individuals to perceive investments in REITs to be relatively less attractive than investments in the stocks of non-REIT corporations that pay distributions, which could adversely affect the value of the stock of REITs, including our common stock. It is not yet clear whether the reduced rate will be extended beyond 2012 and if so, at what rate.

***Recharacterization of transactions under our operating partnership's private placement may result in a 100% tax on income from prohibited transactions, which would diminish our cash distributions to our stockholders.***

The IRS could recharacterize transactions under our operating partnership's private placement such that our operating partnership is treated as the bona fide owner, for tax purposes, of properties acquired and resold by the entity established to facilitate the transaction. Such recharacterization could result in the income realized on these transactions by our operating partnership being treated as gain on the sale of property that is held as inventory or otherwise held primarily for the sale to customers in the ordinary course of business. In such event, such gain would constitute income from a prohibited transaction and would be subject to a 100% tax. If this occurs, our ability to pay cash distributions to our stockholders will be adversely affected.

***In certain circumstances, we may be subject to federal and state income taxes, which would reduce our cash available for distribution to our stockholders.***

Even if we qualify and maintain our status as a REIT, we may be subject to federal income taxes or state taxes in various circumstances. For example, net income from a prohibited transaction will be subject to a 100% tax. In addition, we may not be able to distribute all of our income in any given year, which would result in corporate level taxes, and we may not make sufficient distributions to avoid excise taxes. We may also decide to retain certain gains from the sale or other disposition of our property and pay income tax directly on such gains. In that event, our stockholders would be required to include such gains in income and would receive a corresponding credit for their share of taxes paid by us. We may also be subject to U.S. state and local and non-U.S. taxes on our income or property, either directly or at the level of our operating partnership or at the level of the other companies through which we indirectly own our assets. In addition, any net taxable income earned directly by any of our taxable REIT subsidiaries, which we refer to as TRSs, will be subject to federal and state corporate income tax. In addition, we may be subject to federal or state taxes in other various circumstances. Any federal or state taxes we pay will reduce our cash available for distribution to our stockholders.

***If our operating partnership was classified as a publicly traded partnership under the Code, our status as a REIT and our ability to pay distributions to our stockholders could be adversely affected.***

Our operating partnership is organized as a partnership for U.S. federal income tax purposes. Even though our operating partnership will not elect to be treated as an association taxable as a corporation, it may be taxed as a corporation if it is deemed to be a publicly traded partnership. A publicly traded partnership is a partnership whose interests are traded on an established securities market or are considered readily tradable on a secondary market or the substantial equivalent thereof. We believe and currently intend to take the position that our operating partnership should not be classified as a publicly traded partnership because interests in our operating partnership are not traded on an established securities market, and our operating partnership should satisfy certain safe harbors which prevent a partnership's interests from being treated as readily tradable on an established

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**Table of Contents**

securities market or substantial equivalent thereof. No assurance can be given, however, that the IRS would not assert that our operating partnership constitutes a publicly traded partnership or that facts and circumstances will not develop which could result in our operating partnership being treated as a publicly traded partnership. If the IRS were to assert successfully that our operating partnership is a publicly traded partnership, and substantially all of our operating partnership's gross income did not consist of the specified types of passive income, our operating partnership would be treated as an association taxable as a corporation and would be subject to corporate tax at the entity level. In such event, the character of our assets and items of gross income would change and would result in a termination of our status as a REIT. In addition, the imposition of a corporate tax on our operating partnership would reduce the amount of cash available for distribution to our stockholders.

***Certain property transfers may generate prohibited transaction income, resulting in a penalty tax on gain attributable to the transaction.***

From time to time, we may transfer or otherwise dispose of some of our properties, including the contribution of properties to our joint venture funds or other commingled investment vehicles. Under the Code, any gain resulting from transfers of properties that we hold as inventory or primarily for sale to customers in the ordinary course of business would be treated as income from a prohibited transaction subject to a 100% penalty tax, unless a safe harbor exception applies. Since we acquire properties for investment purposes, we do not believe that our occasional transfers or disposals of property or our contributions of properties into our joint venture funds, or commingled investment vehicles, are properly treated as prohibited transactions. However, whether property is held for investment purposes is a question of fact that depends on all the facts and circumstances surrounding the particular transaction. The IRS may contend that certain transfers or disposals of properties by us or contributions of properties into our joint venture funds are prohibited transactions if they do not meet the safe harbor requirements. While we believe that the IRS would not prevail in any such dispute, if the IRS were to argue successfully that a transfer or disposition or contribution of property constituted a prohibited transaction, we would be required to pay a 100% penalty tax on any gain allocable to us from the prohibited transaction. In addition, income from a prohibited transaction might adversely affect our ability to satisfy the income tests for qualification as a real estate investment trust for federal income tax purposes.

***Foreign investors may be subject to Foreign Investment Real Property Tax Act, or FIRPTA, tax on certain distributions and on sale of common stock if we are unable to qualify as a domestically controlled REIT or if our stock is not considered to be regularly traded on an established securities market.***

A foreign person disposing of a U.S. real property interest, including shares of a U.S. corporation whose assets consist principally of U.S. real property interests or USRPIs, is generally subject to a tax, known as FIRPTA tax, on the gain recognized on the disposition. Such FIRPTA tax does not apply, however, to the disposition of stock in a REIT if the REIT is a domestically controlled qualified investment entity. A domestically controlled qualified investment entity includes a REIT in which, at all times during a specified testing period, less than 50% in value of its shares is held directly or indirectly by non-U.S. holders. In the event that we do not constitute a domestically controlled qualified investment entity, a person's sale of stock nonetheless will generally not be subject to tax under FIRPTA as a sale of a USRPI, provided that (1) the stock owned is of a class that is regularly traded, as defined by applicable Treasury regulations, on an established securities market, and (2) the selling non-U.S. holder held 5% or less of our outstanding stock of that class at all times during a specified testing period. If we were to fail to so qualify as a domestically controlled qualified investment entity, and our common stock were to fail to be regularly traded, gain realized by a foreign investor on a sale of our common stock would be subject to FIRPTA tax and applicable withholding. No assurance can be given that we will be a domestically controlled qualified investment entity. Additionally, any distributions we make to our non-U.S. stockholders that are attributable to gain from the sale of any USRPI will also generally be subject to FIRPTA tax and applicable withholdings, unless the recipient non-U.S. stockholder has not owned more than 5% of our common stock at any time during the year preceding the distribution.

**Table of Contents**

*Congress has introduced legislation that, if enacted, could cause our operating partnership to be taxable as a corporation for U.S. federal income tax purposes under the publicly traded partnership rules.*

Congress has considered and the Obama administration has indicated its support for, legislative proposals to treat all or part of certain income allocated to a partner by a partnership in respect of certain services provided to or for the benefit of the partnership ( carried interest revenue ) as ordinary income for U.S. federal income tax purposes. While more recent proposals would not adversely affect the character of the income for purposes of the REIT qualification tests, it is not clear what form any such final legislation would take. Additionally, while the more recent proposals purport to treat carried interest revenue as qualifying income of certain operating partnerships of publicly-traded REITs for purposes of the qualifying income exception to the publicly-traded partnership rules, our operating partnership may not qualify under this exception in the proposed legislation. As a result, the proposed legislation, if enacted, could cause our operating partnership to be taxable as a corporation for U.S. federal income tax purposes if it is a publicly-traded partnership and the amount of any such carried interest revenue plus any other non-qualifying income earned by our operating partnership exceeds 10% of its gross income in any taxable year.

**ITEM 1B. UNRESOLVED STAFF COMMENTS**

None.



**Table of Contents****ITEM 2. PROPERTIES****Geographic Distribution**

The following table describes the geographic diversification of our consolidated properties as of December 31, 2010.

Markets	Number of Buildings	Percent Owned <sup>(1)</sup>	Square Feet (in thousands)	Occupancy Percentage <sup>(2)</sup>	Annualized Base Rent <sup>(3)</sup> (in thousands)	Percentage of Total Annualized Base Rent
<b>Operating Properties:</b>						
Atlanta	51	100.0%	6,514	87.5%	\$ 18,315	9.8%
Baltimore/Washington D.C.	15	99.6%	1,916	87.6%	8,452	4.5%
Central Pennsylvania	8	100.0%	1,453	86.0%	5,007	2.7%
Charlotte	10	100.0%	1,006	53.8%	2,141	1.1%
Chicago	17	100.0%	3,393	89.3%	8,515	4.5%
Cincinnati	31	100.0%	3,945	90.9%	11,909	6.4%
Columbus	14	100.0%	4,301	76.4%	9,262	4.9%
Dallas <sup>(4)</sup>	46	100.0%	4,288	89.7%	13,939	7.4%
Denver	1	100.0%	160	100.0%	809	0.4%
Houston	41	100.0%	2,963	92.1%	14,367	7.7%
Indianapolis	7	100.0%	2,299	82.2%	5,241	2.8%
Kansas City	1	100.0%	225	100.0%	1,009	0.5%
Louisville	4	100.0%	1,330	98.4%	4,000	2.1%
Memphis	11	100.0%	5,218	93.5%	12,922	6.9%
Mexico	14	100.0%	1,543	95.5%	6,001	3.2%
Miami	5	100.0%	662	97.2%	3,621	1.9%
Minneapolis	3	100.0%	356	100.0%	1,802	1.0%
Nashville	5	100.0%	2,826	100.0%	8,213	4.4%
New Jersey	11	100.0%	1,340	84.6%	5,198	2.8%
Northern California	24	100.0%	2,528	77.6%	12,056	6.4%
Orlando	13	100.0%	1,134	84.1%	4,164	2.2%
Phoenix	13	100.0%	1,472	87.5%	4,922	2.6%
San Antonio	15	100.0%	1,349	90.6%	3,848	2.1%
Seattle	8	100.0%	1,300	97.0%	6,473	3.5%
Southern California	22	92.0%	3,131	99.8%	15,470	8.2%
<b>Total/weighted average operating Properties</b>	<b>390</b>	<b>99.5%</b>	<b>56,652</b>	<b>88.9%</b>	<b>\$ 187,656</b>	<b>100.0%</b>
Consolidated redevelopment properties	1	100.0%	69	62.4%	145	N/A
Consolidated development properties	7	99.3%	1,056	11.9%	767	N/A
<b>Total/weighted average consolidated Properties</b>	<b>398</b>	<b>99.5%</b>	<b>57,777</b>	<b>87.4%</b>	<b>\$ 188,568</b>	<b>N/A</b>

(1) Percent owned is based on equity ownership weighted by square feet.

(2) Based on leases commenced as of December 31, 2010.

(3) Annualized Base Rent is calculated as monthly contractual base rent (cash basis) per the terms of the lease, as of December 31, 2010, multiplied by 12.

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- (4) Three of our buildings in this market totaling approximately 1.6 million square feet are subject to ground leases.

**Table of Contents**

Occasionally our leases contain provisions giving the tenant rights to purchase the property, which can take the form of a fixed price purchase option, a fair market value option, a right of first refusal option or a right of first offer option. The following chart summarizes such rights related to our consolidated operating properties as of December 31, 2010.

	Number of Leases	Square Feet (in thousands)	Annualized Base Rent (in thousands)
Fixed Price Purchase Options	4	1,486	\$ 4,515
Fair Market Value Options	6	662	\$ 2,938
Right of First Refusal Options	5	581	\$ 2,156
Right of First Offer Options	3	97	\$ 2,327

The following table describes the geographic diversification of our investments in unconsolidated properties as of December 31, 2010.

Markets	Number of Buildings	Percent Owned <sup>(1)</sup>	Square Feet (in thousands)	Occupancy Percentage	Annualized Base Rent (in thousands)	Percentage of Total Annualized Base Rent
<b>Operating Properties:</b>						
Southern California Logistics Airport <sup>(2)</sup>	3	50.0%	759	100.0%	\$ 2,776	100.0%
<b>Operating Properties in Funds:</b>						
Atlanta	2	17.2%	703	80.4%	1,034	2.3%
Central Pennsylvania	4	8.6%	1,210	96.7%	5,048	11.2%
Charlotte	1	4.4%	472	100.0%	1,509	3.3%
Chicago	4	18.1%	1,525	100.0%	5,930	13.1%
Cincinnati	5	11.9%	1,847	96.4%	4,235	9.4%
Columbus	2	6.3%	451	71.6%	1,180	2.6%
Dallas	4	16.8%	1,726	82.6%	4,307	9.5%
Denver	5	20.0%	773	95.5%	3,301	7.3%
Indianapolis	1	11.4%	475	100.0%	1,785	3.9%
Kansas City	1	11.4%	180	100.0%	364	0.8%
Louisville	5	10.0%	900	96.3%	2,862	6.3%
Memphis	1	20.0%	1,039	74.1%	2,241	5.0%
Minneapolis	3	4.4%	472	100.0%	2,290	5.1%
Nashville	2	20.0%	1,020	100.0%	3,789	8.4%
New Jersey	2	10.7%	216	83.0%	955	2.1%
Northern California	1	4.4%	396	100.0%	1,758	3.9%
Orlando	2	20.0%	696	82.7%	2,641	5.8%
Total/weighted average fund operating properties	45	14.1%	14,101	91.7%	45,229	100.0%
<b>Unconsolidated development properties:</b>						
Total/weighted average	7	48.4%	3,156	3.5%	666	N/A
Total/weighted average unconsolidated properties	55	21.6%	18,016	76.6%	\$ 48,671	N/A

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- (1) Percentage owned is based on equity ownership weighted by square feet, if applicable.
- (2) Although we contributed 100% of the initial cash equity capital required by the SCLA joint venture, our partners retain certain participation rights in the venture's available cash flows.

**Table of Contents**

**Property Types**

The following table reflects our consolidated portfolio by property type, in terms of square footage, as of December 31, 2010 (square feet in thousands).

	Bulk Distribution			Light Industrial			Service Center			Total Portfolio		
	Number of Buildings	Square Feet	Occ. % <sup>(1)</sup>	Number of Buildings	Square Feet	Occ. % <sup>(1)</sup>	Number of Buildings	Square Feet	Occ. % <sup>(1)</sup>	Number of Buildings	Square Feet	Occ. % <sup>(1)</sup>
Operating Properties	234	48,532	89.8%	114	6,634	85.1%	42	1,485	76.1%	390	56,652	88.9%
Properties Under Redevelopment				1	69	62.4%				1	69	