

MONY GROUP INC  
Form 8-K  
August 05, 2003

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# SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

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## FORM 8-K

CURRENT REPORT

PURSUANT TO SECTION 13 OR 15(d)

OF THE SECURITIES EXCHANGE ACT OF 1934

Date of Report (Date of Earliest Event Reported) August 5, 2003

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## THE MONY GROUP INC.

(Exact name of Registrant as specified in its charter)

**DELAWARE**  
(State or other jurisdiction of  
Incorporation)

**1-14603**  
(Commission File Number)

**13-3976138**  
(IRS Employer  
Identification No.)

**1740 Broadway**  
**New York, New York**  
(Address of principal executive offices)

**10019**  
(Zip Code)

**(212) 708-2000**

(Registrant's telephone number, including area code)



**Item 5. Other Events.**

On August 5, 2003, The MONY Group Inc. issued a News Release reporting its financial results for the quarter ended June 30, 2003 and made available supplemental statistical information with respect to such financial results.

**Item 7. Financial Statements and Exhibits.**

(c) Exhibits.

99.1 News Release of The MONY Group Inc., dated August 5, 2003.

99.2 Presentation entitled The MONY Group Inc. Statistical Supplement as of and for the Three and Six-Month Periods Ended June 30, 2003 and 2002.

**Item 12. Results of Operations and Financial Condition**

On August 5, 2003, The MONY Group Inc. issued a News Release reporting its financial results for the quarter ended June 30, 2003 and made available supplemental statistical information with respect to such financial results. Copies of the News Release and the supplemental statistical information are attached as Exhibits 99.1 and 99.2 to this Report. The information set forth under this Item 12. Results of Operations and Financial Condition, including Exhibits 99.1 and 99.2, is intended to be furnished and shall not be deemed filed for purposes of Section 18 of the Securities Exchange Act of 1934. The information contained in Exhibits 99.1 and 99.2 to this Report is also intended to be furnished under Item 9. Regulation FD Disclosure.

**SIGNATURE**

Pursuant to the requirements of the Securities Exchange Act of 1934, The MONY Group Inc. has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

**THE MONY GROUP INC.**

By:           /s/ RICHARD DADDARIO          

Richard Daddario

Executive Vice President and  
Chief Financial Officer

Date: August 5, 2003

**Exhibit Index**

- 99.1 News Release of The MONY Group Inc., dated August 5, 2003.  
99.2 Presentation entitled The MONY Group Inc. Statistical Supplement as  
of and for the Three and Six-Month Periods Ended June 30, 2003 and 2002.

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**You should rely upon the information contained or incorporated by reference into this prospectus supplement, the accompanying prospectus and any related free writing prospectus required to be filed with the Securities and Exchange Commission, or SEC. We have not, and the underwriters have not, authorized any other person to provide you with different or additional information. If anyone provides you with different or additional information, you should not rely upon it. We are not, and the underwriters are not, making an offer to sell these securities in any jurisdiction where such offer or sale is not permitted. You should assume that the information appearing in this prospectus supplement, the accompanying prospectus, any such free writing prospectus and the documents incorporated by reference herein or therein is accurate only as of the respective dates of these documents or such other dates as may be specified therein. Our business, financial condition, liquidity, results of operations, funds from operations, or FFO, and prospects may have changed since those dates.**

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## **ABOUT THIS PROSPECTUS SUPPLEMENT**

This document is presented in two parts. The first part is comprised of this prospectus supplement which describes the specific terms of this offering and certain other matters relating to us. The second part, the accompanying prospectus, contains a description of our common stock and provides more general information, some of which does not apply to this offering, regarding securities that we may offer from time to time. To the extent that the information contained in this prospectus supplement differs or varies from the information contained in the accompanying prospectus or documents that we previously filed with the SEC, the information in this prospectus supplement will supersede such information.

This prospectus supplement is part of a registration statement that we have filed with the SEC relating to the securities offered hereby. This prospectus supplement does not contain all of the information that we have included in the registration statement and the accompanying exhibits and schedules thereto in accordance with the rules and regulations of the SEC, and we refer you to such omitted information. It is important for you to read and consider all information contained in this prospectus supplement and the accompanying prospectus in making your investment decision. You should also read and consider the additional information incorporated by reference into this prospectus supplement and the accompanying prospectus. See *Where You Can Find More Information* in this prospectus supplement.

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## SUMMARY

*This summary is not complete and may not contain all of the information that may be important to you in deciding whether to invest in shares of our common stock. To understand this offering fully prior to making an investment decision, you should carefully read this prospectus supplement, the accompanying prospectus and the documents incorporated by reference herein and therein, including the Risk Factors sections beginning on page S-8 of this prospectus supplement and in our most recent Annual Report on Form 10-K, our Quarterly Reports on Form 10-Q and other information that we file from time to time with the SEC which is incorporated by reference into this prospectus supplement and the accompanying prospectus. Unless otherwise expressly stated or the context otherwise requires, all information in this prospectus supplement assumes that the overallotment option granted to the underwriters is not exercised.*

*All references to we, our, us, EDR and the Company in this prospectus supplement and the accompanying prospectus mean Education Realty Trust, Inc. and its consolidated subsidiaries, except where it is made clear that any such reference means only Education Realty Trust, Inc.*

## The Company

We are a self-managed and self-advised real estate investment trust, or REIT, organized in July 2004 to develop, acquire, own and manage high quality student housing communities located near university campuses. We were formed to continue and expand upon the student housing business of Allen & O Hara, Inc., a company with over 40 years of experience as an owner, manager and developer of student housing. As of September 30, 2010, we owned 40 student housing communities located in 19 states containing over 25,400 beds located near 35 universities. We will own 31 student housing communities located in 19 states containing over 21,700 beds located near 30 universities after taking into account the acquisition and disposition transactions discussed below under Recent Developments Repositioning of our Owned Portfolio. As discussed below, certain of these transactions have been completed since September 30, 2010 while others are still pending. We currently provide third-party management services for 23 student housing communities located in 10 states containing over 11,900 beds at 19 universities. We selectively develop student housing communities for our own account and also provide third-party development consulting services on student housing development projects for universities and other third parties. Currently, we have under contract or have recently been awarded over \$330 million in third-party development projects.

All of our assets are held by, and we have conducted substantially all of our activities through, Education Realty Operating Partnership, LP, or our Operating Partnership, and its wholly owned subsidiaries, Allen & O Hara Education Services, Inc., or AOES, and Allen & O Hara Development Company, LLC, or AODC. The majority of our operating expenses are borne by the Operating Partnership, AOES or AODC, as the case may be.

We are the sole general partner of our Operating Partnership. As a result, our board of directors effectively directs all of the Operating Partnership's affairs. We own 98.5% of the outstanding partnership units of the Operating Partnership. Our ownership interest in the Operating Partnership will increase upon consummation of this offering. See Use of Proceeds. The remaining Operating Partnership units are held by former owners of certain of our student housing communities, including certain current and former members of our management team, a member of our board of directors and such member's affiliate.

University Towers Operating Partnership, LP, or our University Towers Partnership, which is our affiliate, owns and operates our University Towers student housing community located in Raleigh, North Carolina. We own 72.7% of the

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outstanding partnership units of the University Towers Partnership, and former owners of our University Towers student housing community, including certain current and former members of our management team, a member of our board of directors and such member's affiliate, own 27.3% of the University Towers Partnership units.

Our executive offices are located at 530 Oak Court Drive, Suite 300, Memphis, Tennessee 38117, and our telephone number is (901) 259-2500. Our website address is <http://www.educationrealty.com>. However, the information located on, or accessible from, our website is not, and shall not be deemed to be, a part of this prospectus supplement or the accompanying prospectus or incorporated into any other filings that we make with the SEC.

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## **Our Industry and Market Opportunity**

### **Significant Demand Driver for the Collegiate Housing Market**

We believe that the significant demand driver for collegiate housing this decade will be the emergence of the Echo Boom generation (categorized as those individuals who were born between 1977 and 1997), much of which is entering or has yet to enter adulthood. According to the latest U.S. Census Bureau estimate in 2008, the Echo Boom generation is comprised of approximately 88.5 million Americans. Moreover, according to a March 2009 report issued by the Rosen Consulting Group, or the Rosen Report, in 2008, the number of Americans that turned 18 years of age is estimated to have peaked at 4.5 million, though that figure is projected to remain above 4.0 million annually through 2020. Despite this forecasted slower growth of the U.S. population turning 18 years of age, according to the Rosen Report, undergraduate enrollment is expected to grow steadily at a 1.5% compound annual rate between 2006 and 2016 as an increasing percentage of high school graduates are choosing to attend institutions of higher learning. The Rosen Report additionally provided that the average time taken to complete a degree is also bolstering undergraduate enrollment rates as approximately 56% of students enrolled in traditionally four-year institutions graduate within six years of entry. Thus, we believe that the Echo Boom generation is currently creating and will continue to create a renewed upsurge in college enrollment levels for the foreseeable future.

Despite the fact that future freshman classes are expected to continue to increase in number, according to the Rosen Report, 20 of the largest four-year universities in the U.S. had an aggregate of 11% on-campus housing capacity as a percentage of total enrollment in 2007, a statistic which evidences the stress upon colleges and universities to expand their existing student housing facilities. We believe that new dormitory construction starts, however, have been adversely affected by national and state budgetary constraints, recessionary pressures and lack of availability and increased cost of credit. Additionally, we believe that much of the existing stock of dormitories is nearing the end of its lifespan and will need to be either renovated or replaced. Further compounding these issues is the evolution in student demands for more amenities from their housing accommodations which results in increased costs to construct new student housing facilities. We believe that the funding for future collegiate housing will increasingly come from alternative sources and that colleges and universities will increasingly rely upon the private sector to assist in the financing of new and the renovation of existing student housing facilities.

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**Our Market Opportunity**

We believe that we are a leader in the ownership, development and management of collegiate housing and that our scalable internal resources and platform will allow us to continue to grow our business in a cost-effective manner. As part of our operating strategy, we focus on key student housing markets within particular geographical areas.

According to the Rosen Report, student enrollments in the Southwest and Southeast regions (which includes the Appalachian region) of the United States are projected to grow between 1.8% and 1.9% annually through 2016 and currently account for almost 32% of total U.S. student enrollment. Because a significant number of our student housing communities are located in these key regions, we believe that we are well-positioned to benefit from these projected enrollment increases.

The following map displays expected enrollment growth by state and the locations of our owned, joint venture and managed student housing communities taking into account the following transactions discussed below under Recent Developments Repositioning of our Owned Portfolio (i) the October 2010 acquisition of The GrandMarc at The Corner, (ii) the November 2010 sale of The Reserve at Clemson, and (iii) the closed and pending disposition of nine student housing communities as discussed below under Summary Recent Developments Repositioning of our Owned Portfolio Place-communities and The Gables, on a pro forma basis.

*Source: Rosen Consulting Group. The National Privatized Student Housing Market Outlook, March 2009.*

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## Recent Developments

### Repositioning of our Owned Portfolio

We have entered into the following transactions that have resulted in a meaningful repositioning of our owned portfolio. We believe that these transactions, which represent the execution of our strategy of recycling capital from non-strategic assets to vibrant, younger student housing communities at larger universities, improve the overall quality of our portfolio and create increased long-term growth potential.

#### The University of Texas at Austin

In July 2010, the University of Texas Board of Regents selected us to be the ground tenant and to develop, own and manage a new high-rise student housing community near the core of The University of Texas at Austin campus. The student housing community is expected to be 16 stories and contain approximately 612 beds. This project represents our third wholly-owned development and the second development under our ONE Plan<sup>SM</sup>, a program through which we use our equity and financial stability to fund and own projects on university land. Construction of this \$64.2 million project is expected to begin in the summer of 2011 with an opening planned for the summer of 2013. We expect to fund approximately \$7.2 million of development costs within the next twelve months.

#### University of Connecticut

In September 2010, we entered into an agreement to develop the first two phases of student housing at Storrs Center adjacent to the University of Connecticut. Located in Storrs, Connecticut, Storrs Center will be a \$220 million, mixed-use town center that will include new retail, restaurant, office and residential development within a planned community of pedestrian walkways, green spaces and conservation areas. We will own and manage the student housing at Storrs Center, and the two phases will include 290 units for a total cost of approximately \$45.5 million. We expect to fund approximately \$18.8 million of development costs within the next twelve months. This project represents our fourth wholly-owned development. Construction is expected to begin in 2011 with the opening of the first phase planned for the summer of 2012 and the opening of the second phase planned for 2013.

#### The GrandMarc at The Corner, University of Virginia

In October 2010, we completed the purchase of The GrandMarc at The Corner, or The GrandMarc, a 641-bed student housing community at the University of Virginia in Charlottesville, Virginia, or UVA. The GrandMarc opened in 2006 and is conveniently located within two blocks of campus and The Corner, a popular destination for students due to the wide variety of restaurants, shopping and entertainment venues. UVA enrollment for the 2009/2010 academic year was approximately 24,400. As of September 30, 2010, The GrandMarc was 90.8% occupied at an average monthly rental rate per bed of approximately \$670. The purchase price of The GrandMarc was approximately \$45.5 million with related acquisition costs of approximately \$1.5 million that was expensed during the fourth quarter of 2010. We funded this acquisition with existing cash and a draw on our revolving credit facility.

#### The Reserve at Clemson

In November 2010, we closed the sale of The Reserve at Clemson for a total purchase price of \$14.4 million and net proceeds of \$1.5 million after the repayment of \$12 million of debt and the payment of other related closing costs.



TABLE OF CONTENTS**Place-communities and The Gables**

In October 2010, we entered into two separate sales agreements to sell nine student housing communities, comprised of eight of the former Place-communities and The Gables, for a total of \$84.8 million. The sale of the first four communities closed on December 8, 2010. The gross sales price of these communities was \$38.7 million with net proceeds of approximately \$20.5 million after the repayment of related debt of \$17.2 million and other closing costs.

The remaining five communities are scheduled to close in the first quarter of 2011. The gross sales price of these communities is \$46.1 million with expected net proceeds of approximately \$29.6 million after repayment of related debt of \$16.1 million and other closing costs. There can be no assurance that we will complete this sale as scheduled or on the terms described above or at all. Of the \$33.3 million of indebtedness that we expect to repay in connection with the sales of these properties, \$29.1 million is variable rate debt that matures in late 2013 and early 2014.

The following table sets forth our operating results for the nine months ended September 30, 2010 on an actual basis as reported in our Quarterly Report on Form 10-Q and on a pro forma basis solely to reflect the impact of the closed and pending sales of the nine student housing communities on our operating results.

	As of September 30, 2010 (In thousands, unaudited)		
	Actual	Adjustments	Pro Forma
Revenues:			
Student housing leasing revenue	\$84,628	\$ 10,917	\$ 73,711
Other leasing revenue	77		77
Third-party development services	1,675		1,675
Third-party management services	2,335		2,335
Operating expense reimbursements	11,017		11,017
Total revenues	99,732	10,917	88,815
Operating expenses:			
Student housing leasing operations	44,702	6,365	38,337
General and administrative	11,661		11,661
Depreciation and amortization	22,592	3,239	19,353
Reimbursable operating expenses	10,101		10,101
Total operating expenses <sup>(1)</sup>	89,056	9,604	79,452
Operating income <sup>(1)</sup>	10,676	1,313	9,363
Nonoperating expenses:			
Interest expense	16,653	1,384	15,269
Amortization of deferred financing costs	974	45	929
Interest income	(402 )	(1 )	(401 )
Total nonoperating expenses	17,225	1,428	15,797
Loss before equity in earnings (losses) of unconsolidated entities, income taxes and discontinued operations (excluding loss on impairment) <sup>(1)</sup>	(6,549 )	(115 )	(6,434 )
Loss on impairment <sup>(1)</sup>	33,610	24,213	9,397
Loss before equity in earnings (losses) of unconsolidated entities, income taxes and discontinued operations	(40,159)	(24,328 )	(15,831 )

(1) Loss on impairment has been excluded from operating expenses and reflected after nonoperating expenses in this presentation to more appropriately reflect the impact of the closed and pending sales of the nine student housing

communities on our operating results.  
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## The Offering

Common stock offered by us

11,500,000 shares (or 13,225,000 shares if the underwriters exercise their overallotment option in full)

Common stock to be outstanding after this offering

70,444,620 shares (or 72,169,620 shares if the underwriters exercise their overallotment option in full)<sup>(1)</sup>

Diluted common stock to be outstanding after this offering

71,555,615 shares (or 73,280,615 shares if the underwriters exercise their overallotment option in full)<sup>(1)(2)</sup>

Use of proceeds

We estimate that our net proceeds from this offering will be approximately \$79.7 million (or approximately \$91.7 million if the underwriters exercise their overallotment option in full) after deducting the underwriting discount and other estimated offering expenses payable by us. We intend to contribute the net proceeds to the Operating Partnership in exchange for a number of partnership units to be issued by the Operating Partnership equal to the number of shares of common stock sold in this offering, thereby increasing our ownership interest in the Operating Partnership. The Operating Partnership intends to use the net proceeds to repay debt, fund its development pipeline, fund potential future acquisitions and for general corporate purposes. See Use of Proceeds.

Restriction on ownership

In order to assist us in maintaining our qualification as a REIT, for federal income tax purposes, among other purposes, ownership, actual or constructive, by any person of more than 9.8% in value or number (whichever is more restrictive) of shares of our capital stock is restricted by our charter. This restriction may be waived by our board of directors, in its sole and absolute discretion, upon satisfaction of certain conditions. See Description of Capital Stock in the accompanying prospectus.

Risk factors

An investment in shares of our common stock involves substantial risks, and prospective investors should carefully consider the matters discussed in the Risk Factors sections beginning on page S-8 of this prospectus supplement and in our most recent Annual Report on Form 10-K, our Quarterly Reports on Form 10-Q and other information that we file from time to time with the SEC which is incorporated by reference into this prospectus supplement and the accompanying prospectus.

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Conflicts of interest

As described in Use of Proceeds, we intend to use a portion of the net proceeds from this offering to reduce the outstanding balance on our revolving credit facility. Affiliates of certain of the underwriters are lenders under our revolving credit facility and will each receive a pro rata portion of the net proceeds from this offering used to repay the outstanding balance under such facility. The representatives have advised us that more than 5% of the net offering proceeds will be used to repay indebtedness under our revolving credit facility to banking affiliates of the underwriters. See Underwriting (Conflicts of Interest) Conflicts of Interest.

New York Stock Exchange Symbol

EDR

The number of shares of common stock to be outstanding after this offering is based upon 58,944,620 shares (1) outstanding as of January 3, 2011. Excludes 452,000 shares of common stock available for future issuance under the Education Realty Trust, Inc. 2004 Incentive Plan.

(2) Includes 1,110,995 shares of common stock issuable upon the conversion or exchange of limited partnership units in the Operating Partnership and the University Towers Partnership.

For additional information regarding our common stock, see Description of Capital Stock in the accompanying prospectus.

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## **RISK FACTORS**

*Your investment in shares of our common stock involves substantial risks. In consultation with your own financial and legal advisers, you should carefully consider, among other matters, the factors set forth below as well as in our most recent Annual Report on Form 10-K, our Quarterly Reports on Form 10-Q and other information that we file from time to time with the SEC which is incorporated by reference into this prospectus supplement and the accompanying prospectus before deciding whether an investment in shares of our common stock is suitable for you. If any of the risks contained in or incorporated by reference into this prospectus supplement or the accompanying prospectus develop into actual events, our business, financial condition, liquidity, results of operations, FFO and prospects could be materially and adversely affected, the market price of our common stock could decline and you may lose all or part of your investment.*

### **This offering is expected to be dilutive, and there may be future dilution related to our common stock.**

Giving effect to the issuance of shares of common stock in this offering, the receipt of the expected net proceeds and the use of those proceeds, we expect that this offering will have a dilutive effect on our expected earnings per share and FFO per share for the year ending December 31, 2011. The actual amount of dilution cannot be determined at this time and will be based upon numerous factors. Additionally, subject to the 90-day lock up restrictions described in Underwriting (Conflicts of Interest) No Sales of Similar Securities, we are not restricted from issuing additional securities, including common stock, securities that are convertible into or exchangeable for, or that represent the right to receive, common stock or preferred stock or any substantially similar securities. The market price of our common stock could decline as a result of issuances or sales of a large number of shares of our common stock in the market after this offering or the perception that such issuances or sales could occur. Additionally, future issuances or sales of substantial amounts of our common stock may be at prices below the offering price of the common stock offered by this prospectus supplement and may result in further dilution in our earnings and FFO per share and/or adversely impact the market price of our common stock.

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

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

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

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

actual or anticipated variations in our operating results, FFO, cash flows or liquidity;  
changes in our earnings estimates or those of analysts and any failure to meet such estimates;

changes in our dividend policy;  
publication of research reports about us, the student housing industry or the real estate industry generally;  
increases in market interest rates that lead purchasers of our common stock to demand a higher dividend yield;  
changes in market valuations of similar companies;  
adverse market reaction to the amount of our outstanding debt at any time, the amount of our maturing debt in the near and medium term and our ability to refinance such debt and the terms thereof or our plans to incur additional debt in the future;

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additions or departures of key management personnel, including our ability to find attractive replacements;  
actions by institutional stockholders;  
speculation in the press or investment community;  
the realization of any of the other risk factors included in, or incorporated by reference in, this prospectus supplement and the accompanying prospectus; and  
general market and economic conditions.

Many of the factors listed above are beyond our control. Those factors may cause the market price of our common stock to decline, regardless of our financial performance, condition and prospects. It is impossible to provide any assurance that the market price of our common stock will not decline in the future, and it may be difficult for our stockholders to resell their shares of our common stock at prices that they find attractive, or at all.

**Our student housing communities have previously been, and in the future may be, subject to impairment charges which could adversely affect our results of operations and FFO.**

We are required to periodically evaluate our student housing communities for impairment indicators. A community's value is considered impaired if management's estimate of the aggregate future cash flows (undiscounted and without interest charges) to be generated by the community, based upon its intended use, is less than the carrying value of the community. These estimates of cash flows are based upon factors such as expected future operating income, trends and prospects, as well as the effects of interest and capitalization rates, demand and occupancy, competition and other factors.

In connection with its quarterly review of the recoverability of asset carrying values, during the third quarter of 2010, management determined that the carrying value of nine different student housing communities may not be recoverable due to estimated cash flows giving consideration to the then potential sale of certain of the communities and the then current projections of net operating income. Accordingly, the fair value of these communities was estimated, and management recorded an impairment loss of \$33.6 million. As described above, we have since either completed the sale of or are under contract to sell certain of these nine impaired student housing communities. See Summary Recent Developments Repositioning of our Owned Portfolio Place-communities and The Gables above. Ongoing adverse market and economic conditions and market volatility may result in uncertainty in valuation estimates and instability in the estimated value of our student housing communities which, in turn, could result in a substantial decrease in the value of the communities and future impairment charges.

We continually assess our student housing communities to determine if any dispositions are necessary or appropriate.

We may test the market for our student housing communities and may seek to sell certain student housing communities over the next several years. No assurance can be given that we will be able to recover the current carrying amount of our student housing communities in the future. Our failure to do so would require us to recognize additional impairment charges which could materially and adversely affect us and our results of operations and FFO.

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## FORWARD-LOOKING STATEMENTS

Our disclosure and analysis in this prospectus supplement, the accompanying prospectus and the documents that are incorporated by reference herein and therein contain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, or the Securities Act, and Section 21E of the Securities Exchange Act of 1934, as amended, or the Exchange Act. Forward-looking statements provide our current expectations or forecasts of future events and are not statements of historical fact. These forward-looking statements include information about possible or assumed future events, including, among other things, discussion and analysis of our future financial condition, results of operations and FFO, our strategic plans and objectives, cost management, occupancy and leasing rates and trends, liquidity and ability to refinance our indebtedness as it matures, anticipated capital expenditures (and access to capital) required to complete projects, amounts of anticipated cash distributions to our stockholders in the future and other matters. Words such as anticipates, expects, intends, plans, believes, seeks, estimates and of these words and similar expressions are intended to identify forward-looking statements. These statements are not guarantees of future performance and are subject to risks, uncertainties and other factors, some of which are beyond our control, are difficult to predict and/or could cause actual results to differ materially from those expressed or forecasted in the forward-looking statements.

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

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

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

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

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

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

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

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

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

availability of appropriate acquisition and development targets;

failure to integrate acquisitions successfully;

potential impairment charges;

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

impact of ad valorem, property and income taxes;

changes in generally accepted accounting principles;

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

potential liability for uninsured losses and environmental liabilities;

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lease-up risks; and  
the potential need to fund improvements or other capital expenditures out of operating cash flow.  
This list of risks and uncertainties, however, is only a summary of some of the most important factors and is not intended to be exhaustive. You should carefully review the risks that are described in the Risk Factors sections beginning on page S-8 in this prospectus supplement and in our most recent Annual Report on Form 10-K, our Quarterly Reports on Form 10-Q and other information that we file from time to time with the SEC. New factors that are not currently known to us or that we are currently unaware of may also emerge from time to time that could materially and adversely affect us.

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## **USE OF PROCEEDS**

We estimate that our net proceeds from this offering will be approximately \$79.7 million (or approximately \$91.7 million if the underwriters exercise their overallotment option in full) after deducting the underwriting discount and other estimated offering expenses payable by us.

We intend to contribute the net proceeds to the Operating Partnership in exchange for a number of partnership units to be issued by the Operating Partnership equal to the number of shares of common stock sold in this offering, thereby increasing our ownership interest in the Operating Partnership. The Operating Partnership intends to use the net proceeds to repay debt, fund its development pipeline, fund potential future acquisitions and for general corporate purposes.

We intend to use a portion of the net proceeds from this offering to reduce the outstanding balance on our revolving credit facility. Our \$95 million revolving credit facility matures on November 20, 2012 and accrues interest equal to a base rate or London InterBank Offered Rate, or LIBOR, plus an applicable margin based upon our leverage. As of September 30, 2010, we had no amounts outstanding under the revolving credit facility, and we had letters of credit outstanding of \$1,500,000. Affiliates of certain of the underwriters are lenders under our revolving credit facility and will each receive a pro rata portion of the net proceeds from this offering used to repay the outstanding balance under such facility. See Underwriting (Conflicts of Interest) Conflicts of Interest.

Pending application of any portion of the net proceeds, we may invest it in interest-bearing accounts and short-term, interest-bearing securities as is consistent with our intention to maintain our qualification for taxation as a REIT. Such investments may include, for example, obligations of the Government National Mortgage Association, other government and governmental agency securities, certificates of deposit and interest-bearing bank deposits.

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The following table sets forth our capitalization as of September 30, 2010:

on an actual basis as reported in our Quarterly Report on Form 10-Q for the period ended September 30, 2010; on a pro forma basis to reflect (i) a \$21.7 million reduction in cash and a \$25.0 million increase in our revolving credit facility related to the purchase of The GrandMarc, (ii) \$1.5 million in net proceeds used to reduce the revolving credit facility balance and a \$12.0 million reduction of debt related to the sale of The Reserve at Clemson, and (iii) \$20.5 million of net cash proceeds used to reduce the revolving line of credit balance and a \$17.2 million reduction of debt related to the sale of four student housing communities, each of which occurred subsequent to September 30, 2010 as discussed above under Summary Recent Developments Repositioning of our Owned Portfolio; and

on a pro forma as adjusted basis to reflect the impact of:

the sale of 11,500,000 shares of our common stock offered by us in this offering at a public offering price of \$7.30 per share, and after the deduction of the underwriting discount and other estimated offering expenses payable by us, and application of the net proceeds as set forth under Use of Proceeds; and the pending disposition of the remaining five student housing communities which are scheduled to close in the first quarter of 2011 and the related repayment of debt as discussed above under Summary Recent Developments Repositioning of our Owned Portfolio Place-communities and The Gables.

The table does not give effect to the issuance of up to 1,725,000 additional shares of our common stock that may be sold pursuant to the underwriters overallotment option. You should read the following table in conjunction with the consolidated financial statements and the related notes thereto which are incorporated by reference into this prospectus supplement.

	As of September 30, 2010 (In thousands, except share and per share data)		
	Actual	Pro Forma	Pro Forma As Adjusted
Cash and cash equivalents (excluding restricted cash)	\$ 27,960	\$ 6,235	\$ 112,645
Mortgage and construction loans	397,588	368,388	352,288
Revolving credit facility		2,928	
Total debt	397,588	371,316	352,288
Unamortized debt premium	499	499	499
Total debt, net of unamortized premium	398,087	371,815	352,787
Redeemable noncontrolling interests	10,035	10,035	10,035
Equity:			
Education Realty Trust, Inc. stockholders' equity:			
Common stock, \$0.01 par value per share	584	584	699
Additional paid-in capital	415,429	415,429	495,026
Accumulated deficit	(88,876 )	(88,876 )	(88,876 )
Total Education Realty Trust, Inc. stockholders' equity	327,137	327,137	406,849
Total capitalization	\$ 735,259	\$ 708,987	\$ 769,671

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Our common stock is listed on the New York Stock Exchange, or NYSE, under the symbol EDR. The table below sets forth, for the fiscal quarters indicated, high and low reported sales prices per share on the NYSE and the cash dividends per share with respect to such fiscal quarter. The last reported sale price of our common stock on the NYSE on January 4, 2011 was \$7.73 per share.

	Stock Price		
	High	Low	Dividends
2008			
First Quarter	\$ 13.89	\$ 9.95	\$ 0.205
Second Quarter	\$ 14.50	\$ 11.15	\$ 0.205
Third Quarter	\$ 13.46	\$ 9.84	\$ 0.205
Fourth Quarter	\$ 11.06	\$ 2.16	\$ 0.1025
2009			
First Quarter	\$ 6.03	\$ 2.61	\$ 0.1025
Second Quarter	\$ 5.24	\$ 3.32	\$ 0.1025
Third Quarter	\$ 6.44	\$ 4.22	\$ 0.05
Fourth Quarter	\$ 6.01	\$ 4.56	\$ 0.05
2010			
First Quarter	\$ 6.19	\$ 4.78	\$ 0.05
Second Quarter	\$ 7.38	\$ 5.47	\$ 0.05
Third Quarter	\$ 7.50	\$ 5.87	\$ 0.05
Fourth Quarter	\$ 8.09	\$ 7.09	

It has been our policy to declare and pay dividends to the holders of shares of our common stock so as to comply with applicable provisions of the Internal Revenue Code of 1986, as amended, or Code, governing REITs.

Our board of directors will continue to evaluate our per share dividend payments on a quarterly basis as they monitor the capital markets and the impact that the economy has on us. The decision as to whether to authorize and pay dividends on shares of our common stock in the future, as well as the timing, amount and composition of any such future dividends, will be at the sole and absolute discretion of our board of directors in light of conditions then existing, including our earnings, FFO, financial condition, liquidity, capital requirements, debt maturities, the availability of capital, contractual prohibitions or other restrictions, applicable REIT and legal restrictions and general overall economic conditions and other factors. While the statements above concerning our dividend policy represent our current expectations, any actual dividend payable will be determined by our board of directors based upon the circumstances at the time of declaration and the actual number of shares then outstanding, and any dividend payable may vary from such expected amounts.

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



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## **ADDITIONAL FEDERAL INCOME TAX CONSIDERATIONS**

As described more fully in the accompanying prospectus, we have elected to be taxed as a REIT under Sections 856 through 860 of the Code and applicable Treasury Regulations, which set forth the requirements for qualification as a REIT for federal income tax purposes. In the opinion of Bass, Berry & Sims PLC, we qualified to be taxed as a REIT for our taxable years ended December 31, 2007 through December 31, 2009 and our organization and current and proposed method of operation will enable us to continue to qualify as a REIT for our taxable year ended December 31, 2010 and thereafter. Investors should be aware that Bass, Berry & Sims PLC's opinion is based on customary assumptions, is conditioned on certain representations made by us as to factual matters, including representations regarding the nature of our properties and the future conduct of our business, and is not binding on the Internal Revenue Service, or IRS, or any court and speaks as of the date issued. In addition, Bass, Berry & Sims PLC's opinion is based on existing federal income tax law governing qualification as a REIT, which is subject to change, possibly on a retroactive basis. Moreover, our continued qualification and taxation as a REIT depend on our ability to meet on a continuing basis, through actual results, certain qualification tests set forth in the federal income tax laws. Those qualification tests involve the percentage of income that we earn from specified sources, the percentage of our assets that falls within specified categories, the diversity of our stock ownership, and the percentage of our earnings that we distribute. While Bass, Berry & Sims PLC has reviewed those matters in connection with the foregoing opinion, Bass, Berry & Sims PLC will not review our compliance with those tests on a continuing basis. Accordingly, no assurance can be given that the actual results of our operations for any particular taxable year will satisfy such requirements.

The following discussion, which supplements the discussion under the heading "Federal Income Tax Consequences of Our Status as a REIT" in the accompanying prospectus, is a summary of certain additional federal income tax considerations regarding (i) certain distributions of our common stock and (ii) the acquisition, ownership and disposition of our common stock. This discussion does not address all aspects of taxation that may be relevant to particular investors in light of their personal investment or tax circumstances, or to certain types of investors that are subject to special treatment under the federal income tax laws, such as insurance companies, tax-exempt organizations (except to the limited extent discussed below under "Taxation of Tax-Exempt Stockholders"), financial institutions or broker-dealers, non-U.S. individuals and foreign corporations (except to the limited extent discussed below under "Taxation of Non-U.S. Stockholders") and other persons subject to special tax rules. Moreover, this summary assumes that our stockholders hold our stock as a capital asset for federal income tax purposes, which generally means property held for investment. The statements in this section are based on the current federal income tax laws, are for general purposes only and are not tax advice. We cannot assure you that new laws, interpretations of law, or court decisions, any of which may take effect retroactively, will not cause any statement in this section to be inaccurate.

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

### **Certain Distributions of Our Common Stock.**

IRS guidance permits certain distributions made by a publicly-traded REIT that (i) are declared before 2013 with respect to a taxable year ending before 2012 and (ii) consist of both cash and its stock, to be treated as dividend distributions for purposes of satisfying the annual distribution requirement applicable to REITs. Based on that guidance, if we satisfy certain requirements, including the requirement that at least 10% of the total value of any such

distribution consists of cash, the cash and our stock that we distribute will be treated as a dividend, to the extent of our earnings and profits. If we make such a distribution to our stockholders, each of our stockholders will be required to treat the total value of the distribution that each stockholder receives as a dividend, to the extent of each stockholder's pro-rata share of our earnings and profits, regardless of whether such stockholder receives cash, our stock or a combination of cash and our stock. For a general discussion of the federal income tax consequences to our stockholders on the receipt of

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dividends, see below, Taxation of Taxable U.S. Stockholders, Taxation of Tax-Exempt Stockholders and Taxation of Non-U.S. Stockholders.

## Taxation of Taxable U.S. Stockholders

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

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

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

**Distributions.** As long as we qualify as a REIT, distributions made out of our current or accumulated earnings and profits that we do not designate as capital gain dividends or retained long-term capital gains will be dividend income to taxable U.S. stockholders. A corporate U.S. stockholder will not qualify for the dividends-received deduction generally available to corporations. Dividends paid to a U.S. stockholder generally will not qualify for the tax rates applicable to qualified dividend income. Legislation enacted in 2003, 2006 and 2010 reduced the maximum tax rate for qualified dividend income to 15% for tax years 2003 through 2012. Without future congressional action, the maximum tax rate on qualified dividend income will increase to 39.6% in 2013. Qualified dividend income generally includes dividends paid by domestic C corporations and certain qualified foreign corporations to U.S. stockholders that are taxed at individual rates. Because we are not generally subject to federal income tax on the portion of our REIT taxable income that we distribute to our stockholders, our dividends generally will not constitute qualified dividend income. As a result, our REIT dividends generally will be taxed at the higher tax rates applicable to ordinary income. The highest marginal individual income tax rate on ordinary income is 35% through 2012. Without future congressional action, the maximum individual income tax rate on ordinary income will increase to 39.6% in 2013. The federal income tax rates applicable to qualified dividend income generally will apply, however, to our ordinary REIT dividends, if any, that are (1) attributable to qualified dividends received by us prior to 2013 from non-REIT corporations, such as any taxable REIT subsidiaries, or (2) attributable to pre-2013 income on which we have paid federal corporate income tax (e.g., to the extent that we distribute less than 100% of our taxable income). In general, to qualify for the reduced federal income tax rate on qualified dividend income under such circumstances, a U.S. stockholder must hold our stock for more than 60 days during the 121-day period beginning on the date that is 60 days before the date on which our stock becomes ex-dividend. In addition, for taxable years beginning after December 31, 2012, dividends paid to certain individuals, estates or trusts will be subject to a 3.8% Medicare tax.

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

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

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

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

U.S. stockholders may not include in their individual income tax returns any of our net operating losses or capital losses. Instead, these losses are generally carried over by us for potential offset against our future income. Taxable distributions from us and gain from the disposition of our common stock will not be treated as passive activity income; and, therefore, U.S. stockholders generally will not be able to apply any passive activity losses, such as, for example, losses from certain types of limited partnerships in which the U.S. stockholder is a limited partner, against such income. In addition, taxable distributions from us and gain from the disposition of our common stock generally will be treated as investment income for purposes of the investment interest limitations. We will notify U.S. stockholders after the close of our taxable year as to the portions of the distributions attributable to that year that constitute ordinary income, return of capital and capital gain.

**Dispositions.** A U.S. stockholder who is not a dealer in securities generally must treat any gain or loss realized on a taxable disposition of our common stock as long-term capital gain or loss if the U.S. stockholder has held such stock for more than one year, and otherwise as short-term capital gain or loss. In general, a U.S. stockholder will realize gain or loss in an amount equal to the difference between the sum of the fair market value of any property and the amount of cash received in such disposition and the U.S. stockholder's adjusted tax basis in such stock. A U.S. stockholder's adjusted tax basis generally will equal the U.S. stockholder's acquisition cost, increased by the excess of undistributed net capital gains deemed distributed to the U.S. stockholder over the federal corporate income tax deemed paid by the U.S. stockholder on such gains and reduced by any returns of capital. However, a U.S. stockholder must treat any loss on a sale or exchange of our common stock held by such stockholder for six months or less as a long-term capital loss to the extent of capital gain dividends and any other actual or deemed distributions from us that such U.S. stockholder treats as long-term capital gain. All or a portion of any loss that a U.S. stockholder realizes on a taxable disposition of shares of our common stock may be disallowed if the U.S. stockholder purchases other shares of our common stock within 30 days before or after the disposition.

**Capital Gains and Losses.** The tax-rate differential between long-term capital gain and ordinary income for non-corporate taxpayers may be significant. A taxpayer generally must hold a capital asset for more than one year for gain or loss derived from its sale or exchange to be treated as long-term capital gain or loss. The highest marginal individual income tax rate currently is 35% (which rate, absent congressional action, will increase to 39.6% in 2013). The maximum tax rate on long-term capital gain applicable to U.S. stockholders taxed at individual rates currently is 15% (which rate, absent congressional action, will increase to 20% in 2013). The maximum tax rate on long-term capital gain from the sale or exchange of section 1250 property (i.e., generally, depreciable real property) is 25% to the extent the gain would have been treated as ordinary income if the property were section 1245 property (i.e., generally, depreciable personal property). We generally may designate whether a distribution that we designate as capital gain dividends (and any retained capital gain that we are deemed to distribute) is attributable to the sale or

exchange of section 1250 property. The characterization of income as capital gain or ordinary income may affect the deductibility of capital losses. A non-corporate taxpayer may deduct capital losses not offset by capital gains against its ordinary income only up to a maximum annual amount of \$3,000. A non-corporate taxpayer may carry forward unused capital losses indefinitely. A corporate taxpayer must pay tax on its net capital gain at federal

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corporate income tax rates, whether or not such gains are classified as long-term capital gains. A corporate taxpayer may deduct capital losses only to the extent of capital gains, with unused losses carried back three years and forward five years.

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

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

Finally, in certain circumstances, a qualified employee pension or profit-sharing trust that owns more than 10% of the value of our stock must treat a percentage of the dividends that it receives from us as unrelated business taxable income. Such percentage is equal to the gross income we derive from an unrelated trade or business, determined as if we were a pension trust, divided by our total gross income for the year in which we pay the dividends. Such rule applies to a pension trust holding more than 10% of the value of our stock only if:

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

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

either:

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

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

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

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

only a summary of certain of those rules.

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

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

a lower treaty rate applies and the non-U.S. stockholder submits an IRS Form W-8BEN to us evidencing eligibility for that reduced rate;  
the non-U.S. stockholder submits an IRS Form W-8ECI to us claiming that the distribution is effectively connected income; or

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

A non-U.S. stockholder will not incur tax on a distribution in excess of our current and accumulated earnings and profits if the excess portion of such distribution does not exceed such non-U.S. stockholder's adjusted basis in our common stock. Instead, the excess portion of such distribution will reduce the non-U.S. stockholder's adjusted basis in our common stock. A non-U.S. stockholder will be subject to tax on a distribution that exceeds both our current and accumulated earnings and profits and the non-U.S. stockholder's adjusted basis in our common stock, if the non-U.S. stockholder otherwise would be subject to tax on gain from the sale or disposition of our common stock, as described below. See Dispositions below. Under FIRPTA (discussed below), we may be required to withhold 10% of any distribution that exceeds our current and accumulated earnings and profits. Although we intend to withhold at a rate of 30% on the entire amount of any distribution (other than a distribution attributable to a sale of a USRPI), to the extent that we do not do so, we may withhold at a rate of 10% on any portion of a distribution not subject to withholding at a rate of 30%. Because we generally cannot determine at the time we make a distribution whether the distribution will exceed our current and accumulated earnings and profits, we may withhold tax on the entire amount of any distribution. However, a non-U.S. stockholder may obtain a refund of amounts that we withhold if we later determine that a distribution in fact exceeded our current and accumulated earnings and profits.

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

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

non-U.S. stockholder owned more than 5% of our common stock any time during the one-year period preceding the distribution, capital gain distributions to such non-U.S. stockholder in respect of our common stock that are attributable to our sales of USRPIs would be subject to tax under FIRPTA, as described in the preceding paragraph.

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If a distribution is subject to FIRPTA, we must withhold 35% of such distribution that we could designate as a capital gain dividend. A non-U.S. stockholder may receive a credit against its tax liability for the amount that we withhold.

Moreover, if a non-U.S. stockholder disposes of our common stock during the 30-day period preceding a dividend payment, and such non-U.S. stockholder (or a person related to such non-U.S. stockholder) acquires or enters into a contract or option to acquire our stock within 61 days of the first day of the 30-day period described above, and any portion of such dividend payment would, but for the disposition, be treated as a USRPI capital gain to such non-U.S. stockholder, then such non-U.S. stockholder will be treated as having USRPI capital gain in an amount that, but for the disposition, would have been treated as USRPI capital gain.

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

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

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

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

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

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

is a corporation or qualifies for certain other exempt categories and, when required, demonstrates this fact; or provides a taxpayer identification number, certifies as to no loss of exemption from backup withholding, and otherwise complies with the applicable requirements of the backup withholding rules. A stockholder who does not provide us with its correct taxpayer identification number also may be subject to penalties imposed by the IRS. Any amount paid as backup withholding will be creditable against the stockholder's income tax liability. In addition, we may be required to withhold a portion of capital gain distributions to any stockholders who

fail to certify their non-foreign status to us.

Backup withholding generally will not apply to payments of dividends made by us or our paying agents, in their capacities as such, to a non-U.S. stockholder provided that such non-U.S. stockholder furnishes to us or our paying agent the required certification as to its non-U.S. status, such as providing a valid IRS Form W

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

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

For taxable years beginning after December 31, 2012, if certain disclosure requirements related to U.S. accounts or ownership are not satisfied, a U.S. withholding tax at a 30% rate will be imposed on dividends and proceeds of sale in respect of our common stock received by (i) U.S. stockholders that own their stock through foreign accounts or foreign intermediaries and (ii) certain non-U.S. stockholders. If payment of withholding taxes is required, non-U.S. stockholders that are otherwise eligible for an exemption from, or reduction of, U.S. withholding taxes with respect to such dividends and proceeds will be required to seek a refund from the IRS to obtain the benefit of such exemption or reduction. We will not pay any additional amounts in respect of any amounts withheld.

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Merrill Lynch, Pierce, Fenner & Smith Incorporated and KeyBanc Capital Markets Inc. are acting as representatives of each of the underwriters named below. Subject to the terms and conditions set forth in an underwriting agreement among us, our Operating Partnership and the underwriters, we have agreed to sell to the underwriters, and each of the underwriters has agreed, severally and not jointly, to purchase from us, the number of shares of common stock set forth opposite its name below.

<u>Underwriter</u>	Number of Shares
Merrill Lynch, Pierce, Fenner & Smith Incorporated	5,175,000
KeyBanc Capital Markets Inc.	4,025,000
UBS Securities LLC	1,150,000
Morgan Keegan & Company, Inc.	1,150,000
Total	11,500,000

Subject to the terms and conditions set forth in the underwriting agreement, the underwriters have agreed, severally and not jointly, to purchase all of the shares of common stock sold under the underwriting agreement if any of these shares are purchased. If an underwriter defaults, the underwriting agreement provides that the purchase commitments of the nondefaulting underwriters may be increased or the underwriting agreement may be terminated.

We have agreed to indemnify the underwriters against certain liabilities, including liabilities under the Securities Act, or to contribute to payments the underwriters may be required to make in respect of those liabilities.

The underwriters are offering the shares of common stock, subject to prior sale, when, as and if issued to and accepted by them, subject to approval of legal matters by their counsel, including the validity of the shares, and other conditions contained in the underwriting agreement, such as the receipt by the underwriters of officer's certificates and legal opinions. The underwriters reserve the right to withdraw, cancel or modify offers to the public and to reject orders in whole or in part.

**Commissions and Discounts**

The representatives have advised us that the underwriters propose initially to offer the shares of common stock to the public at the public offering price set forth on the cover page of this prospectus supplement and to dealers at that price less a concession not in excess of \$0.18 per share. After the initial offering, the public offering price, concession or any other term of this offering may be changed.

The following table shows the public offering price, underwriting discount and proceeds before expenses to us. The information assumes either no exercise or full exercise by the underwriters of their overallotment option.

	Per Share	Without Option	With Option
Public offering price	\$ 7.30	\$ 83,950,000	\$ 96,542,500
Underwriting discount	\$ .3285	\$ 3,777,750	\$ 4,344,412

Proceeds, before expenses, to us	\$ 6.9715	\$ 80,172,250	\$ 92,198,088
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The expenses of this offering, not including the underwriting discount, are estimated at \$460,000 and are payable by us.

## Overallotment Option

We have granted an option to the underwriters, exercisable for 30 days after the date of this prospectus supplement, to purchase up to 1,725,000 additional shares of common stock at the public offering price, less the underwriting discount. If the underwriters exercise this option, each will be obligated, subject to conditions contained in the underwriting agreement, to purchase a number of additional shares of common stock proportionate to that underwriter's initial amount reflected in the above table.

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## **No Sales of Similar Securities**

We, our executive officers and our directors have agreed not to sell or transfer any common stock or securities convertible into, exchangeable for, exercisable for, or repayable with common stock, for 90 days after the date of this prospectus supplement without first obtaining the written consent of each of the representatives. Specifically, we and these other persons have agreed, with certain limited exceptions, not to directly or indirectly, and, in each case, not to publicly disclose the intention to:

offer, pledge, sell or contract to sell any common stock or Operating Partnership units;  
sell any option or contract to purchase any common stock or Operating Partnership units;  
purchase any option or contract to sell any common stock or Operating Partnership units;  
grant any option, right or warrant for the purchase of any common stock or Operating Partnership units;  
lend or otherwise dispose of or transfer any common stock or Operating Partnership units; or  
request or demand that we file a registration statement related to the common stock or Operating Partnership units; or  
enter into any swap, hedge or other agreement that transfers, in whole or in part, the economic consequence of ownership of any common stock or Operating Partnership units whether any such swap, hedge or transaction is to be settled by delivery of shares of common stock, Operating Partnership units or other securities, in cash or otherwise.

This lock-up provision applies to common stock, Operating Partnership units and securities convertible into or exchangeable or exercisable for or repayable with common stock or Operating Partnership units. It also applies to common stock and Operating Partnership units owned now or acquired later by the person executing the agreement or for which the person executing the agreement later acquires the power of disposition. In the event that either (x) during the last 17 days of the lock-up period referred to above, we issue an earnings release or material news or a material event relating to us occurs or (y) prior to the expiration of the lock-up period, and, in either the case of clause (x) or (y) immediately above, the safe harbor pursuant to Rule 139 under the Securities Act is not available to the underwriters, we announce that we will release earnings results during the 16-day period beginning on the last day of the lock-up period, the restrictions described above shall continue to apply until the expiration of the 18-day period beginning on the issuance of the earnings release or the occurrence of the material news or material event.

## **New York Stock Exchange Listing**

Our shares of common stock are listed on the NYSE under the symbol EDR.

## **Price Stabilization, Short Positions**

Until the distribution of our shares of common stock is completed, SEC rules may limit underwriters and selling group members from bidding for and purchasing our common stock. However, the representatives may engage in transactions that stabilize the price of the common stock, such as bids or purchases to peg, fix or maintain that price.

In connection with this offering, the underwriters may purchase and sell our common stock in the open market. These transactions may include short sales, purchases on the open market to cover positions created by short sales and stabilizing transactions. Short sales involve the sale by the underwriters of a greater number of shares of common stock than they are required to purchase in this offering. Covered short sales are sales made in an amount not greater than the underwriters' overallotment option described above. The underwriters may close out any covered short position by either exercising their overallotment option or purchasing shares of common stock in the open market. In determining the source of shares of common stock to close out the covered short position, the underwriters will consider, among other things, the price of shares available for purchase in the open market as compared to the price at



which they may purchase shares through the overallotment option. Naked short sales are sales in excess of the overallotment option. The underwriters must close out any naked short position by purchasing shares of common stock in the open market. A naked short position is more likely to be created if the underwriters are concerned that there may be downward pressure on the price of our common stock in the open market after pricing that could adversely affect

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investors who purchase in this offering. Stabilizing transactions consist of various bids for or purchases of shares of common stock made by the underwriters in the open market prior to the completion of this offering. The underwriters may conduct these transactions on the NYSE, in the over-the-counter market or otherwise.

Similar to other purchase transactions, the underwriters' purchases to cover the syndicate short sales may have the effect of raising or maintaining the market price of our common stock or preventing or retarding a decline in the market price of our common stock. As a result, the price of our common stock may be higher than the price that might otherwise exist in the open market.

Neither we nor any of the underwriters make any representation or prediction as to the direction or magnitude of any effect that the transactions described above may have on the price of our common stock. In addition, neither we nor any of the underwriters make any representation that the representatives will engage in these transactions or that these transactions, once commenced, will not be discontinued without notice.

## **Electronic Offer, Sale and Distribution of Shares**

In connection with this offering, certain of the underwriters or securities dealers may distribute this prospectus supplement and the accompanying prospectus by electronic means, such as e-mail. In addition, certain of the underwriters may facilitate Internet distribution for this offering to certain of their Internet subscription customers.

Each such underwriter may allocate a limited number of shares for sale to its online brokerage customers. An electronic prospectus supplement and the accompanying prospectus is available on the Internet web site maintained by each such underwriter. Other than this prospectus supplement and the accompanying prospectus in electronic format, the information on each underwriter's web site is not part of this prospectus supplement or the accompanying prospectus.

## **Conflicts of Interest**

KeyBank National Association, UBS Loan Finance LLC and Regions Bank, each of which is an affiliate of an underwriter in this offering, are lenders under our \$95 million revolving credit facility. KeyBank National Association acts as administrative agent and KeyBanc Capital Markets Inc. acts as a co-book-runner and a co-lead arranger under this facility. UBS Securities LLC acts as a co-syndication agent under this facility. Regions Bank acts as a co-syndication agent and Regions Capital Markets acts as a co-book-runner and a co-lead arranger under this facility. We intend to use a portion of the net proceeds from this offering to reduce the outstanding balance of our revolving credit facility. The affiliates of the underwriters under our revolving credit facility will each receive a pro rata portion of the net proceeds from this offering used to repay the outstanding balance under such facility. The representatives have advised us that more than 5% of the net offering proceeds will be used to repay indebtedness under our revolving credit facility to banking affiliates of the underwriters.

## **Other Relationships**

Some of the underwriters and their affiliates have engaged in, and may in the future engage in, investment banking, commercial banking and other commercial dealings in the ordinary course of business with us or our affiliates. They have received, or may in the future receive, customary fees and commissions for these transactions.

In addition, in the ordinary course of their business activities, the underwriters and their affiliates may make or hold a broad array of investments and actively trade debt and equity securities (or related derivative securities) and financial

instruments (including bank loans) for their own account and for the accounts of their customers. Such investments and securities activities may involve securities and/or instruments of ours or our affiliates. The underwriters and their affiliates may also make investment recommendations and/or publish or express independent research views in respect of such securities or financial instruments and may hold, or recommend to clients that they acquire, long and/or short positions in such securities and instruments.

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## Notice to Prospective Investors in the EEA

In relation to each member state of the European Economic Area which has implemented the Prospectus Directive (each, a relevant member state), an offer to the public of any shares of common stock which are the subject of the offering contemplated by this prospectus supplement may not be made in that relevant member state except that an offer to the public in that relevant member state of any shares of common stock may be made at any time under the following exemptions under the Prospectus Directive, if they have been implemented in that relevant member state:

- (a) to any legal entities that are authorized or regulated to operate in the financial markets or, if not so authorized or regulated, whose corporate purpose is solely to invest in securities;
  - to any legal entity that has two or more of (1) an average of at least 250 employees during the last financial year;
  - (b)(2) a total balance sheet of more than €43,000,000 and (3) an annual net turnover of more than €50,000,000, as shown in its last annual or consolidated accounts;
  - (c) by the underwriters to fewer than 100 natural or legal persons (other than qualified investors as defined in the Prospectus Directive) subject to obtaining the prior consent of the underwriters; or
  - (d) in any other circumstances falling within Article 3(2) of the Prospectus Directive,
- provided that no such offer of shares of common stock shall result in a requirement for the publication by us or any underwriter of a prospectus pursuant to Article 3 of the Prospectus Directive.

Any person making or intending to make any offer of shares of common stock within the EEA should only do so in circumstances in which no obligation arises for us or any of the underwriters to produce a prospectus for such offer. Neither we nor the underwriters have authorized, nor do they authorize, the making of any offer of shares of common stock through any financial intermediary, other than offers made by the underwriters which constitute the final offering of shares of common stock contemplated in this prospectus supplement.

For the purposes of this provision, the expression an offer to the public in any relevant member state means the communication in any form and by any means of sufficient information on the terms of the offer and any shares of common stock to be offered so as to enable an investor to decide to purchase any shares of common stock, as the same may be varied in that member state by any measure implementing the Prospectus Directive in that member state and the expression Prospectus Directive means Directive 2003/71/EC and includes any relevant implementing measure in each relevant member state.

Each person in a relevant member state who receives any communication in respect of, or who acquires any shares of common stock under, the offer of shares of common stock contemplated by this prospectus supplement will be deemed to have represented, warranted and agreed to and with us and each underwriter that:

- (a) it is a qualified investor within the meaning of the law in that relevant member state implementing Article 2(1)(e) of the Prospectus Directive; and
- in the case of any shares of common stock acquired by it as a financial intermediary, as that term is used in Article 3(2) of the Prospectus Directive, (i) the shares of common stock acquired by it in the offering have not been acquired on behalf of, nor have they been acquired with a view to their offer or resale to, persons in any relevant member state other than qualified investors (as defined in the Prospectus Directive), or in circumstances in which
- (b) the prior consent of the representatives has been given to the offer or resale; or (ii) where shares of common stock have been acquired by it on behalf of persons in any relevant member state other than qualified investors, the offer of those shares of common stock to it is not treated under the Prospectus Directive as having been made to such persons.

In addition, in the United Kingdom, this prospectus supplement is being distributed only to, and is directed only at, and any offer subsequently made may only be directed at persons who are qualified investors (as defined in the Prospectus Directive)(i) who have professional experience in matters relating to investments falling within Article 19 (5) of the Financial Services and Markets Act 2000 (Financial

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Promotion) Order 2005, as amended (the Order ) and/or (ii) who are high net worth companies (or persons to whom it may otherwise be lawfully communicated) falling within Article 49(2)(a) to (d) of the Order (all such persons together being referred to as relevant persons ). This document must not be acted on or relied on in the United Kingdom by persons who are not relevant persons. In the United Kingdom, any investment or investment activity to which this document relates is only available to, and will be engaged in with, relevant persons.

## **Notice to Prospective Investors in Switzerland**

We have not and will not register with the Swiss Financial Market Supervisory Authority ( FINMA ) as a foreign collective investment scheme pursuant to Article 119 of the Federal Act on Collective Investment Scheme of 23 June 2006, as amended ( CISA ), and accordingly the shares of common stock being offered pursuant to this prospectus supplement have not and will not be approved, and may not be licensable, with FINMA. Therefore, the shares of common stock have not been authorized for distribution by FINMA as a foreign collective investment scheme pursuant to Article 119 CISA and the shares of common stock offered hereby may not be offered to the public (as this term is defined in Article 3 CISA) in or from Switzerland. The shares of common stock may solely be offered to qualified investors, as this term is defined in Article 10 CISA, and in the circumstances set out in Article 3 of the Ordinance on Collective Investment Scheme of 22 November 2006, as amended ( CISO ), such that there is no public offer. Investors, however, do not benefit from protection under CISA or CISO or supervision by FINMA. This prospectus supplement and any other materials relating to the shares of common stock are strictly personal and confidential to each offeree and do not constitute an offer to any other person. This prospectus supplement may only be used by those qualified investors to whom it has been handed out in connection with the offer described herein and may neither directly or indirectly be distributed or made available to any person or entity other than its recipients. It may not be used in connection with any other offer and shall in particular not be copied and/or distributed to the public in Switzerland or from Switzerland. This prospectus supplement does not constitute an issue prospectus as that term is understood pursuant to Article 652a and/or 1156 of the Swiss Federal Code of Obligations. We have not applied for a listing of the shares of common stock on the SIX Swiss Exchange or any other regulated securities market in Switzerland, and consequently, the information presented in this prospectus supplement does not necessarily comply with the information standards set out in the listing rules of the SIX Swiss Exchange and corresponding prospectus schemes annexed to the listing rules of the SIX Swiss Exchange.

## **Notice to Prospective Investors in the Dubai International Financial Centre**

This prospectus supplement relates to an exempt offer in accordance with the Offered Securities Rules of the Dubai Financial Services Authority ( DFSA ). This prospectus supplement is intended for distribution only to persons of a type specified in the Offered Securities Rules of the DFSA. It must not be delivered to, or relied on by, any other person. The DFSA has no responsibility for reviewing or verifying any documents in connection with exempt offers. The DFSA has not approved this prospectus supplement nor taken steps to verify the information set forth herein and has no responsibility for the prospectus supplement. The shares of common stock to which this prospectus supplement relates may be illiquid and/or subject to restrictions on their resale. Prospective purchasers of the shares of common stock offered should conduct their own due diligence on the shares of common stock. If you do not understand the contents of this prospectus supplement, you should consult an authorized financial advisor.

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## LEGAL MATTERS

Certain legal matters and certain federal income tax matters will be passed upon for us by Bass, Berry & Sims PLC, Memphis, Tennessee. Certain matters of Maryland law, including the validity of the common stock to be issued in connection with this offering, will be passed upon for us by Venable LLP, Baltimore, Maryland. Sidley Austin LLP, New York, New York will act as counsel to the underwriters with respect to this offering.

## INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The consolidated financial statements incorporated in this prospectus supplement by reference from the Company's Annual Report on Form 10-K for the year ended December 31, 2009, and the effectiveness of the Company's internal control over financial reporting have been audited by Deloitte & Touche LLP, an independent registered public accounting firm, as stated in their report included therein, which is incorporated herein by reference. Such consolidated financial statements have been so incorporated in reliance upon the report of such firm given upon their authority as experts in accounting and auditing.

## WHERE YOU CAN FIND MORE INFORMATION

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

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

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

Annual Report on Form 10-K for the year ended December 31, 2009 (including portions of our definitive Proxy Statement for the 2010 Annual Meeting of Stockholders incorporated therein by reference);  
Quarterly Report on Form 10-Q for the quarter ended March 31, 2010;

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Quarterly Report on Form 10-Q for the quarter ended June 30, 2010;

Quarterly Report on Form 10-Q for the quarter ended September 30, 2010;

Current Report on Form 8-K filed on January 12, 2010 (excluding the information furnished under Item 7.01 and Exhibit 99.1);

Current Report on Form 8-K filed on February 2, 2010 (excluding the information furnished under Item 7.01 and Exhibit 99.1);

Current Report on Form 8-K filed on February 17, 2010 (excluding the information furnished under Item 7.01 and Exhibit 99.1);

Current Report on Form 8-K filed on April 14, 2010;

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Current Report on Form 8-K filed on May 21, 2010;  
Current Report on Form 8-K filed on June 2, 2010 (excluding Exhibit 99.1);  
Current Report on Form 8-K filed on June 4, 2010;  
Current Report on Form 8-K filed on July 19, 2010 (excluding the information furnished under Item 7.01, Exhibit 99.1 and Exhibit 99.2);  
Current Report on Form 8-K filed on October 26, 2010 (excluding the information furnished under Item 7.01 and Exhibit 99.1);

Current Report on Form 8-K filed on January 3, 2011; and

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

All documents that we file pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act after the date of this prospectus supplement and the termination of this offering of the securities pursuant to this prospectus supplement are incorporated by reference into this prospectus supplement from the date of the filing of such documents, except for information furnished under Item 2.02 or Item 7.01 of Form 8-K or other information furnished to the SEC which is not deemed filed and not incorporated by reference into this prospectus supplement and the accompanying prospectus.

Information that we subsequently file with the SEC as aforesaid will automatically update and may supersede information in this prospectus supplement and the accompanying prospectus and information that we previously filed with the SEC.

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

Education Realty Trust, Inc.  
530 Oak Court Drive, Suite 300  
Memphis, Tennessee 38117  
(901) 259-2500

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**PROSPECTUS**

**\$250,000,000**

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

We may offer, from time to time, one or more series or classes of common stock, preferred stock, debt securities, depositary shares and subscription rights. We refer to our common stock, preferred stock, debt securities, depositary shares and subscription rights collectively as the securities.

We may offer these securities with an aggregate initial public offering price of up to \$250,000,000, or its equivalent in a foreign currency based on the exchange rate at the time of sale, in amounts, at initial prices and on terms determined at the time of the offering. We may offer the securities separately or together, in separate series or classes and in amounts, at prices and on terms described in one or more supplements to this prospectus.

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

We may offer and sell these securities to or through one or more underwriters, dealers and agents, or directly to purchasers, on a continuous or delayed basis. If any underwriters, dealers or agents are involved in the sale of any of the securities, their names, and any applicable purchase price, fee, commission or discount arrangement with, between or among them, will be set forth, or will be calculable from the information set forth, in an accompanying prospectus supplement. For more detailed information, see Plan of Distribution beginning on page 37 of this prospectus. No securities may be sold without delivery of an accompanying prospectus supplement describing the method and terms of the offering of those securities.

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

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

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

**The date of this prospectus is September 10, 2009.**

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

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## **ABOUT THIS PROSPECTUS**

This prospectus is part of a registration statement on Form S-3 that we filed with the Securities and Exchange Commission, or SEC, using a shelf registration process for the delayed offering and sale of securities pursuant to Rule 415 under the Securities Act of 1933, as amended, or the Securities Act. Under the shelf registration process, we may, over time, sell any combination of the securities described in this prospectus in one or more offerings. This prospectus provides you with a general description of the securities that we may offer. As allowed by SEC rules, this prospectus does not contain all the information you can find in the registration statement or the exhibits to the registration statement. We will not use this prospectus to offer and sell securities unless it is accompanied by a prospectus supplement that more fully describes the securities being offered and the terms of the offering. Any accompanying prospectus supplement or free writing prospectus may also add to, update or supersede other information contained in this prospectus. Before purchasing any securities, you should carefully read this prospectus, any prospectus supplement and any free writing prospectus together with the information incorporated or deemed to be incorporated by reference herein as described under the heading **Where You Can Find More Information** beginning on page 39 this prospectus. All references to we, our, us, EDR and the Company in this prospectus mean Education Realty Trust and its consolidated subsidiaries, except where it is made clear that the term means only Education Realty Trust, Inc.

## **FORWARD-LOOKING STATEMENTS**

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

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

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

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

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

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

our possible failure to qualify as a REIT and the risk of changes in laws affecting REITs;  
our dependence upon key personnel whose continued service is not guaranteed;  
our ability to identify, hire and retain highly-qualified executives in the future;  
availability of appropriate acquisition and development targets;  
failure to integrate acquisitions successfully;

the financial condition and liquidity of, or disputes with, our joint venture and development partners;  
impact of ad valorem, property and income taxes;  
changes in generally accepted accounting principles;

construction delays, increasing construction costs or construction costs that exceed estimates;  
potential liability for uninsured losses and environmental liabilities;  
lease-up risks; and

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

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

## THE COMPANY

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

Our primary business objectives are to maximize cash flow available for distribution to our stockholders and to achieve sustainable long-term growth in cash flow per share in order to maximize long-term stockholder value. We intend to achieve these objectives by (i) acquiring student housing communities nationwide that meet our focused investment criteria, (ii) maximizing net operating income from the operation of our owned properties through proactive and goal-oriented property management strategies, (iii) building our third-party business of management services and development consulting services and (iv) selectively developing properties for our own account.

All of our assets are held by, and we have conducted substantially all of our activities through, Education Realty Operating Partnership, LP, or the Operating Partnership, and its wholly owned subsidiaries. We are the sole general partner of our Operating Partnership, and, as a result, our board of directors effectively directs all of the Operating Partnership's affairs. As of June 30, 2009, we owned 96.0% of the outstanding partnership units of the Operating Partnership. In addition, University Towers Operating Partnership, LP, or the University Towers Partnership, which is our affiliate, owns and operates our University Towers property located in Raleigh, North Carolina. As of June 30, 2009, we owned 72.7% of the units in the University Towers Partnership.

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Our executive offices are located at 530 Oak Court Drive, Suite 300, Memphis, Tennessee 38117, and our telephone number is (901) 259-2500. Our website address is [www.educationrealty.com](http://www.educationrealty.com). However, the

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information located on, or accessible from, our website is not, and shall not be deemed to be, a part of this prospectus, any accompanying prospectus supplement or any free writing prospectus or incorporated into any other filings that we make with the SEC.

**RISK FACTORS**

Investment in any securities offered pursuant to this prospectus involves substantial risks. You should carefully consider the risk factors incorporated by reference to our most recent Annual Report on Form 10-K, our subsequent Quarterly Reports on Form 10-Q and the other information contained in this prospectus, as updated by our subsequent filings under the Exchange Act, and the risk factors and other information contained in any accompanying prospectus supplement before acquiring any of such securities. The occurrence of any of these risks might cause you to lose all or part of your investment in the offered securities. Please also refer to the section entitled Forward-Looking Statements beginning on page 1 of this prospectus.

**CONSOLIDATED RATIO OF EARNINGS TO FIXED CHARGES**

Our consolidated ratios of earnings to fixed charges for the six months ended June 30, 2009 and the years ended December 31, 2004, 2005, 2006, 2007, and 2008 are set forth below. Information presented for periods prior to January 31, 2005, the date of our initial public offering, relate to Allen & O Hara, Inc., our predecessor. For purposes of calculating the ratio of earnings to fixed charges, earnings consist of income before taxes, noncontrolling interest and equity in earnings of equity investees, plus fixed charges less capitalized interest. Fixed charges include interest expense, capitalized interest, amortization of premiums, discounts, and deferred financing costs related to debt and an estimate of the interest component of rent expense.

	Year Ended December 31,					Six Months
	2004	2005	2006	2007	2008	Ended June 30, 2009
Ratio of earnings to fixed charges	1.11	*	*	*	*	1.09

\* For the years ended December 31, 2005, 2006, 2007 and 2008, fixed charges exceeded earnings by \$16,492, \$12,780, \$6,936 and \$6,801, respectively (dollar amounts in thousands).

**USE OF PROCEEDS**

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

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## **DESCRIPTION OF CAPITAL STOCK**

### **General**

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

### **Authorized Stock**

Our charter provides that we may issue up to 200,000,000 shares of common stock, par value \$0.01 per share, and 50,000,000 shares of preferred stock, par value \$0.01 per share. In addition, our charter provides that our board of directors, without any action by our stockholders, may amend our charter from time to time to increase or decrease the aggregate number of shares of stock or the number of shares of stock of any class that we have authority to issue. As of August 1, 2009, there were 56,697,966 shares of common stock issued and outstanding and no shares of preferred stock issued and outstanding.

### **Common Stock**

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

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

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

Under the MGCL, a Maryland corporation generally cannot dissolve, amend its charter, merge, consolidate, transfer all or substantially all of its assets, engage in a statutory share exchange or engage in similar transactions outside the ordinary course of business unless declared advisable by the board of directors and approved by the affirmative vote of stockholders holding at least two-thirds of the shares entitled to vote on the matter unless a lesser percentage (but

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

Maryland law permits a corporation to transfer all or substantially all of its assets without the approval of the stockholders of the corporation to one or more persons if all of the equity interests of the person or persons are owned, directly or indirectly, by the corporation. Maryland law also does not require approval of the stockholders of a parent corporation to merge or sell all or substantially all of the assets of a subsidiary entity. Because operating assets may be held by a corporation's subsidiaries, as in our situation, this may mean that a subsidiary of a corporation can transfer all of its assets without a vote of the corporation's stockholders.

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

## **Preferred Stock**

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

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

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

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

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

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

We believe that the power of our board of directors, without stockholder approval, to amend our charter to increase the aggregate number of shares of stock or the number of shares of stock of any class or series that we have authority to issue, to issue additional authorized but unissued shares of our common stock or preferred stock and to classify or reclassify unissued shares of our common stock or preferred stock and thereafter to cause us to issue such classified or reclassified shares of stock will provide us with flexibility in structuring possible future financings and acquisitions and in meeting other needs which might arise. The additional classes or series, as well as the common stock, will be available for issuance without further action by our stockholders, unless stockholder consent is required by applicable law or the rules of any stock exchange or automated quotation system on which our securities may be listed or traded.

Although our board of directors does not intend to do so, it could authorize us to issue a class or series that could, depending upon the terms of the particular class or series, delay, defer or prevent a transaction or a change of control

in EDR that might involve a premium price for our stockholders or otherwise be in their best interest.

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## **Restrictions on Ownership and Transfer**

In order for us to qualify as a REIT under the Code, not more than 50% of the value of the outstanding shares of our capital stock may be owned, actually or constructively, by five or fewer individuals (as defined in the Code to include certain entities) during the last half of a taxable year (other than the first year for which an election to be a REIT has been made by us). In addition, if we, or one or more owners (actually or constructively) of 10% or more of us, actually or constructively owns 10% or more of a tenant of ours (or a tenant of any partnership in which we are a partner), the rent received by us (either directly or through any such partnership) from such tenant will not be qualifying income for purposes of the REIT gross income tests of the Code. Our capital stock must also be beneficially owned by 100 or more persons during at least 335 days of a taxable year of 12 months or during a proportionate part of a shorter taxable year (other than the first year for which an election to be a REIT has been made by us). For further discussion, see Federal Income Tax Consequences of our Status as a REIT beginning on page 22 of this prospectus.

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

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

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

As a condition of any grant of a waiver from the ownership limit, our board of directors may require an opinion of counsel or IRS ruling satisfactory to our board of directors and/or representations or undertakings from the applicant with respect to preserving our REIT status.

In connection with the waiver of the ownership limit or at any other time, our board of directors may decrease the ownership limit for all other persons and entities. The decreased ownership limit will not be effective for any person or entity whose percentage ownership in our capital stock is in excess of such decreased ownership limit until such time as such person or entity's percentage ownership equals or falls below the decreased ownership limit, but any further acquisition of our capital stock in excess of such percentage ownership will be in violation of the ownership limit. Additionally, the new ownership limit may not allow five or fewer individuals (as defined for purposes of the REIT ownership restrictions under the Code) to beneficially own more than 49.9% of the value of our outstanding

capital stock.

Our charter further prohibits:

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

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

Any person who acquires or attempts or intends to acquire beneficial or constructive ownership of our capital stock that will or may violate any of the foregoing restrictions on transferability and ownership will be required to give notice immediately to us and provide us with such other information as we may request in order to determine the effect of such transfer on our status as a REIT. The foregoing provisions on transferability and ownership will not apply if our board of directors determines that it is no longer in our best interests to attempt to qualify, or to continue to qualify, as a REIT.

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

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

Shares of our capital stock transferred to the trustee are deemed offered for sale to us, or our designee, at a price per share equal to the lesser of (i) the price paid by the purported owner for such shares (or, if the event which resulted in the transfer to the trust did not involve a purchase of such shares at market price, the market price on the day of the event which resulted in the transfer of such shares to the trust) and (ii) the market price on the date we, or our designee, accepts such offer. We have the right to accept such offer until the trustee has sold the shares of our capital stock held in the trust pursuant to the clauses discussed below. Upon a sale to us, the interest of the charitable beneficiary in such shares sold terminates and the trustee must distribute the net proceeds of the sale to the purported owner and any dividends or other distributions held by the trustee with respect to such capital stock will be paid to the charitable beneficiary.

If we do not buy the shares, the trustee must, within 20 days of receiving notice from us of the transfer of shares of capital stock to the trust, sell the shares to a person or entity designated by the trustee who could own the shares without violating the ownership limits or other restrictions. After that, the trustee must distribute to the purported owner an amount equal to the lesser of (i) the net price paid by the purported owner for the shares (or, if the event



which resulted in the transfer to the trust did not involve a purchase of such shares at market price, the market price on the day of the event which resulted in the transfer of such shares of our stock to the trust) and (ii) the net sales proceeds received by the trust for the shares. Any proceeds in excess of the amount distributable to the purported owner will be distributed to the charitable beneficiary.

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

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

These ownership limits could delay, defer or prevent a transaction or a change of control in EDR that might involve a premium price over the then prevailing market price for the holders of some, or a majority, of our outstanding shares of common stock or which such holders might believe to be otherwise in their best interest.

## **Transfer Agent and Registrar**

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

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

The following is a summary of certain provisions of Maryland law and of our charter and bylaws. See [Where You Can Find More Information](#) beginning on page [39](#) of this prospectus.

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

Each member of our board of directors will serve one-year terms, with each current director serving until the next annual meeting of stockholders and until their respective successors are duly elected and qualify. Our common stockholders will have no right to cumulative voting in the election of directors. Consequently, at each annual meeting of stockholders at which our board of directors is elected, the holders of a majority of the shares of our common stock will be able to elect all of the members of our board of directors. Moreover, our charter permits our stockholders to remove a director, but only for cause, upon the affirmative vote of a majority of the shares of our common stock entitled to vote generally in the election of directors.

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

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

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

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

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

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

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

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

**Control Share Acquisitions.** The MGCL provides that control shares of a Maryland corporation acquired in a control share acquisition have no voting rights except to the extent approved at a special meeting by the affirmative vote of two-thirds of the votes entitled to be cast on the matter, excluding shares of stock in a corporation in respect of which any of the following persons is entitled to exercise or direct the exercise of the voting power of shares of stock of the corporation in the election of directors: (i) a person who makes or proposes to make a control share acquisition, (ii) an officer of the corporation or (iii) an employee of the corporation who is also a director of the corporation. Control shares are voting shares of stock which, if aggregated with all other such shares of stock previously acquired by the acquiror or in respect of which the acquiror is able to exercise or direct the exercise of voting power (except solely by virtue of a revocable proxy), would entitle the acquiror to exercise voting power in electing directors within one of the following ranges of voting power: (i) one-tenth or more but less than one-third, (ii) one-third or more but less than a majority, or (iii) a majority or more of all voting power. Control shares do not include shares that the acquiring person is then entitled to vote as a result of having previously obtained stockholder approval. A control share acquisition means the acquisition of control shares, subject to certain exceptions.

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

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

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paid by the acquiror in the control share acquisition.

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

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

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

a classified board;

a two-thirds vote requirement for removing a director;

a requirement that the number of directors be fixed only by vote of the directors;

a requirement that a vacancy on the board be filled only by the remaining directors and for the remainder of the full term of the class of directors in which the vacancy occurred; and

a majority requirement for the calling by stockholders of a special meeting of stockholders.

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

**Amendment to our charter.** Our charter may be amended only if declared advisable by the board of directors and approved by the affirmative vote of the holders of at least a majority of all of the votes entitled to be cast on the matter, other than amendments to provisions relating to the removal of directors, which must be declared advisable by our board of directors and approved by the affirmative vote of two-thirds of all the votes entitled to be cast on the matter.

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

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

pursuant to our notice of the meeting;

by, or at the direction of, our board of directors; or

by a stockholder who is a stockholder of record both at the time of giving of notice and at the time of the annual meeting, who is entitled to vote at the meeting and who has complied with the advance notice procedures set forth in our bylaws.

With respect to special meetings of stockholders, only the business specified in our Company's notice of meeting may be brought before the meeting of stockholders, unless otherwise provided by law.

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

by, or at the direction of, our board of directors; or

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

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

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

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

an act or omission of the director or officer was material to the matter giving rise to the proceeding and:  
was committed in bad faith; or  
was the result of active and deliberate dishonesty;

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

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

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

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





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any present or former director or officer who is made, or threatened to be made, a party to the proceeding by reason of his or her service in that capacity; or  
any individual who, while a director or officer of our Company and at our request, serves or has served another corporation, real estate investment trust, partnership, joint venture, trust, employee benefit plan or any other enterprise as a director, officer, partner or trustee and who is made, or threatened to be made, a party to the proceeding by reason of his or her service in that capacity.  
Our bylaws also authorize us, subject to approval from our board of directors or a committee thereof, to indemnify and advance expenses to any person who served a predecessor of ours in any of the capacities described above and to any employee or agent of our Company or a predecessor of our Company.

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

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

## **DESCRIPTION OF DEBT SECURITIES**

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

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

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

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

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

their title and whether they are senior securities or subordinated securities;

their initial aggregate principal amount and any limit on their aggregate principal amount;  
the percentage of the principal amount at which they will be issued and, if other than 100% of the principal amount,  
the portion of the principal amount payable upon declaration of acceleration of their maturity;  
the terms, if any, upon which they may be convertible into shares of our common stock or preferred stock and the  
terms and conditions upon which a conversion will be effected, including the initial conversion price or rate and the  
conversion period;

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if convertible, the portion of the principal amount that is convertible into common stock or preferred stock, or the method by which any portion will be determined;

if convertible, any applicable limitations on the ownership or transferability of the common stock or preferred stock into which they are convertible;

the date or dates, or the method for determining the date or dates, on which the principal will be payable;

the rate or rates (which may be fixed or variable), or the method for determining the rate or rates, at which they will bear interest, if any;

the date or dates, or the method for determining the date or dates, from which any interest will accrue, the interest payment dates on which any interest will be payable, the regular record dates for the interest payment dates, or the method by which the date will be determined, the person to whom the interest will be payable, and the basis upon which interest will be calculated if other than that of a 360-day year of twelve 30-day months;

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

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

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

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

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

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

any provisions for collateral security for their repayment;

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

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

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

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

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

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

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

Restrictions on ownership and transfer of our common stock and preferred stock are designed to preserve our status as a REIT and, therefore, may act to prevent or hinder a change of control. See Description Of Capital Stock Restrictions on Ownership and Transfer beginning on page 6 of this prospectus. Investors should review the accompanying prospectus supplement for information with respect to any deletions from, modifications of or additions to the events of default or covenants that are described below, including any addition of a covenant or other provision providing event risk or similar protection.

## **Merger, Consolidation or Sale**

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

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

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

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

## **Covenants**

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

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

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

our failure to pay any installment of interest;

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

our failure to make any required sinking fund payment;

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

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

If an event of default under any indenture with respect to debt securities of any series at the time outstanding occurs and is continuing, then the applicable trustee or the holders of not less than 25% of the principal amount of the

outstanding debt securities of that series may declare the principal amount (or, if the debt securities of that series are original issue discount securities or indexed securities, such portion of the principal amount as may be specified in the terms thereof) of all the debt securities of that series to be due and payable immediately by written notice thereof to us (and to the applicable trustee if given by the holders). However, at any time after such a declaration of acceleration with respect to debt securities of such series (or of all debt securities then outstanding under any indenture, as the case may be) has been made, but before a

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judgment or decree for payment of the money due has been obtained by the applicable trustee, the holders of not less than a majority in principal amount of outstanding debt securities of such series (or of all debt securities then outstanding under the applicable indenture, as the case may be) may rescind and annul such declaration and its consequences if:

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

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

payment default; or

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

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

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

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

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





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## **Modification of the Indenture**

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

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

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

change the place or currency of payment of principal of (or premium, if any) or interest, if any, on the debt securities;

impair the right to institute suit for the enforcement of any payment on or with respect to the debt securities;

reduce the above-stated percentage of holders of the debt securities necessary to modify or amend the indenture; or

modify the foregoing requirements or reduce the percentage of the outstanding debt securities necessary to waive compliance with certain provisions of the indenture or for waiver of certain defaults.

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

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

## **Redemption of Debt securities**

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

## **Conversion of Debt securities**

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

whether the debt securities are convertible into shares of our common stock or preferred stock;

the conversion price (or the manner of calculating the price);

the conversion period;

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

any restrictions on conversion.

## **Subordination**

Upon any distribution to our creditors in a liquidation, dissolution or reorganization, the payment of the principal of and interest on any subordinated securities will be subordinated to the extent provided in the applicable indenture to the prior payment in full of all senior securities. No payment of principal or interest will be permitted to be made on

subordinated securities at any time if any payment default or any other default which permits accelerations exists.  
After all senior securities are paid in full and until the subordinated

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securities are paid in full, holders of subordinated securities will be subrogated to the right of holders of senior securities to the extent that distributions otherwise payable to holders of subordinated securities have been applied to the payment of senior securities. By reason of any subordination, in the event of a distribution of assets upon our insolvency, some of our general creditors may recover more, ratably, than holders of subordinated securities. The accompanying prospectus supplement or the information incorporated herein by reference will contain the approximate amount of senior securities outstanding as of the end of our most recent fiscal quarter.

## **Global Debt Securities**

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

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

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

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

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

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

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

## **Governing Law**

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

# **DESCRIPTION OF DEPOSITARY SHARES**

## **General**

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

The depositary shares to be issued will be evidenced by depositary receipts issued pursuant to the applicable deposit agreement. Immediately following the issuance and delivery of a class or series of preferred stock by us to the preferred stock depository, we will cause the preferred stock depository to issue, on our behalf, the depositary receipts. The following description of the depositary shares, and any description of the depositary shares in an accompanying prospectus supplement, may not be complete and is subject to, and qualified in its entirety by reference to, the underlying deposit agreement and the depositary receipt, which we will file with the SEC at or prior to the time of the sale of the depositary shares. You should refer to, and read this summary together with, the deposit agreement and related depositary receipt. You can obtain copies of any form of deposit agreement or other agreement pursuant to which the depositary shares are issued by following the directions described under the caption **Where You Can Find More Information** in the accompanying prospectus.

## **Dividends And Other Distributions**

The depository will distribute all cash dividends or other cash distributions received in respect of our preferred stock to the record holders of depositary shares relating to such preferred stock in proportion to the number of such

depository shares owned by such holders. The depository shall distribute only such amount, however, as can be distributed without attributing to any holder of depository shares a fraction of one cent, and the balance not so distributed shall be added to and treated as part of the next sum received by the depository for distribution to record holders of depository shares.

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

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

### **Redemption Of Depositary Shares**

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

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

### **Voting Our Preferred Stock**

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

### **Amendment And Termination Of The Depositary Agreement**

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

## **Charges Of Depositary**

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

## **Miscellaneous**

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

Neither the depositary nor EDR will be liable if it is prevented or delayed by law or any circumstance beyond its control in performing its obligations under the deposit agreement. The obligations of the depositary



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and EDR under the deposit agreement will be limited to performance in good faith of their duties thereunder and they will not be obligated to prosecute or defend any legal proceeding in respect of any depositary shares or preferred stock unless satisfactory indemnity is furnished. They may rely upon written advice of counsel or accountants, or upon information provided by persons presenting preferred stock for deposit, holders of depositary receipts or other persons believed to be competent and on documents believed to be genuine.

## **Resignation And Removal Of The Depositary**

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

## **Restrictions On Ownership**

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

## **DESCRIPTION OF SUBSCRIPTION RIGHTS**

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

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

the price, if any, for the subscription rights;