

ESSEX PROPERTY TRUST INC

Form 424B5

April 07, 2011

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The information in this preliminary prospectus supplement is not complete and may be changed. This preliminary prospectus supplement and the accompanying prospectus are not an offer to sell these securities and are not soliciting an offer to buy these securities in any jurisdiction where the offer or sale is not permitted.

**SUBJECT TO COMPLETION, DATED APRIL 7, 2011**

**PRELIMINARY PROSPECTUS SUPPLEMENT  
(To prospectus dated March 25, 2010)**

**Filed pursuant to Rule 424(b)(5)  
Registration No. 333-165693**

**Shares**

**% Series H Cumulative Redeemable Preferred Stock  
(Liquidation Preference \$25 Per Share)**

We are offering \_\_\_\_\_ shares of our \_\_\_\_\_ % Series H Cumulative Redeemable Preferred Stock, par value \$0.0001 per share (the \_\_\_\_\_ Series H Preferred Stock \_\_\_\_\_).

Dividends on the Series H Preferred Stock will be payable quarterly in arrears on or about the 15th day of January, April, July and October of each year. The dividend rate is \_\_\_\_\_ % per annum of the \$25.00 liquidation preference, which is equivalent to \$ \_\_\_\_\_ per annum per share of Series H Preferred Stock. The first dividend on the Series H Preferred Stock sold in this offering will be paid on July \_\_\_\_\_, 2011 and will be in the amount of \$ \_\_\_\_\_ per share.

Generally, we may not redeem the Series H Preferred Stock prior to April \_\_\_\_\_, 2016. On and after April \_\_\_\_\_, 2016, we may, at our option, redeem the Series H Preferred Stock, in whole or from time to time in part, by paying \$25.00 per share, plus any accrued and unpaid dividends to, but not including, the date of redemption. In addition, upon the occurrence of a change of control the result of which our shares of common stock, par value \$0.0001 per share ( \_\_\_\_\_ common stock \_\_\_\_\_), and the common securities of the acquiring or surviving entity (or American Depositary Receipts ( \_\_\_\_\_ ADRs \_\_\_\_\_) representing such securities) are not listed on the New York Stock Exchange (the \_\_\_\_\_ NYSE \_\_\_\_\_), the NYSE Amex Equities (the \_\_\_\_\_ NYSE Amex \_\_\_\_\_) or the NASDAQ Stock Market ( \_\_\_\_\_ NASDAQ \_\_\_\_\_) or listed or quoted on a successor exchange or quotation system, we may, at our option, redeem the Series H Preferred Stock, in whole or in part and within 120 days after the first date on which such change of control occurred, by paying \$25.00 per share, plus any accrued and unpaid dividends to, but not including, the date of redemption. If we exercise any of our redemption rights relating to the Series H Preferred Stock, the holders of Series H Preferred Stock will not have the conversion right described below. The Series H Preferred Stock has no maturity date and will remain outstanding indefinitely unless redeemed by us or converted in connection with a change of control by the holders of Series H Preferred Stock.

Upon the occurrence of a change of control the result of which our common stock and the common securities of the acquiring or surviving entity (or ADRs representing such securities) are not listed on the NYSE, the NYSE Amex or NASDAQ or listed or quoted on a successor exchange or quotation system, each holder of Series H Preferred Stock will have the right (unless, prior to the Change of Control Conversion Date (as defined herein), we have provided or provide notice of our election to redeem the Series H Preferred Stock) to convert some or all of the Series H Preferred Stock held by such holder on the Change of Control Conversion Date into a number of shares of our common stock per share of Series H Preferred Stock to be converted equal to the lesser of:

the quotient obtained by dividing (i) the sum of the \$25.00 liquidation preference plus the amount of any accrued and unpaid dividends to, but not including, the Change of Control Conversion Date (unless the Change of Control Conversion Date is after a record date for a Series H Preferred Stock dividend payment and prior to the corresponding Series H Preferred Stock dividend payment date, in which case no additional amount for such

accrued and unpaid dividend will be included in this sum) by (ii) the Common Share Price (as defined herein); and

(the Share Cap ), subject to certain adjustments;

subject, in each case, to provisions for the receipt of alternative consideration as described in this prospectus supplement.

The Series H Preferred Stock is subject to certain restrictions on ownership designed to preserve our qualification as a real estate investment trust ( REIT ) for federal income tax purposes.

We intend to file an application to list the Series H Preferred Stock on the NYSE under the symbol ESSPrH.

We have granted the underwriters the right to purchase up to an additional shares of our Series H Preferred Stock at the public offering price, less the underwriting discount, to cover over-allotments within 30 days from the date of this prospectus supplement.

**Investing in the Series H Preferred Stock involves a high degree of risk. Before buying any Series H Preferred Stock, you should carefully read the discussion of material risks of investing in the Series H Preferred Stock under the heading Risk Factors on page S-7 of this prospectus supplement and beginning on page 6 of our Annual Report on Form 10-K for the year ended December 31, 2010.**

	Per Share	Total
Public offering price	\$	\$
Underwriting discount	\$	\$
Proceeds, before expenses, to us	\$	\$

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

The underwriters expect to deliver the shares on or about April , 2011.

**Wells Fargo Securities**

**Raymond James**

**Barclays Capital**

**RBC Capital Markets**

**Baird**

**FBR**

**Janney Montgomery Scott**

**Morgan Keegan**

**Stifel Nicolaus Weisel**

The date of this prospectus supplement is April , 2011.

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You should rely only on the information contained in or incorporated by reference into this prospectus supplement, the accompanying prospectus or any applicable free writing prospectus. 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 on it. This prospectus supplement and the accompanying prospectus do not constitute an offer to sell, or a solicitation of an offer to purchase, any securities in any jurisdiction

where it is unlawful to make such offer or solicitation. You should assume that the information appearing in this prospectus supplement, the accompanying prospectus, any applicable free writing prospectus and the documents incorporated by reference herein or therein is accurate only as of their respective dates or on the date or dates which are specified in these documents. Our business, financial condition, liquidity, results of operations and prospects may have changed since those dates.

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**ABOUT THIS PROSPECTUS SUPPLEMENT**

This document is in two parts. The first part is this prospectus supplement, which describes the specific terms of this offering. The second part, the accompanying prospectus, gives more general information, some of which may not apply to this offering.

To the extent the information contained in this prospectus supplement differs or varies from the information contained in the accompanying prospectus or documents incorporated by reference, the information in this prospectus supplement will supersede such information.

*This prospectus supplement does not contain all of the information that is important to you. You should read the accompanying prospectus as well as the documents incorporated by reference in this prospectus supplement and the accompanying prospectus. See Incorporation of Certain Information by Reference and Available Information in this prospectus supplement. Unless the context otherwise requires, in this prospectus supplement, the terms Company, we, us and our include Essex Property Trust, Inc. and its consolidated subsidiaries, including Essex Portfolio, L.P., our operating partnership.*

**OUR COMPANY**

**General**

The Company is a Maryland corporation that operates as a self-administered and self-managed REIT. The Company owns all of its interest in its real estate investments directly or indirectly through Essex Portfolio, L.P. ( operating partnership ). The Company is the sole general partner of the operating partnership and as of December 31, 2010 owned a 93.4% general partnership interest.

The Company has elected to be treated as a REIT for federal income tax purposes, commencing with the year ended December 31, 1994, as the Company completed an initial public offering on June 13, 1994. In order to maintain compliance with REIT tax rules, the Company utilizes taxable REIT subsidiaries for various revenue generating or investment activities. All taxable REIT subsidiaries are consolidated by the Company.

We are engaged primarily in the ownership, operation, management, acquisition, development and redevelopment of predominantly apartment communities. As of December 31, 2010, we owned or held an interest in 147 apartment communities, aggregating 30,072 units, located along the West Coast of the United States, as well as five commercial buildings (totaling approximately 215,840 square feet), and two active development projects with 436 units in various stages of development.

Our principal executive offices are located at 925 East Meadow Drive, Palo Alto, CA 94303. Our telephone number is (650) 494-3700. Our Internet website is [www.essexpropertytrust.com](http://www.essexpropertytrust.com). The information contained on our website is not part of this prospectus supplement.

**Business Strategies**

The following is a discussion of the Company's business strategies in regards to real estate investment and management.

*Research Driven Approach* The Company believes that successful real estate investment decisions and portfolio growth begin with extensive regional economic research and local market knowledge.

Utilizing a proprietary research model that the Company has developed over the last two decades, the Company continually assesses markets where the Company operates, as well as markets where the Company considers future investment opportunities by evaluating the following:

focus on markets in major metropolitan areas that have regional population in excess of one million;

constraints on new supply driven by: (i) low availability of developable land sites where competing housing could be economically built; (ii) political growth barriers, such as protected land, urban growth boundaries,

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and potential lengthy and expensive development permit processes; and (iii) natural limitations to development, such as mountains or waterways;

rental demand that is enhanced by affordability of rents relative to costs of for-sale housing; and

housing demand that is based on proximity to jobs, high median incomes, the quality of life and related commuting factors, as well as potential job growth.

Recognizing that all real estate markets are cyclical, the Company regularly evaluates the results of its regional economic, as well as its local market, research and adjusts the geographic focus of its portfolio accordingly. The Company seeks to increase its portfolio allocation in markets projected to have the strongest local economies and to decrease such allocations in markets projected to have declining economic conditions. Likewise, the Company also seeks to increase its portfolio allocation in markets that have attractive property valuations and to decrease such allocations in markets that have inflated valuations and low relative yields.

*Property Operations* The Company manages its communities by focusing on strategies that will generate above-average rental growth, tenant retention/satisfaction and long-term asset appreciation. The Company intends to achieve this by utilizing the strategies set forth below:

*Property Management* The Senior Vice President of Operations, Divisional Managers, Regional Portfolio Managers and Area Managers are accountable for the performance and maintenance of the communities. They supervise, provide training for the on-site managers, review actual performance against budget, monitor market trends and prepare operating and capital budgets.

*Capital Preservation* The Executive Vice President of Asset Management and the Capital and Maintenance department are responsible for the planning, budgeting and completion of major capital improvement projects at the Company's communities.

*Business Planning and Control* Comprehensive business plans are implemented in conjunction with every investment decision. These plans include benchmarks for future financial performance, based on collaborative discussions between on-site managers and senior management.

*Development and Redevelopment* The Company focuses on acquiring and developing apartment communities in supply constrained markets, and redeveloping its existing communities to improve the financial and physical aspects of the Company's communities.



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**THE OFFERING**

The following is a brief summary of certain terms of this offering. For a more complete description of the terms of the Series H Preferred Stock, see [Description of the Series H Preferred Stock](#) in this prospectus supplement and [Description of Capital Stock](#) [Description of Preferred Stock](#) in the accompanying prospectus.

Issuer	Essex Property Trust, Inc.
Securities Offered	_____ shares of Series H Preferred Stock ( _____ ) shares if the underwriters exercise their over-allotment option in full. We reserve the right to reopen this series and issue additional Series H Preferred Stock either through public or private sales at any time.
Dividends	<p>_____ Holders of the Series H Preferred Stock will be entitled to receive cumulative cash dividends on the Series H Preferred Stock at the rate of _____ % per annum of the \$25.00 per share liquidation preference (equivalent to \$ _____ per annum per share of Series H Preferred Stock). Dividends on the Series H Preferred Stock will be payable quarterly in arrears on or about the 15th day of January, April, July and October of each year. The first dividend on the Series H Preferred Stock sold in this offering will be paid on July 15, 2011 and will be in the amount of \$ _____ per share.</p>
No Maturity	<p>The Series H Preferred Stock has no maturity date, and we are not required to redeem the Series H Preferred Stock. In addition, we are not required to set aside funds to redeem the Series H Preferred Stock. Accordingly, the shares of Series H Preferred Stock will remain outstanding indefinitely unless we decide to redeem them or, under circumstances where the holders of the Series H Preferred Stock have a conversion right, the holders of shares of Series H Preferred Stock decide to convert them.</p>
Optional Redemption	<p>We may not redeem the Series H Preferred Stock prior to April _____, 2016, except as described below under <a href="#">Special Optional Redemption</a> and in limited circumstances relating to our continuing qualification as a REIT. On and after April _____, 2016, we may, at our option, redeem the Series H Preferred Stock, in whole or from time to time in part, by paying \$25.00 per share, plus any accrued and unpaid dividends to, but not including, the date of redemption.</p>
Special Optional Redemption	<p>Upon the occurrence of a Change of Control (as defined below), we may, at our option, redeem the Series H Preferred Stock, in whole or in part and within 120 days after the first date on which such Change of Control occurred, by paying \$25.00 per share, plus any accrued and unpaid dividends to, but not including, the date of redemption. If, prior to the Change of Control Conversion Date, we exercise any of our redemption</p>

rights relating to the Series H Preferred Stock (whether our optional redemption right or our special optional redemption right), the holders of Series H Preferred Stock will not have the conversion right described below.

A **Change of Control** is when, after the original issuance of the Series H Preferred Stock, the following have occurred and are continuing:

the acquisition by any person, including any syndicate or group deemed to be a **person** under Section 13(d)(3) of the Securities

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Exchange Act of 1934, as amended (the Exchange Act ), of beneficial ownership, directly or indirectly, through a purchase, merger or other acquisition transaction or series of purchases, mergers or other acquisition transactions of shares of the Company entitling that person to exercise more than 50% of the total voting power of all shares of the Company entitled to vote generally in elections of directors (except that such person will be deemed to have beneficial ownership of all securities that such person has the right to acquire, whether such right is currently exercisable or is exercisable only upon the occurrence of a subsequent condition); and

following the closing of any transaction referred to in the bullet point above, neither we nor the acquiring or surviving entity has a class of common securities (or ADRs representing such securities) listed on the NYSE, the NYSE Amex or NASDAQ or listed or quoted on an exchange or quotation system that is a successor to the NYSE, the NYSE Amex or NASDAQ.

Conversion Rights

Upon the occurrence of a Change of Control, each holder of Series H Preferred Stock will have the right (unless, prior to the Change of Control Conversion Date, we have provided or provide notice of our election to redeem the Series H Preferred Stock) to convert some or all of the Series H Preferred Stock held by such holder on the Change of Control Conversion Date into a number of shares of our common stock per share of Series H Preferred Stock to be converted equal to the lesser of:

the quotient obtained by dividing (i) the sum of the \$25.00 liquidation preference plus the amount of any accrued and unpaid dividends to, but not including, the Change of Control Conversion Date (unless the Change of Control Conversion Date is after a record date for a Series H Preferred Stock dividend payment and prior to the corresponding Series H Preferred Stock dividend payment date, in which case no additional amount for such accrued and unpaid dividend will be included in this sum) by (ii) the Common Share Price; and

(the Share Cap), subject to certain adjustments;

subject, in each case, to provisions for the receipt of alternative consideration as described in this prospectus supplement.

If we have provided or provide a redemption notice, whether pursuant to our special optional redemption right in connection with a Change of Control or our optional redemption right, holders of Series H Preferred Stock will not have any right to convert the Series H Preferred Stock in connection with the Change of Control Conversion Right and any Series H Preferred Stock subsequently selected for redemption that has been tendered for conversion will be redeemed on the related date of redemption instead of converted on the Change of Control Conversion Date.

For definitions of Change of Control Conversion Right, Change of Control Conversion Date and Common Share Price and for a description of the adjustments and provisions for the receipt of alternative consideration that may be applicable to the Change of Control

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Conversion Right, see Description of the Series H Preferred Stock Conversion Rights.

Except as provided above in connection with a Change of Control, the Series H Preferred Stock is not convertible into or exchangeable for any other securities or property.

**Liquidation Preference**

If we liquidate, dissolve or wind up, the holders of the Series H Preferred Stock will have the right to receive \$25.00 per share, plus any accrued and unpaid dividends to, but not including, the date of payment, before any payments are made to the holders of our common stock or any other shares of stock that rank junior to the Series H Preferred Stock.

**Ranking**

The Series H Preferred Stock ranks senior to our common stock and future junior securities, on a parity with our outstanding 7.8125% Series F Cumulative Redeemable Preferred Stock, our 4.875% Series G Cumulative Convertible Preferred Stock and any future parity securities (collectively, the Parity Preferred Stocks ), and junior to all of our existing and future indebtedness and any future senior securities, with respect to the payment of dividends and the distribution of assets in the event of our liquidation, dissolution or winding up.

**Voting Rights**

Holders of Series H Preferred Stock generally have no voting rights. However, if we do not pay dividends on the Series H Preferred Stock for six quarterly periods, whether or not consecutive, the holders of the Series H Preferred Stock, voting as a single class with the holders of any other Parity Preferred Stocks upon which like voting rights have been conferred and are exercisable, will be entitled to vote for the election of two additional directors to serve on our Board of Directors until we pay all dividends which we owe on the Series H Preferred Stock. In addition, the affirmative vote of the holders of at least two-thirds of the outstanding Series H Preferred Stock is required for us to authorize, create or increase shares ranking senior to the Series H Preferred Stock or to amend our charter (including the articles supplementary designating the Series H Preferred Stock) in a manner that materially and adversely affects the rights of the holders of the Series H Preferred Stock.

Among other things, we may, without any vote of the holders of the Series H Preferred Stock, issue additional Series H Preferred Stock and Parity Preferred Stocks.

**Information Rights**

During any period in which we are not subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act and any Series H Preferred Stock is outstanding, we will (i) transmit by mail or other permissible means under the Exchange Act to all holders of Series H Preferred Stock as their names and addresses appear in our record books and without cost to such holders, copies of the Annual Reports on Form 10-K and Quarterly Reports on Form 10-Q that we would have been required to file with the SEC pursuant to Section 13 or 15(d) of the

Exchange Act if we were subject thereto (other than any exhibits that would have been required) and (ii) within 15 days following written request, supply copies of such reports to any prospective holder of the Series H Preferred Stock. We will mail (or

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otherwise provide) the reports to the holders of Series H Preferred Stock within 15 days after the respective dates by which we would have been required to file such reports with the SEC if we were subject to Section 13 or 15(d) of the Exchange Act.

Listing	We intend to file an application to list the Series H Preferred Stock on the NYSE under the symbol ESSPrH. If listing is approved, we expect trading to commence within 30 days after initial delivery of the Series H Preferred Stock.
Restrictions on Ownership and Transfer	To ensure that we maintain our qualification as a REIT for federal income tax purposes, our charter provides that no person or entity may own more than 6.0% of the value of our outstanding shares of capital stock, including the Series H Preferred Stock, with some exceptions. See Description of Capital Stock Restrictions on Transfer in the accompanying prospectus.
Use of Proceeds	We estimate that the net proceeds of this offering, after deducting the underwriting discount and other estimated offering expenses payable by us, will be approximately \$ million (approximately \$ million if the underwriters exercise their over-allotment option in full). We will contribute the net proceeds of this offering to our operating partnership. The proceeds will be used to repurchase, in whole or in part, the operating partnership's Series B Preferred Units and any remaining proceeds will be used for general corporate purposes. Prior to such repurchase, we intend to invest the net proceeds in certificates of deposit, interest-bearing short-term investment grade securities or money-market accounts which are consistent with our intention to qualify as a REIT. See Use of Proceeds.
Risk Factors	See Risk Factors beginning on page S-7 of this prospectus supplement and beginning on page 6 of our Annual Report on Form 10-K for the year ended December 31, 2010, to read about certain risks you should consider before buying the Series H Preferred Stock.
Tax Consequences	Certain federal income tax considerations of purchasing, owning and disposing of the Series H Preferred Stock are summarized in Additional Federal Income Tax Considerations on page S-20 of this prospectus supplement, which supplements the discussion under the heading Certain Material Federal Income Tax Considerations in the accompanying prospectus.

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**RISK FACTORS**

*An investment in the Series H Preferred Stock involves a high degree of risk. In addition to other information in this prospectus supplement, you should carefully consider the following risks, the risks described in our Annual Report on Form 10-K for the year ended December 31, 2010, as well as other information and data set forth in this prospectus supplement, the accompanying prospectus and the documents incorporated by reference herein and therein before making an investment decision with respect to the Series H Preferred Stock. The occurrence of any of these risks could materially and adversely affect our business, financial condition, liquidity, results of operations, prospects and our ability to pay cash dividends to holders of the Series H Preferred Stock, which could cause you to lose all or a significant portion of your investment in the Series H Preferred Stock. Some statements in this prospectus supplement, including statements in the following risk factors, constitute forward-looking statements. See *Forward-Looking Information* below.*

***The Series H Preferred Stock is subordinate to our existing and future debt, and your interests could be diluted by the issuance of additional preferred shares and by other transactions.***

The Series H Preferred Stock will rank junior to all of our existing and future debt and to other non-equity claims on us and our assets available to satisfy claims against us, including claims in bankruptcy, liquidation or similar proceedings. Our future debt may include restrictions on our ability to pay dividends to preferred shareholders. Subject to limitations prescribed by Maryland law and Essex's charter, the Board of Directors is authorized to issue, from the authorized but unissued shares of capital stock of Essex, preferred stock in such classes or series as the Board of Directors may determine and to establish from time to time the number of shares of preferred stock to be included in any such class or series. The issuance of additional preferred stock or other securities on parity (in addition to our existing 7.8125% Series F Cumulative Redeemable Preferred Stock and 4.875% Series G Cumulative Convertible Preferred Stock) with or senior to the Series H Preferred Stock would dilute the interests of the holders of the Series H Preferred Stock, and any issuance of preferred stock or other securities senior to the Series H Preferred Stock or of additional indebtedness could affect our ability to pay dividends on, redeem or pay the liquidation preference on the Series H Preferred Stock. Other than the conversion right afforded to holders of Series H Preferred Stock that may occur in connection with a change of control as described under *Description of the Series H Preferred Stock Conversion Rights* below, none of the provisions relating to the Series H Preferred Stock contain any provisions relating to or limiting our indebtedness or affording the holders of the Series H Preferred Stock protection in the event of a highly leveraged or other transaction, including a merger or the sale, lease or conveyance of all or substantially all our assets or business, that might adversely affect the holders of the Series H Preferred Stock, so long as the rights of the Series H Preferred shareholders are not materially and adversely affected.

***The Series H Preferred Stock have not been rated.***

We have not sought to obtain a rating for the Series H Preferred Stock. No assurance can be given, however, that one or more rating agencies might not independently determine to issue such a rating or that such a rating, if issued, would not adversely affect the market price of the Series H Preferred Stock. In addition, we may elect in the future to obtain a rating of the Series H Preferred Stock, which could adversely impact the market price of the Series H Preferred Stock. Ratings only reflect the views of the rating agency or agencies issuing the ratings and such ratings could be revised downward or withdrawn entirely at the discretion of the issuing rating agency if in its judgment circumstances so warrant. Any such downward revision or withdrawal of a rating could have an adverse effect on the market price of the Series H Preferred Stock.

***As a holder of Series H Preferred Stock, you have extremely limited voting rights.***



Your voting rights as a holder of Series H Preferred Stock will be limited. Our shares of common stock are the only class of our securities that carry full voting rights. Voting rights for holders of Series H Preferred Stock exist primarily with respect to the ability to elect, with other Parity Preferred Stock, two additional directors to our Board of Directors in the event that six quarterly dividends (whether or not consecutive) payable on the Series H Preferred Stock are in arrears, and with respect to voting on amendments to our charter or articles supplementary relating to the Series H Preferred Stock that materially and adversely affect the rights of the holders of Series H Preferred Stock

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or create additional classes or series of our shares that are senior to the Series H Preferred Stock. Other than the limited circumstances described in this prospectus supplement, holders of Series H Preferred Stock will not have any voting rights. See Description of the Series H Preferred Stock Voting Rights.

***The change of control conversion feature may not adequately compensate you, and the change of control conversion and redemption features of the Series H Preferred Stock may make it more difficult for a party to take over the Company or discourage a party from taking over the Company.***

Upon the occurrence of a change of control the result of which our shares of common stock and the common securities of the acquiring or surviving entity (or ADRs representing such securities) are not listed on the NYSE, the NYSE Amex or NASDAQ or listed or quoted on an exchange or quotation system that is a successor to the NYSE, the NYSE Amex or NASDAQ, holders of the Series H Preferred Stock will have the right (unless, prior to the Change of Control Conversion Date, we have provided or provide notice of our election to redeem the Series H Preferred Stock) to convert some or all of their Series H Preferred Stock into our shares of common stock (or equivalent value of alternative consideration) and under these circumstances we will also have a special optional redemption right to redeem the Series H Preferred Stock. See Description of the Series H Preferred Stock Conversion Rights and Special Optional Redemption. Upon such a conversion, the holders will be limited to a maximum number of shares of our common stock equal to the Share Cap multiplied by the number of shares of Series H Preferred Stock converted. If the Common Share Price is less than \$ (which is approximately % of the per-share closing sale price of our common stock on April , 2011), subject to adjustment, the holders will receive a maximum of shares of our common stock per share of Series H Preferred Stock, which may result in a holder receiving value that is less than the liquidation preference of the Series H Preferred Stock. In addition, those features of the Series H Preferred Stock may have the effect of inhibiting a third party from making an acquisition proposal for the Company or of delaying, deferring or preventing a change of control of the Company under circumstances that otherwise could provide the holders of our common stock and Series H Preferred Stock with the opportunity to realize a premium over the then-current market price or that shareholders may otherwise believe is in their best interests.

***There is no established trading market for the Series H Preferred Stock, listing on the NYSE does not guarantee a market for the Series H Preferred Stock and the market price and trading volume of the Series H Preferred Stock may fluctuate significantly.***

The Series H Preferred Stock is a new issue of securities with no established trading market. We intend to file an application to list the Series H Preferred Stock on the NYSE, but there can be no assurance that the NYSE will approve the Series H Preferred Stock for listing. Even if the NYSE approves the Series H Preferred Stock for listing, an active trading market on the NYSE for the Series H Preferred Stock may not develop or, if it does develop, may not last, in which case the market price of the Series H Preferred Stock could be materially and adversely affected. If an active trading market does develop on the NYSE, the Series H Preferred Stock may trade at prices lower than the initial public offering price. The market price of the Series H Preferred Stock would depend on many factors, including, but not limited to:

prevailing interest rates;

the market for similar securities;

general economic and financial market conditions;

our issuance, as well as the issuance by our subsidiaries, of additional preferred equity or debt securities; and

our financial condition, cash flows, liquidity, results of operations, funds from operations and prospects.

We have been advised by the underwriters that they intend to make a market in the Series H Preferred Stock, but they are not obligated to do so and may discontinue market-making at any time without notice.

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**FORWARD-LOOKING INFORMATION**

This prospectus supplement contains or incorporates by reference forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended (the Securities Act ) and Section 21E of the Exchange Act, and are subject to the safe harbor provisions created by these statutes. All statements, other than statements of historical facts, that address activities, events or developments that we intend, expect, project, believe or anticipate will or may occur in the future are forward-looking statements. Such statements are characterized by terminology such as anticipates, projects, plans and similar expressions or the negative of those terms or other comparable terminology. These forward-looking statements which include statements about our expectations, objectives, anticipations, intentions and strategies regarding the future, expected operating results, revenues and earnings, reflect only management's current expectations and are not guarantees of future performance and are subject to risks and uncertainties, including those risks described under the heading Risk Factors in this prospectus supplement and our most recent annual report, that could cause actual results to differ materially from the results contemplated by the forward-looking statements.

All forward-looking statements included or incorporated by reference in this prospectus supplement and the accompanying prospectus are made as of the date herein or therein, based on information available to us as of the date hereof or thereof, and we assume no obligation to update any forward-looking statement or statements. It is important to note that such forward-looking statements are subject to risks and uncertainties and that our actual results could differ materially from those in such forward-looking statements. The factors set forth under the heading Risk Factors in this prospectus supplement and in our most recent Annual Report on Form 10-K and other reports that we file with the SEC from time to time, among others, in some cases have affected, and in the future could affect, our actual results and could cause our actual results to differ materially from those expressed in any forward-looking statement made by us. You are cautioned not to place undue reliance on forward-looking statements contained in this prospectus supplement.

**USE OF PROCEEDS**

We estimate that the net proceeds of this offering, after deducting the underwriting discount and other estimated offering expenses payable by us, will be approximately \$ million (approximately \$ million if the underwriters exercise their over-allotment option in full).

We will contribute the net proceeds of this offering to our operating partnership. Our operating partnership will use these proceeds to repurchase, in whole or in part, its outstanding Series B Preferred Units, and any remaining proceeds will be used for general corporate purposes. Prior to such repurchase, we intend to invest the net proceeds in certificates of deposit, interest-bearing short-term investment grade securities or money-market accounts which are consistent with our intention to continue to qualify as a REIT.

There are 1,600,000 Series B Preferred Units outstanding and such units have an aggregate liquidation preference of \$80 million. The Series B Preferred Units may be redeemed, at the operating partnership's option as of December 31, 2009, from time to time, at a redemption price equal to the capital account balance of such holders of Series B Preferred Units. The Series B Preferred Units are entitled to receive distributions at the rate of 7.875% per year of the \$50.00 liquidation preference per unit.

**Table of Contents****RATIO OF EARNINGS TO FIXED CHARGES, PREFERRED STOCK DIVIDENDS AND PREFERRED UNIT DISTRIBUTIONS**

The following table sets forth our ratio of earnings to fixed charges, preferred stock dividends and preferred unit distributions for the periods shown:

	<b>Year Ended December 31</b>				
	<b>2010</b>	<b>2009</b>	<b>2008</b>	<b>2007</b>	<b>2006</b>
Ratio of earnings to fixed charges (excluding preferred stock dividends and preferred unit distributions)	1.43X	1.36X	1.68X	1.57X	1.51X
Ratio of earnings to combined fixed charges, preferred stock dividends and preferred unit distributions	1.31X	1.22X	1.40X	1.29X	1.27X

The ratio of earnings to fixed charges is calculated by dividing earnings by fixed charges. For this purpose, earnings consist of income before discontinued operations before gain on sale of real estate and interest expense. Fixed charges consist of interest expense plus interest costs capitalized.

**DESCRIPTION OF THE SERIES H PREFERRED STOCK**

*This description of the Series H Preferred Stock supplements the description of the general terms and provisions of our capital stock, including preferred stock, contained in the accompanying prospectus. You should consult that general description for further information.*

**General**

Subject to limitations prescribed by Maryland law and Essex's charter, the Board of Directors is authorized to issue, from the authorized but unissued shares of capital stock of Essex, preferred stock in such classes or series as the Board of Directors may determine and to establish from time to time the number of shares of preferred stock to be included in any such class or series. Each class or series will have the designations, powers, preferences, rights, qualifications, limitations or restrictions as Maryland law may permit and our Board of Directors may determine by adoption of applicable articles supplementary to our charter.

This summary of the terms and provisions of the Series H Preferred Stock is not complete. Our Board of Directors will adopt articles supplementary designating the terms of the Series H Preferred Stock, and you may obtain a complete copy of the articles supplementary designating the Series H Preferred Stock by contacting us. In connection with this offering, we will file the articles supplementary with the SEC. Our Board of Directors may authorize the issuance and sale of additional Series H Preferred Stock from time to time.

We intend to file an application list the Series H Preferred Stock on the NYSE under the symbol ESSPrH. If listing is approved, we expect trading to commence within 30 days after initial delivery of the Series H Preferred Stock.

The transfer agent, registrar and dividend disbursement agent for the Series H Preferred Stock is Computershare Investor Services LLC.

**Ranking**

The Series H Preferred Stock ranks senior to our shares of common stock and to any other of our future equity securities that we may later authorize or issue that by their terms rank junior to the Series H Preferred Stock with respect to the payment of dividends and the distribution of assets in the event of our liquidation, dissolution or winding up. The Series H Preferred Stock ranks on a parity with (i) our 7.8125% Series F Cumulative Redeemable Preferred Stock, of which 1,000,000 shares are outstanding, (ii) our 4.875% Series G Cumulative Convertible Preferred Stock, of which 178,249 shares are outstanding, and (iii) any future equity securities that we may later authorize or issue that by their terms are on a parity with the Series H Preferred Stock. The Series H Preferred Stock ranks junior to any equity securities that we may later authorize or issue that by their terms rank senior to the Series H Preferred Stock. Any such authorization or issuance would require the affirmative vote of the holders of at

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least two-thirds of the outstanding shares of Series H Preferred Stock. Any convertible debt securities that we may issue are not considered to be equity securities for these purposes. The Series H Preferred Stock ranks junior to all of our existing and future indebtedness.

### **Dividends**

Holders of the Series H Preferred Stock will be entitled to receive, when and as authorized by our Board of Directors, out of funds legally available for the payment of dividends, cumulative cash dividends at the rate of % per annum of the \$25.00 per share liquidation preference, equivalent to \$ per annum per share of Series H Preferred Stock. Dividends on the Series H Preferred Stock will be payable quarterly in arrears on or about the 15th day of January, April, July and October of each year. The first dividend on the Series H Preferred Stock sold in this offering will be paid on July , 2011 and will be in the amount of \$ per share. Dividends payable on the Series H Preferred Stock for any partial period will be computed on the basis of a 360-day year consisting of twelve 30-day months. We will pay dividends to holders of record as they appear in our share records at the close of business on the applicable record date, which will be the first day of the calendar month in which the applicable dividend falls, or such other date as designated by our Board of Directors for the payment of dividends that is not more than 90 days nor fewer than 10 days prior to the dividend payment date.

Our Board of Directors will not authorize, and we will not pay, any dividends on the Series H Preferred Stock or set aside funds for the payment of dividends if the terms of any of our agreements, including agreements relating to our indebtedness, prohibit that authorization, payment or setting aside of funds or provide that the authorization, payment or setting aside of funds is a breach of or a default under that agreement, or if the authorization, payment or setting aside of funds is restricted or prohibited by law. We are and may in the future become a party to agreements that restrict or prevent the payment of dividends on, or the purchase or redemption of, our shares of common stock. Under certain circumstances, these agreements could restrict or prevent the payment of dividends on or the purchase or redemption of shares of our Series H Preferred Stock. These restrictions may be indirect (for example, covenants requiring us to maintain specified levels of net worth or assets) or direct. We do not believe that these restrictions currently have any adverse impact on our ability to pay dividends on the Series H Preferred Stock.

Notwithstanding the foregoing, dividends on the Series H Preferred Stock will accrue whether or not we have earnings, whether or not there are funds legally available for the payment of dividends and whether or not dividends are authorized. Accrued but unpaid dividends on the Series H Preferred Stock will not bear interest, and the holders of the Series H Preferred Stock will not be entitled to any dividends in excess of full cumulative dividends as described above. All of our dividends on Series H Preferred Stock, including any capital gain distributions, will be credited to the previously accrued dividends on the Series H Preferred Stock. We will credit any dividend made on Series H Preferred Stock first to the earliest accrued and unpaid dividend due.

We will not declare or pay any dividends, or set aside any funds for the payment of dividends, on our common stock or any other shares that rank junior to the Series H Preferred Stock, if any, or redeem or otherwise acquire our common stock or other junior shares, unless we also have declared and either paid or set aside for payment the full cumulative dividends on the Series H Preferred Stock for the current and all past dividend periods. This restriction will not limit our redemption or other acquisition of shares under incentive, benefit or share purchase plans for officers, trustees or employees or others performing or providing similar services or for the purposes of enforcing restrictions upon ownership and transfer of our equity securities contained in our charter in order to preserve our status as a REIT.

If we do not declare and either pay or set aside for payment the full cumulative dividends on the Series H Preferred Stock and all shares that rank on a parity with Series H Preferred Stock, the amount which we have declared will be allocated pro rata to the Series H Preferred Stock and to each parity series of shares so that the amount declared for

each Series H Preferred Stock and for each share of each parity series is proportionate to the accrued and unpaid dividends on those shares.

**Liquidation Rights**

In the event of our liquidation, dissolution or winding up, the holders of the Series H Preferred Stock will be entitled to be paid out of our assets legally available for distribution to our shareholders liquidating distributions in cash or property at fair market value as determined by our Board of Directors equal to a liquidation preference of



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\$25.00 per share, plus any accrued and unpaid dividends to, but not including, the date of the payment. Holders of Series H Preferred Stock will be entitled to receive this liquidating distribution before we distribute any assets to holders of our common stock or any other shares of preferred stock that rank junior to the Series H Preferred Stock. The rights of holders of Series H Preferred Stock to receive their liquidation preference would be subject to preferential rights of the holders of any series of shares that is senior to the Series H Preferred Stock. Written notice will be given to each holder of Series H Preferred Stock of any such liquidation no fewer than 30 days and no more than 60 days prior to the payment date. After payment of the full amount of the liquidating distribution to which they are entitled, the holders of Series H Preferred Stock will have no right or claim to any of our remaining assets. If we consolidate or merge with any other entity, sell, lease, transfer or convey all or substantially all of our property or business, or engage in a statutory share exchange, we will not be deemed to have liquidated. As of December 31, 2010, we had outstanding shares of 7.8125% Series F Cumulative Redeemable Preferred Stock and outstanding shares of 4.875% Series G Cumulative Convertible Preferred Stock, and our operating partnership had outstanding Series B Preferred Units. In the event our assets are insufficient to pay the full liquidating distributions to the holders of Series H Preferred Stock and all other classes or series of our equity securities ranking on a parity with the Series H Preferred Stock, if any, then we will distribute our assets to the holders of Series H Preferred Stock and all other classes or series of parity securities ratably in proportion to the full liquidating distributions they would have otherwise received.

## **Redemption**

We may not redeem the Series H Preferred Stock prior to April , 2016, except as described below under Special Optional Redemption and Restrictions on Ownership and Transfer. On and after April , 2016, upon no fewer than 30 days nor more than 60 days written notice, we may, at our option, redeem the Series H Preferred Stock, in whole or from time to time in part, by paying \$25.00 per share, plus any accrued and unpaid dividends to, but not including, the date of redemption.

We will give notice of redemption by publication in a newspaper of general circulation in the City of New York and by mail to each holder of record of Series H Preferred Stock at the address shown on our share transfer books. A failure to give notice of redemption or any defect in the notice or in its mailing will not affect the validity of the redemption of any Series H Preferred Stock except as to the holder to whom notice was defective. Each notice will state the following:

the redemption date;

the redemption price;

the number of shares of Series H Preferred Stock to be redeemed;

the place or places where the certificates for the Series H Preferred Stock are to be surrendered for payment; and

that dividends on the Series H Preferred Stock to be redeemed will cease to accrue on the redemption date.

If we redeem fewer than all of the shares of Series H Preferred Stock, the notice of redemption mailed to each shareholder will also specify the number of shares of Series H Preferred Stock that we will redeem from each shareholder. In this case, we will determine the number of shares of Series H Preferred Stock to be redeemed on a pro rata basis, by lot or by any other equitable method we may choose in our sole discretion.

If we have given a notice of redemption and have set aside sufficient funds for the redemption in trust for the benefit of the holders of the shares of Series H Preferred Stock called for redemption, then from and after the redemption date, those shares of Series H Preferred Stock will be treated as no longer being outstanding, no further dividends will accrue and all other rights of the holders of those shares of Series H Preferred Stock will terminate. The holders of those shares of Series H Preferred Stock will retain their right to receive the redemption price for their shares and any accrued and unpaid dividends through, but not including, the redemption date.

The holders of Series H Preferred Stock at the close of business on a dividend record date will be entitled to receive the dividend payable with respect to the Series H Preferred Stock on the corresponding payment date notwithstanding the redemption of the Series H Preferred Stock between such record date and the corresponding

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payment date or our default in the payment of the dividend due. Except as provided above, we will make no payment or allowance for unpaid dividends, whether or not in arrears, on Series H Preferred Stock to be redeemed.

The Series H Preferred Stock has no stated maturity and will not be subject to any sinking fund or mandatory redemption provisions, except as provided under Restrictions on Ownership and Transfer below. In order to ensure that we continue to meet the requirements for qualification as a REIT, the Series H Preferred Stock will be subject to the restrictions on ownership and transfer set forth in our charter.

Subject to applicable law, we may purchase Series H Preferred Stock in the open market, by tender or by private agreement.

### **Special Optional Redemption**

Upon the occurrence of a Change of Control, we may, at our option, redeem the Series H Preferred Stock, in whole or in part and within 120 days after the first date on which such Change of Control occurred, by paying \$25.00 per share, plus any accrued and unpaid dividends to, but not including, the date of redemption. If, prior to the Change of Control Conversion Date, we have provided or provide notice of redemption with respect to the shares of Series H Preferred Stock (whether pursuant to our optional redemption right or our special optional redemption right), the holders of such shares of Series H Preferred Stock will not have the conversion right described below under Conversion Rights.

We will mail to you, if you are a record holder of the Series H Preferred Stock, a notice of redemption no fewer than 30 days nor more than 60 days before the redemption date. We will send the notice to your address shown on our share transfer books. A failure to give notice of redemption or any defect in the notice or in its mailing will not affect the validity of the redemption of any Series H Preferred Stock except as to the holder to whom notice was defective. Each notice will state the following:

the redemption date;

the redemption price;

the number of shares of Series H Preferred Stock to be redeemed;

the place or places where the certificates for the Series H Preferred Stock are to be surrendered for payment;

that the Series H Preferred Stock are being redeemed pursuant to our special optional redemption right in connection with the occurrence of a Change of Control and a brief description of the transaction or transactions constituting such Change of Control;

that the holders of the Series H Preferred Stock to which the notice relates will not be able to tender such Series H Preferred Stock for conversion in connection with the Change of Control and each share of Series H Preferred Stock tendered for conversion that is selected, prior to the Change of Control Conversion Date, for redemption will be redeemed on the related date of redemption instead of converted on the Change of Control Conversion Date; and

that dividends on the Series H Preferred Stock to be redeemed will cease to accrue on the redemption date.

If we redeem fewer than all of the outstanding shares of Series H Preferred Stock, the notice of redemption mailed to each shareholder will also specify the number of shares of Series H Preferred Stock that we will redeem from each shareholder. In this case, we will determine the number of shares of Series H Preferred Stock to be redeemed on a pro

rata basis, by lot or by any other equitable method we may choose.

If we have given a notice of redemption and have set aside sufficient funds for the redemption in trust for the benefit of the holders of shares of Series H Preferred Stock called for redemption, then from and after the redemption date, those shares of Series H Preferred Stock will be treated as no longer being outstanding, no further dividends will accrue and all other rights of the holders of those shares of Series H Preferred Stock will terminate. The holders of those shares of Series H Preferred Stock will retain their right to receive the redemption price for their shares and any accrued and unpaid dividends through, but not including, the redemption date.

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The holders of Series H Preferred Stock at the close of business on a dividend record date will be entitled to receive the dividend payable with respect to the Series H Preferred Stock on the corresponding payment date notwithstanding the redemption of the Series H Preferred Stock between such record date and the corresponding payment date or our default in the payment of the dividend due. Except as provided above, we will make no payment or allowance for unpaid dividends, whether or not in arrears, on Series H Preferred Stock to be redeemed.

A **Change of Control** is when, after the original issuance of the Series H Preferred Stock, the following have occurred and are continuing:

the acquisition by any person, including any syndicate or group deemed to be a person under Section 13(d)(3) of the Exchange Act of beneficial ownership, directly or indirectly, through a purchase, merger or other acquisition transaction or series of purchases, mergers or other acquisition transactions of shares of the Company entitling that person to exercise more than 50% of the total voting power of all shares of the Company entitled to vote generally in elections of directors (except that such person will be deemed to have beneficial ownership of all securities that such person has the right to acquire, whether such right is currently exercisable or is exercisable only upon the occurrence of a subsequent condition); and

following the closing of any transaction referred to in the bullet point above, neither we nor the acquiring or surviving entity has a class of common securities (or ADRs representing such securities) listed on the NYSE, the NYSE Amex or NASDAQ or listed or quoted on an exchange or quotation system that is a successor to the NYSE, the NYSE Amex or NASDAQ.

## **Conversion Rights**

Upon the occurrence of a Change of Control, each holder of Series H Preferred Stock will have the right, unless, prior to the Change of Control Conversion Date, we have provided or provide notice of our election to redeem the Series H Preferred Stock as described under Redemption or Special Optional Redemption, to convert some or all of the shares of Series H Preferred Stock held by such holder (the Change of Control Conversion Right) on the Change of Control Conversion Date into a number of shares of our common stock per share of Series H Preferred Stock (the Common Share Conversion Consideration) equal to the lesser of:

the quotient obtained by dividing (i) the sum of the \$25.00 liquidation preference plus the amount of any accrued and unpaid dividends to, but not including, the Change of Control Conversion Date (unless the Change of Control Conversion Date is after a record date for a Series H Preferred Stock dividend payment and prior to the corresponding Series H Preferred Stock dividend payment date, in which case no additional amount for such accrued and unpaid dividend will be included in this sum) by (ii) the Common Share Price (such quotient, the Conversion Rate); and

(the Share Cap).

The Share Cap is subject to pro rata adjustments for any share splits (including those effected pursuant to a dividend of our common stock), subdivisions or combinations (in each case, a Share Split) with respect to our common stock as follows: the adjusted Share Cap as the result of a Share Split will be the number of shares of our common stock that is equivalent to the product obtained by multiplying (i) the Share Cap in effect immediately prior to such Share Split by (ii) a fraction, the numerator of which is the number of shares of our common stock outstanding after giving effect to such Share Split and the denominator of which is the number of shares of our common stock outstanding immediately prior to such Share Split.

For the avoidance of doubt, subject to the immediately succeeding sentence, the aggregate number of shares of our common stock (or equivalent Alternative Conversion Consideration (as defined below), as applicable) issuable in connection with the exercise of the Change of Control Conversion Right will not exceed \_\_\_\_\_ shares of our common stock (or equivalent Alternative Conversion Consideration, as applicable), subject to increase to the extent the underwriters' over-allotment option is exercised to purchase additional shares of Series H Preferred Stock, not to exceed \_\_\_\_\_ shares of our common stock in total (or equivalent Alternative Conversion Consideration, as applicable) (the Exchange Cap ). The Exchange Cap is subject to pro rata adjustments for any Share Splits on the same basis as the corresponding adjustment to the Share Cap.

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In the case of a Change of Control pursuant to which our common stock will be converted into cash, securities or other property or assets (including any combination thereof) (the Alternative Form Consideration ), a holder of Series H Preferred Stock will receive upon conversion of such Series H Preferred Stock the kind and amount of Alternative Form Consideration which such holder would have owned or been entitled to receive upon the Change of Control had such holder held a number of shares of our common stock equal to the Common Share Conversion Consideration immediately prior to the effective time of the Change of Control (the Alternative Conversion Consideration, and the Common Share Conversion Consideration or the Alternative Conversion Consideration, as may be applicable to a Change of Control, is referred to as the Conversion Consideration ).

If the holders of our common stock have the opportunity to elect the form of consideration to be received in the Change of Control, the consideration that the holders of the Series H Preferred Stock will receive will be the form and proportion of the aggregate consideration elected by the holders of our common stock who participate in the determination (based on the weighted average of elections) and will be subject to any limitations to which all holders of our common stock are subject, including, without limitation, pro rata reductions applicable to any portion of the consideration payable in the Change of Control.

We will not issue fractional shares of our common stock upon the conversion of the Series H Preferred Stock. Instead, we will pay the cash value of such fractional shares.

Within 15 days following the occurrence of a Change of Control, we will provide to holders of Series H Preferred Stock a notice of occurrence of the Change of Control that describes the resulting Change of Control Conversion Right. This notice will state the following:

the events constituting the Change of Control;

the date of the Change of Control;

the last date on which the holders of Series H Preferred Stock may exercise their Change of Control Conversion Right;

the method and period for calculating the Common Share Price;

the Change of Control Conversion Date;

that if, prior to the Change of Control Conversion Date, we have provided or provide notice of our election to redeem all or any portion of the Series H Preferred Stock, holders will not be able to convert such shares of Series H Preferred Stock and such shares will be redeemed on the related redemption date, even if such shares have already been tendered for conversion pursuant to the Change of Control Conversion Right;

if applicable, the type and amount of Alternative Conversion Consideration entitled to be received per share of Series H Preferred Stock;

the name and address of the paying agent and the conversion agent; and

the procedures that the holders of Series H Preferred Stock must follow to exercise the Change of Control Conversion Right.

We will issue a press release for publication on the Dow Jones & Company, Inc., Business Wire, PR Newswire or Bloomberg Business News (or, if these organizations are not in existence at the time of issuance of the press release,

such other news or press organization as is reasonably calculated to broadly disseminate the relevant information to the public), or post notice on our website, in any event prior to the opening of business on the first business day following any date on which we provide the notice described above to the holders of Series H Preferred Stock.

To exercise the Change of Control Conversion Right, the holder of Series H Preferred Stock will be required to deliver, on or before the close of business on the Change of Control Conversion Date, the certificates (if any) evidencing Series H Preferred Stock to be converted, duly endorsed for transfer, together with a written conversion notice completed, to our transfer agent. The conversion notice must state:

the relevant Change of Control Conversion Date;

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the number of shares of Series H Preferred Stock to be converted; and

that the shares of Series H Preferred Stock are to be converted pursuant to the applicable provisions of the Series H Preferred Stock.

The **Change of Control Conversion Date** is the date the shares of Series H Preferred Stock are to be converted, which will be a business day that is no fewer than 20 days nor more than 35 days after the date on which we provide the notice described above to the holders of Series H Preferred Stock.

The **Common Share Price** will be: (i) the amount of cash consideration per share of common stock, if the consideration to be received in the Change of Control by the holders of our common stock is solely cash; and (ii) the average of the per-share closing prices for our common stock on the NYSE for the 10 consecutive trading days immediately preceding, but not including, the effective date of the Change of Control, if the consideration to be received in the Change of Control by the holders of our common stock is other than solely cash.

Holders of Series H Preferred Stock may withdraw any notice of exercise of a Change of Control Conversion Right (in whole or in part) by a written notice of withdrawal delivered to our transfer agent prior to the close of business on the business day prior to the Change of Control Conversion Date. The notice of withdrawal must state:

the number of withdrawn shares of Series H Preferred Stock;

if certificated Series H Preferred Stock have been issued, the certificate numbers of the withdrawn shares of Series H Preferred Stock; and

the number of shares of Series H Preferred Stock, if any, which remain subject to the conversion notice.

Notwithstanding the foregoing, if the shares of Series H Preferred Stock are held in global form, the conversion notice and/or the notice of withdrawal, as applicable, must comply with applicable procedures of The Depository Trust Company.

Series H Preferred Stock as to which the Change of Control Conversion Right has been properly exercised and for which the conversion notice has not been properly withdrawn will be converted into the applicable Conversion Consideration in accordance with the Change of Control Conversion Right on the Change of Control Conversion Date, unless prior to the Change of Control Conversion Date we have provided or provide notice of our election to redeem such Series H Preferred Stock, whether pursuant to our optional redemption right or our special optional redemption right. If we elect to redeem Series H Preferred Stock that would otherwise be converted into the applicable Conversion Consideration on a Change of Control Conversion Date, such Series H Preferred Stock will not be so converted and the holders of such shares will be entitled to receive on the applicable redemption date \$25.00 per share, plus any accrued and unpaid dividends thereon to, but not including, the redemption date.

We will deliver amounts owing upon conversion no later than the third business day following the Change of Control Conversion Date.

In connection with the exercise of any Change of Control Conversion Right, we will comply with all federal and state securities laws and stock exchange rules in connection with any conversion of Series H Preferred Stock into our common stock. Notwithstanding any other provision of the Series H Preferred Stock, no holder of Series H Preferred Stock will be entitled to convert such Series H Preferred Stock for our common stock to the extent that receipt of such common stock would cause such holder (or any other person) to exceed the share ownership limits contained in our

charter and the articles supplementary setting forth the terms of the Series H Preferred Stock, unless we provide an exemption from this limitation for such holder. See Restrictions on Ownership and Transfer, below.

These Change of Control conversion and redemption features may make it more difficult for a party to take over the Company or discourage a party from taking over the Company. See Risk Factors The change of control conversion feature may not adequately compensate you, and the change of control conversion and redemption features of the Series H Preferred Stock may make it more difficult for a party to take over the Company or discourage a party from taking over the Company.

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Except as provided above in connection with a Change of Control, the shares of Series H Preferred Stock are not convertible into or exchangeable for any other securities or property.

## **Voting Rights**

Holders of Series H Preferred Stock will have no voting rights, except as set forth below.

Whenever dividends on the Series H Preferred Stock are due but unpaid for six quarterly periods, whether or not consecutive (a Preferred Dividend Default), the number of directors then constituting our Board of Directors shall be increased by two and holders of the Series H Preferred Stock, voting as a single class with the holders of any other Parity Preferred Stocks upon which like voting rights have been conferred and are exercisable, will be entitled to vote for the election of two additional directors to serve on our Board of Directors (the Preferred Stock Directors) at a special meeting called by the holders of at least 10% of the outstanding Series H Preferred Stock or the holders of at least 10% of any such other series of Parity Preferred Stocks, or at the next annual or special meeting of shareholders, and at each subsequent annual or special meeting of shareholders until all dividends accumulated on the Series H Preferred Stock for the past dividend periods and the then-current dividend period have been paid or declared and set aside for payment in full.

If and when all accumulated dividends in arrears and dividends for the then current dividend period on the Series H Preferred Stock shall have been paid in full or a sum sufficient for the payment is irrevocably deposited in trust for payment, the holders of the Series H Preferred Stock shall be divested of the voting rights as described in this section (subject to revesting in the event of each and every Preferred Dividend Default) and, if all accumulated dividends in arrears and the dividends for the current dividend period have been paid in full or set aside for payment in full on all other classes or series of Parity Preferred Stocks upon which like voting rights have been conferred and are exercisable, the term of office of each Preferred Stock Director so elected shall terminate. Any Preferred Stock Director may be removed at any time with or without cause by the vote of, and shall not be removed otherwise than by the vote of, the holders of record of a majority of the outstanding shares of Series H Preferred Stock when they have the voting rights set forth as described in this section (voting together as a single class, with one vote for each \$50.00 of liquidation preference, with all other classes or series of Parity Preferred Stocks upon which like voting rights have been conferred and are exercisable). So long as a Preferred Dividend Default shall continue, any vacancy in the office of a Preferred Stock Director may be filled by written consent of the Preferred Stock Director remaining in office or, if none remains in office, by a vote of the holders of record of a majority of the outstanding shares of Series H Preferred Stock when they have the voting rights set forth in this section (voting together as a single class with all other classes or series of Parity Preferred Stocks upon which like voting rights have been conferred and are exercisable). The Preferred Stock Directors shall each be entitled to one vote per Director on any matter.

So long as any shares of Series H Preferred Stock remain outstanding, we shall not, without the affirmative vote of the holders of at least two-thirds of the shares of Series H Preferred Stock outstanding at the time: (i) authorize or create, or increase the authorized or issued amount of, any class or series of shares ranking senior to the Series H Preferred Stock with respect to payment of dividends or rights upon liquidation, dissolution or winding up of the Company, or reclassify any authorized shares of the Company into any such shares, or create, authorize or issue any obligations or security convertible into or evidencing the right to purchase any such shares; or (ii) amend, alter or repeal the provisions of our charter (including the articles supplementary designating the Series H Preferred Stock), whether by merger, consolidation or otherwise, in each case in such a way that would materially and adversely affect any right, preference, privilege or voting power of the Series H Preferred Stock; provided, however, that with respect to the occurrence of a merger, consolidation or a sale or lease of all of our assets as an entirety, so long as (a) the shares of Series H Preferred Stock remain outstanding with the terms thereof materially unchanged, or (b) the holders of the Series H Preferred Stock receive equity securities with rights, preferences, privileges or voting powers substantially the same as those of the Series H Preferred Stock, then the occurrence of any such event shall not be deemed to

materially and adversely affect the rights, privileges or voting powers of the holders of the Series H Preferred Stock. In addition, any increase in the amount of authorized Series H Preferred Stock or the creation or issuance, or increase in the amounts authorized, of any other equity securities ranking on a parity with or junior to the Series H Preferred Stock with respect to payment of dividends and the dividend of assets upon liquidation, dissolution or winding up of the Company, shall not be deemed to materially and adversely affect the rights, preferences, privileges or voting powers of the Series H Preferred Stock.

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In any matter in which the Series H Preferred Stock are entitled to vote, each Series H Preferred Stock will be entitled to one vote. If the holders of Series H Preferred Stock and another series of preferred shares, if any, are entitled to vote together as a single class on any matter, the Series H Preferred Stock and the shares of the other series will have one vote for each \$50.00 of liquidation preference.

## **Information Rights**

During any period in which we are not subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act and any shares of Series H Preferred Stock are outstanding, we will (i) transmit by mail or other permissible means under the Exchange Act to all holders of Series H Preferred Stock as their names and addresses appear in our record books and without cost to such holders, copies of the Annual Reports on Form 10-K and Quarterly Reports on Form 10-Q that we would have been required to file with the SEC pursuant to Section 13 or 15(d) of the Exchange Act if we were subject thereto (other than any exhibits that would have been required) and (ii) within 15 days following written request, supply copies of such reports to any prospective holder of the Series H Preferred Stock. We will mail (or otherwise provide) the reports to the holders of Series H Preferred Stock within 15 days after the respective dates by which we would have been required to file such reports with the SEC if we were subject to Section 13 or 15(d) of the Exchange Act.

## **Restrictions on Ownership and Transfer**

To ensure that we maintain our qualification as a REIT for federal tax purposes, our charter provides that no person or entity may own more than 6.0% of the value of our outstanding shares of capital stock, including the Series H Preferred Stock, with some exceptions. See [Description of Capital Stock](#), [Restrictions on Transfer](#) and [Description of Preferred Stock](#) in the accompanying prospectus.

## **Preemptive Rights**

No holders of the Series H Preferred Stock shall, as the holders, have any preemptive rights to purchase or subscribe for our common stock or any other security of the Company.

## **Book-Entry Procedures**

The Depository Trust Company (the "DTC") will act as securities depository for the Series H Preferred Stock. We will issue one or more fully registered global securities certificates in the name of DTC's nominee, Cede & Co. These certificates will represent the total aggregate number of shares of Series H Preferred Stock. We will deposit these certificates with DTC or a custodian appointed by DTC. We will not issue certificates to you for the Series H Preferred Stock that you purchase, unless DTC's services are discontinued as described below.

Title to book-entry interests in the Series H Preferred Stock will pass by book-entry registration of the transfer within the records of DTC in accordance with its procedures. Book-entry interests in the securities may be transferred within DTC in accordance with procedures established for these purposes by DTC. Each person owning a beneficial interest in shares of the Series H Preferred Stock must rely on the procedures of DTC and the participant through which such person owns its interest to exercise its rights as a holder of the Series H Preferred Stock.

DTC has advised us that it is a limited-purpose trust company organized under the New York Banking Law, a member of the Federal Reserve System, a clearing corporation within the meaning of the New York Uniform Commercial Code and a clearing agency registered under the provisions of Section 17A of the Exchange Act. DTC holds securities that its participants ( "Direct Participants" ) deposit with DTC. DTC also facilitates the settlement among Direct Participants of securities transactions, such as transfers and pledges, in deposited securities through electronic

computerized book-entry changes in Direct Participants' accounts, thereby eliminating the need for physical movement of securities certificates. Direct Participants include securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. Access to the DTC system is also available to others such as securities brokers and dealers, including the underwriters, banks and trust companies that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly ( Indirect Participants ). The rules applicable to DTC and its Direct and Indirect Participants are on file with the SEC.

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When you purchase shares of Series H Preferred Stock within the DTC system, the purchase must be by or through a Direct Participant. The Direct Participant will receive a credit for the Series H Preferred Stock on DTC's records. You, as the actual owner of the Series H Preferred Stock, are the beneficial owner. Your beneficial ownership interest will be recorded on the Direct and Indirect Participants' records, but DTC will have no knowledge of your individual ownership. DTC's records reflect only the identity of the Direct Participants to whose accounts Series H Preferred Stock are credited.

You will not receive written confirmation from DTC of your purchase. The Direct or Indirect Participants through whom you purchased the Series H Preferred Stock should send you written confirmations providing details of your transactions, as well as periodic statements of your holdings. The Direct and Indirect Participants are responsible for keeping an accurate account of the holdings of their customers like you.

Transfers of ownership interests held through Direct and Indirect Participants will be accomplished by entries on the books of Direct and Indirect Participants acting on behalf of the beneficial owners.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to beneficial owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time.

We understand that, under DTC's existing practices, in the event that we request any action of the holders, or an owner of a beneficial interest in a global security such as you desires to take any action which a holder is entitled to take under our charter, DTC would authorize the Direct Participants holding the relevant shares to take such action, and those Direct Participants and any Indirect Participants would authorize beneficial owners owning through those Direct and Indirect Participants to take such action or would otherwise act upon the instructions of beneficial owners owning through them.

Any redemption notices with respect to the Series H Preferred Stock will be sent to Cede & Co. If less than all of the outstanding shares of Series H Preferred Stock are being redeemed, DTC will reduce each Direct Participant's holdings of shares of Series H Preferred Stock in accordance with its procedures.

In those instances where a vote is required, neither DTC nor Cede & Co. itself will consent or vote with respect to the shares of Series H Preferred Stock. Under its usual procedures, DTC would mail an omnibus proxy to us as soon as possible after the record date. The omnibus proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants whose accounts the shares of Series H Preferred Stock are credited to on the record date, which are identified in a listing attached to the omnibus proxy.

Dividends on the Series H Preferred Stock will be made directly to DTC's nominee (or its successor, if applicable). DTC's practice is to credit participants' accounts on the relevant payment date in accordance with their respective holdings shown on DTC's records unless DTC has reason to believe that it will not receive payment on that payment date.

Payments by Direct and Indirect Participants to beneficial owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in street name. These payments will be the responsibility of the participant and not of DTC, us or any agent of ours.

DTC may discontinue providing its services as securities depository with respect to the Series H Preferred Stock at any time by giving reasonable notice to us. Additionally, we may decide to discontinue the book-entry only system of transfers with respect to the Series H Preferred Stock. In that event, we will print and deliver certificates in fully registered form for the Series H Preferred Stock. If DTC notifies us that it is unwilling to continue as securities

depository, or it is unable to continue or ceases to be a clearing agency registered under the Exchange Act and a successor depository is not appointed by us within 90 days after receiving such notice or becoming aware that DTC is no longer so registered, we will issue the Series H Preferred Stock in definitive form, at our expense, upon registration of transfer of, or in exchange for, such global security.

According to DTC, the foregoing information with respect to DTC has been provided to the financial community for informational purposes only and is not intended to serve as a representation, warranty or contract modification of any kind.

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**Global Clearance and Settlement Procedures**

Initial settlement for the Series H Preferred Stock will be made in immediately available funds. Secondary market trading among DTC's Participants will occur in the ordinary way in accordance with DTC's rules and will be settled in immediately available funds using DTC's Same-Day Funds Settlement System.

**ADDITIONAL FEDERAL INCOME TAX CONSIDERATIONS**

The following discussion supplements, and should be read in conjunction with, the discussion under the heading "Certain Material Federal Income Tax Considerations" in the accompanying prospectus. The following is a summary of certain additional federal income tax considerations with respect to the ownership of our Series H Preferred Stock.

**The U.S. federal income tax treatment of holders of our Series H Preferred Stock depends in some instances on determinations of fact and interpretations of complex provisions of U.S. federal income tax law for which no clear precedent or authority may be available. In addition, the tax consequences to any particular shareholder of holding our Series H Preferred Stock will depend on the shareholder's particular tax circumstances. You are urged to consult your tax advisor regarding the U.S. federal, state, local, and foreign income and other tax consequences to you in light of your particular investment or tax circumstances of acquiring, holding, exchanging, or otherwise disposing of our Series H Preferred Stock.**

**Taxation of Essex Property Trust, Inc.**

The law firm of Baker & McKenzie LLP has acted as our tax counsel in connection with the offering. We have received an opinion of Baker & McKenzie LLP to the effect that we have been organized and have operated in conformity with the requirements for qualification and taxation as a real estate investment trust (a REIT) under the Internal Revenue Code of 1986, as amended (the Code) for each of our taxable years beginning with the taxable year ended December 31, 1994 through our taxable year ended December 31, 2010. If we continue to be organized and operated after December 31, 2010 in the same manner as we had prior to that date, we will continue to qualify as a REIT. It must be emphasized that the opinion of Baker & McKenzie LLP is based on various assumptions relating to our organization and operation, and is conditioned upon factual representations and covenants made by our management regarding our organization, assets, income, the present and future conduct of our business operations, and other items regarding our ability to meet the various requirements for qualification as a REIT, and assumes that such representations and covenants are accurate and complete and that we will take no action inconsistent with our qualification as a REIT. While we intend to operate so that we will qualify as a REIT, given the highly complex nature of the rules governing REITs, the ongoing importance of factual determinations, and the possibility of future changes in our circumstances, no assurance can be given by Baker & McKenzie LLP or by us that we will qualify as a REIT for any particular year. The opinion is expressed as of the date issued. Baker & McKenzie LLP will have no obligation to advise us or our shareholders of any subsequent change in the matters stated, represented or assumed, or of any subsequent change in the applicable law. You should be aware that opinions of counsel are not binding on the Internal Revenue Service (the IRS), and no assurance can be given that the IRS will not challenge the conclusions set forth in such opinions. An opinion of counsel does not foreclose the possibility that we may have to utilize one or more of the REIT savings provisions discussed in the prospectus, which could require us to pay an excise or penalty tax (which could be significant in amount) in order for us to maintain our REIT qualification.

Our qualification and taxation as a REIT depend upon our ability to meet on a continuing basis, through actual annual (or, in some cases, quarterly) operating results, the various requirements under the Code that are described in this discussion. These requirements apply to, among other things, the sources of our gross income, the composition and values of our assets, our distribution levels, and the diversity of ownership of our shares. Given the complex nature of the REIT qualification requirements, the ongoing importance of factual determinations, and the possibility of future

changes in our circumstances, no assurance can be given by us that we will satisfy such requirements.

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**Taxation of Shareholders**

***Taxation of Taxable U.S. Shareholders***

This section summarizes the taxation of U.S. shareholders that are not tax-exempt organizations. For these purposes, a U.S. shareholder is a beneficial owner of our Series H Preferred Stock that for U.S. federal income tax purposes is:

a citizen or resident of the U.S.,

a corporation (including an entity treated as a corporation for U.S. federal income tax purposes) created or organized in or under the laws of the U.S. or of a political subdivision thereof (including the District of Columbia),

an estate whose income is subject to U.S. federal income taxation regardless of its source, or

any trust if (1) a U.S. court is able to exercise primary supervision over the administration of such trust and one or more U.S. persons have the authority to control all substantial decisions of the trust, or (2) it has a valid election in place to be treated as a U.S. person.

If an entity or arrangement that is treated as a partnership for U.S. federal income tax purposes holds our Series H Preferred Stock, the U.S. federal income tax treatment of a partner generally will depend upon the status of the partner and the activities of the partnership. A partner of a partnership holding our Series H Preferred Stock should consult its own tax advisor regarding the U.S. federal income tax consequences to the partner of the acquisition, ownership and disposition of our Series H Preferred Stock by the partnership.

*Distributions Generally.* So long as we qualify as a REIT, the distributions that we make to our taxable U.S. shareholders out of current or accumulated earnings and profits that we do not designate as capital gain dividends or as qualified dividend income will generally be taken into account by shareholders as ordinary income and will not be eligible for the dividends received deduction for corporations. In determining the extent to which a distribution with respect to our Series H Preferred Stock constitutes a dividend for U.S. federal income tax purposes, our earnings and profits will be allocated first to distributions with respect to our preferred shares, and then to our common shares. Dividends received from REITs are generally not eligible to be taxed at the preferential qualified dividend income rates currently available to individual U.S. shareholders who receive dividends from taxable subchapter C corporations.

*Capital Gain Dividends.* We may elect to designate distributions of our net capital gain as capital gain dividends. Distributions that we designate as capital gain dividends will generally be taxed to U.S. shareholders as long-term capital gains without regard to the period for which the U.S. shareholder that receives such distribution has held its shares. Designations made by us will only be effective to the extent that they comply with Revenue Ruling 89-81, which requires that distributions made to different classes of shares be composed proportionately of dividends of a particular type. If we designate any portion of a dividend as a capital gain dividend, a U.S. shareholder will receive an IRS Form 1099-DIV indicating the amount that will be taxable to the U.S. shareholder as capital gain. Corporate U.S. shareholders may be required to treat up to 20% of some capital gain dividends as ordinary income. Recipients of capital gain dividends from us that are taxed at corporate income tax rates will be taxed at the normal corporate income tax rates on these dividends.

We will classify portions of any designated capital gain dividend or undistributed capital gain as either:

a long-term capital gain distribution, which would be taxable to non-corporate U.S. shareholders at a maximum rate of 15% (through 2012), and taxable to U.S. shareholders that are corporations at a maximum rate of 35%, or

an unrecaptured Section 1250 gain distribution, which would be taxable to non-corporate U.S. shareholders at a maximum rate of 25%, to the extent of previously claimed depreciation deductions.

Distributions from us in excess of our current and accumulated earnings and profits will not be taxable to a U.S. shareholder to the extent that they do not exceed the adjusted basis of the U.S. shareholder's Series H Preferred Stock in respect of which the distributions were made. Rather, the distribution will reduce the adjusted basis of these

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shares. To the extent that such distributions exceed the adjusted basis of a U.S. shareholder's Series H Preferred Stock, the U.S. shareholder generally must include such distributions in income as long-term capital gain, or short-term capital gain if the shares have been held for one year or less.

*Qualified Dividend Income.* With respect to U.S. shareholders who are taxed at the rates applicable to individuals, we may designate a portion of our distributions paid to such U.S. shareholders as qualified dividend income. A portion of a distribution that is properly designated as qualified dividend income is taxable to non-corporate U.S. shareholders as capital gain (through 2012), *provided* that the U.S. shareholder has held our Series H Preferred Stock with respect to which the distribution is made for more than 60 days during the 121-day period beginning on the date that is 60 days before the date on which such Series H Preferred Stock became ex-dividend with respect to the relevant distribution. The maximum amount of our distributions eligible to be designated as qualified dividend income for a taxable year is equal to the sum of:

the qualified dividend income received by us during such taxable year from non-REIT corporations (including any taxable REIT subsidiary (a TRS) in which we may own an interest),

the excess of any undistributed REIT taxable income recognized during the immediately preceding year over the U.S. federal income tax paid by us with respect to such undistributed REIT taxable income, and

the excess of any income recognized during the immediately preceding year attributable to the sale of a built-in-gain asset that was acquired in a carry-over basis transaction from a non-REIT C corporation over the U.S. federal income tax paid by us with respect to such built-in gain.

Generally, dividends that we receive will be treated as qualified dividend income for purposes of the first bullet above if (A) the dividends are received from (i) a U.S. corporation (other than a REIT or a regulated investment company), (ii) any TRS, or (iii) a qualifying foreign corporation, and (B) specified holding period requirements and other requirements are met. If we designate any portion of a dividend as qualified dividend income, a U.S. shareholder will receive an IRS Form 1099-DIV indicating the amount that will be taxable to the holder as qualified dividend income. We expect that an insignificant portion, if any, of our distributions will consist of qualified dividend income. If we designate any portion of a dividend as qualified dividend income, a U.S. shareholder will receive an IRS Form 1099-DIV indicating the amount that will be taxable to the holder as qualified dividend income.

*Dispositions of Our Series H Preferred Stock.* In general, a U.S. shareholder will realize gain or loss upon the sale, redemption or other taxable disposition of our Series H Preferred Stock 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. shareholder's adjusted tax basis in our Series H Preferred Stock at the time of the disposition. In general, a U.S. shareholder's adjusted basis will equal the U.S. shareholder's acquisition cost, increased by the excess for net capital gains deemed distributed to the U.S. shareholder (discussed above) less tax deemed paid on it and reduced by returns on capital.

In general, capital gains recognized by individuals and other non-corporate U.S. shareholders upon the sale or disposition of our Series H Preferred Stock will be subject to a maximum federal income tax rate of 15% (through 2012), if our Series H Preferred Stock is held for more than one year, and will be taxed at ordinary income rates of up to 35% (through 2012) if the shares are held for one year or less. Gains recognized by U.S. shareholders that are corporations are subject to federal income tax at a maximum rate of 35%, whether or not such gains are classified as long-term capital gains.

Capital losses recognized by a U.S. shareholder upon the disposition of our Series H Preferred Stock that was held for more than one year at the time of disposition will be considered long-term capital losses, and are generally available

only to offset capital gain income of the shareholder but not ordinary income (except in the case of individuals, who may offset up to \$3,000 of ordinary income each year). In addition, any loss upon a sale or exchange of our Series H Preferred Stock by a U.S. shareholder who has held the shares for six months or less, after applying holding period rules, will be treated as a long-term capital loss to the extent of distributions that we make that are required to be treated by the U.S. shareholder as long-term capital gain.

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*Redemptions of our Series H Preferred Stock.* If we redeem any Series H Preferred Stock, the treatment accorded to any redemption by us for cash (as distinguished from a sale, exchange or other disposition) of our Series H Preferred Stock to a holder of such Series H Preferred Stock can only be determined on the basis of the particular facts as to each holder at the time of redemption. In general, a holder of our Series H Preferred Stock will recognize capital gain or loss measured by the difference between the amount received by the holder of such shares upon the redemption and such holder's adjusted tax basis in our Series H Preferred Stock redeemed (provided the Series H Preferred Stock is held as a capital asset) if such redemption (i) results in a complete termination of the holder's interest in all classes of our shares under Section 302(b)(3) of the Code, or (ii) is not essentially equivalent to a dividend with respect to the holder of our Series H Preferred Stock under Section 302(b)(1) of the Code. In applying these tests, there must be taken into account not only our Series H Preferred Stock being redeemed, but also such holder's ownership of other classes and series of our shares and any options (including stock purchase rights) to acquire any of the foregoing. The holder of our Series H Preferred Stock also must take into account any such securities (including options) which are considered to be owned by such holder by reason of the constructive ownership rules set forth in Sections 318 and 302(c) of the Code.

If the holder of Series H Preferred Stock owns (actually or constructively) none of our voting shares, or owns an insubstantial amount of our voting shares, based upon current law, it is probable that the redemption of Series H Preferred Stock from such a holder would be considered to be not essentially equivalent to a dividend. However, whether a distribution is not essentially equivalent to a dividend depends on all of the facts and circumstances, and a holder of our Series H Preferred Stock intending to rely on any of these tests at the time of redemption should consult its tax advisor to determine their application to its particular situation. If the redemption does not meet any of the tests under Section 302 of the Code, then the redemption proceeds received from our Series H Preferred Stock will be treated as a distribution on our shares as described above under Taxation of Taxable U.S. Shareholders. If the redemption of a holder's Series H Preferred Stock is taxed as a dividend, the adjusted basis of such holder's redeemed Series H Preferred Stock will be transferred to any other shares held by the holder. If the holder owns no other shares, under certain circumstances, such basis may be transferred to a related person, or it may be lost entirely.

Under proposed Treasury regulations pursuant to Section 302 of the Code (the Proposed Regulations), if any portion of the amount received by a shareholder on a redemption of our Series H Preferred Stock is treated as a distribution with respect to our shares but not as a taxable dividend, then such portion will be allocated to all shares held by the shareholder just before the redemption on a pro-rata, share-by-share, basis. The amount applied to each share will first reduce the shareholder's basis in that share and any excess after the basis is reduced to zero will result in taxable gain. If the shareholder has different bases in its shares, then the amount allocated could reduce some of the basis with respect to certain shares while reducing all the basis and giving rise to taxable gain with respect to other shares. As a result, the shareholder could derive gain even if its total basis in its shares of our Series H Preferred Stock exceeds the amount received on redemption.

The Proposed Regulations permit the transfer of basis in the redeemed shares of our Series H Preferred Stock to a shareholder's remaining, unredeemed Series H Preferred Stock (if any), but not to any other class of shares held (directly or indirectly) by the shareholder. Instead, any unrecovered basis in our Series H Preferred Stock would be treated as a deferred loss to be recognized upon the satisfaction of certain conditions described in the Proposed Regulations.

The Proposed Regulations are effective for transactions that occur after the date such regulations are published as final Treasury regulations. There is no assurance, however, as to whether, when and in what particular form the Proposed Regulations will ultimately be finalized.

*Conversions of our Series H Preferred Stock.* Except as provided below, (i) a shareholder generally will not recognize gain or loss upon the conversion of our Series H Preferred Stock into our common stock, and (ii) a shareholder's basis

and holding period in our common stock received upon conversion generally will be the same as those of the converted Series H Preferred Stock. The basis will be reduced, however, by the portion of adjusted tax basis allocated to any fractional share exchanged for cash. Any of our common stock received in a conversion that is attributable to accumulated and unpaid dividends on the converted Series H Preferred Stock will be treated as a

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distribution that is potentially taxable as a dividend and subject to the treatment as described above under Taxation of Taxable U.S. Shareholders.

Cash received upon a conversion in lieu of a fractional share generally will be treated as a payment in a taxable exchange for such fractional share, and gain or loss will be recognized on the receipt of cash in an amount equal to the difference between the amount of cash received and the adjusted tax basis allocable to the fractional share deemed exchanged. This gain or loss will be long-term capital gain or loss if the shareholder held our Series H Preferred Stock for more than one year at the time of conversion. If a shareholder is an individual, long-term capital gains will be taxed at a reduced rate of 15% under current law. If a shareholder is a corporation, long-term capital gains will be taxed at a maximum rate of 35%. See discussion above under Taxation of Taxable U.S. Shareholders.

## **Other Tax Considerations**

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

Several of the tax considerations described herein are subject to a sunset provision. The sunset provisions generally provide that for taxable years beginning after December 31, 2012, certain provisions that are currently in the Code will revert back to a prior version of those provisions. These provisions include provisions related to the reduced maximum income tax rate for capital gain of 15% (rather than 20%) for taxpayers taxed at individual rates, qualified dividend income, including the application of the 15% capital gain rate to qualified dividend income, and certain other tax rate provisions described herein. The impact of this reversion is not discussed herein. Consequently, prospective shareholders should consult their own tax advisors regarding the effect of sunset provisions on an investment in our Series H Preferred Stock.

### ***Expansion of Medicare Tax***

The Health Care and Reconciliation Act of 2010 requires that, in certain circumstances, certain U.S. shareholders that are individuals, estates, and trusts pay a 3.8% tax on net investment income, effective for taxable years beginning after December 31, 2012. Dividends on and gains from the sale or other disposition of our Series H Preferred Stock would likely constitute net investment income. Prospective investors are urged to consult their own tax advisors regarding this new legislation and its impact on an investment in our Series H Preferred Stock.

### ***Foreign Accounts and Foreign Entities***

The Hiring Incentives to Restore Employment Act of 2010 imposes withholding taxes on certain types of payments made to foreign financial institutions and certain other non-U.S. entities. Under this legislation, the failure to comply with additional certification, information reporting and other specified requirements could result in withholding tax being imposed on payments of dividends and sales proceeds to U.S. shareholders that own our Series H Preferred Stock through foreign accounts or foreign intermediaries and to certain non-U.S. shareholders. The legislation imposes a 30% withholding tax on dividends on, and gross proceeds from the sale or other disposition of, our Series H Preferred Stock paid to a foreign financial institution or to a foreign nonfinancial entity, unless (i) the foreign financial institution undertakes certain diligence and reporting obligations or (ii) the foreign non-financial entity either certifies it does not have any substantial U.S. owners or furnishes identifying information regarding each substantial U.S. owner. In addition, if the payee is a foreign financial institution, it generally must enter into an agreement with the U.S. Treasury that requires, among other things, that it undertake to identify accounts held by certain U.S. persons or U.S.-owned foreign entities, annually report certain information about such accounts, and withhold 30% on payments to certain other account holders. This legislation is generally effective for payments made after December 31, 2012. Prospective investors are urged to consult their own tax advisors regarding this new legislation and its impact on an investment in our Series H Preferred Stock.

**PROSPECTIVE SHAREHOLDERS ARE STRONGLY ENCOURAGED TO CONSULT THEIR OWN TAX ADVISORS AS TO THE UNITED STATES FEDERAL, STATE AND LOCAL INCOME TAX CONSEQUENCES IN THEIR PARTICULAR SITUATIONS OF THE PURCHASE, OWNERSHIP, EXCHANGE AND DISPOSITION OF OUR SERIES H PREFERRED STOCK, AS WELL AS CONSEQUENCES UNDER THE LAWS OF ANY OTHER TAXING JURISDICTION.**

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**ANY DISCUSSION HEREIN OF THE TAX CONSEQUENCES OF AN INVESTMENT IN OUR SERIES H PREFERRED STOCK IS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED, BY ANY PERSON FOR THE PURPOSE OF AVOIDING TAX PENALTIES THAT MAY BE IMPOSED UNDER U.S. TAX LAWS. THIS DISCUSSION IS PROVIDED TO SUPPORT THE PROMOTION OR MARKETING OF OUR SERIES H PREFERRED STOCK. EACH TAXPAYER SHOULD SEEK ADVICE BASED ON THE TAXPAYER S PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR CONCERNING THE POTENTIAL TAX CONSEQUENCES OF AN INVESTMENT IN OUR SERIES H PREFERRED STOCK.**

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**UNDERWRITING**

Subject to the terms and conditions set forth in an underwriting agreement with Wells Fargo Securities, LLC and Raymond James & Associates, Inc., as representatives of the underwriters named below, we have agreed to sell to each underwriter, and each underwriter has severally agreed to purchase from us, the number of shares of Series H Preferred Stock set forth opposite its name in the table below.

<b>Underwriter</b>	<b>Number of Shares</b>
Wells Fargo Securities, LLC	
Raymond James & Associates, Inc.	
Barclays Capital Inc.	
RBC Capital Markets, LLC	
FBR Capital Markets & Co.	
Janney Montgomery Scott LLC	
Morgan Keegan & Company, Inc.	
Robert W. Baird & Co. Incorporated	
Stifel, Nicolaus & Company, Incorporated	
 Total	

Under the terms of the underwriting agreement, the underwriters are committed, severally and not jointly, to purchase all of the shares of Series H Preferred Stock if any 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 severally the underwriters against certain liabilities, including liabilities under the Securities Act, or to contribute to payments the underwriters may be required to make because of any of those liabilities.

The underwriting agreement provides that the underwriters' obligations to purchase the shares of Series H Preferred Stock depend on the satisfaction of the conditions contained in the underwriting agreement. The conditions contained in the underwriting agreement include the requirement that the representations and warranties made by us to the underwriters are true, that there is no material adverse change in the financial markets and that we deliver to the underwriters customary closing documents.

**Commissions and Discounts**

The underwriters propose to offer our shares of Series H Preferred Stock directly to the public at \$     per share and to certain dealers at such price less a concession not in excess of \$     per share. The underwriters may allow, and such dealers may reallow, a concession not in excess of \$     per share to other dealers. If all of the shares of Series H Preferred Stock are not sold at the public offering price, the representatives of the underwriters may change the public offering price and the other selling terms. The offering of the shares of Series H Preferred Stock by the underwriters is subject to receipt and acceptance and subject to the underwriters' right to reject any order in whole or in part.

The following table shows the per share and total underwriting discount that we will pay to the underwriters. These amounts are shown assuming both no exercise and full exercise of the underwriters' option to purchase additional shares of Series H Preferred Stock.

	<b>Per Share</b>	<b>Total Option Not Exercised</b>	<b>Total Option Exercised</b>
Public offering price	\$	\$	\$
Underwriting discount			

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We estimate that the total expenses related to this offering payable by us, excluding the underwriting discount, will be approximately \$ .

### **Over-Allotment Option**

We have granted the underwriters an option to purchase up to additional shares of Series H Preferred Stock at the public offering price less the underwriting discount and less an amount per share equal to any distributions per share payable by us on our shares of Series H Preferred Stock that are not payable by us on these option shares. The underwriters may exercise this option for 30 days from the date of this prospectus supplement solely to cover any over-allotments. 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 Series H Preferred Stock proportionate to that underwriter's initial amount reflected in the above table.

### **No Sales of Shares of Series H Preferred Stock**

We have agreed not to, directly or indirectly, subject to certain exceptions, (i) issue, sell, offer to sell, contract or agree to sell, hypothecate, pledge, grant any option to purchase or otherwise dispose of or agree to dispose of, directly or indirectly, or establish or increase a put equivalent position or liquidate or decrease a call equivalent position within the meaning of Section 16 of the Exchange Act and the rules and regulations of the SEC promulgated thereunder, with respect to, any shares of Series H Preferred Stock or any securities similar to or ranking on par with or senior to the shares Series H Preferred Stock (including preferred interests in our operating partnership), or any securities convertible into or exchangeable or exercisable for, or any warrants or other rights to purchase, the foregoing, (ii) file or cause to become effective a registration statement under the Securities Act relating to the offer and sale of any shares of Series H Preferred Stock or any securities similar to or ranking on par with or senior to the shares of Series H Preferred Stock, or any securities convertible into or exchangeable or exercisable for, or any warrants or other rights to purchase, the foregoing, (iii) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of Series H Preferred Stock or any securities similar to or ranking on par with or senior to the shares of Series H Preferred Stock, or any securities convertible into or exchangeable or exercisable for, or any warrants or other rights to purchase, the foregoing, whether any such transaction is to be settled by delivery of our common stock or such other securities, in cash or otherwise or (iv) publicly announce an intention to effect any transaction specified in clause (i), (ii) or (iii) for a period of 30 days after the date of this prospectus supplement without the prior written consent of the representatives.

### **New York Stock Exchange Listing**

We intend to file an application to list our shares of Series H Preferred Stock on the NYSE under the symbol ESSPrH. If this application is approved, we expect trading of our shares of Series H Preferred Stock on the NYSE to begin within 30 days following initial delivery of our shares of Series H Preferred Stock. The underwriters have advised us that they intend to make a market in our shares of Series H Preferred Stock prior to the commencement of trading on the NYSE. The underwriters will have no obligation to make a market in the shares, however, and may cease market making activities, if commenced, at any time.

### **Price Stabilization and Short Positions**

Until the distribution of shares of Series H Preferred Stock is completed, SEC rules may limit the underwriters and selling group members from bidding for and purchasing our shares of Series H Preferred Stock. However, the underwriters may engage in transactions that stabilize the price of the shares of Series H Preferred Stock, such as bids or purchases of shares in the open market while the offering is in progress to peg, fix, or maintain that price. These transactions may also include short sales and purchases to cover positions created by short sales. Short sales involve

the sale by the underwriters of a greater number of shares than they are required to purchase in the offering. Covered short sales are sales made in an amount not greater than the underwriters' option to purchase additional shares of Series H Preferred Stock from us in the offering. The underwriters may reduce that short position by purchasing Series H Preferred Shares in the open market and by exercising all or part of the over-allotment option described above. In determining the source of shares to close out the covered short position, the underwriters will

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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 additional shares of Series H Preferred Stock pursuant to the option granted to them. Naked short sales are any sales in excess of the over-allotment option. The underwriters must close out any naked short position by purchasing shares of Series H Preferred 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 the shares of Series H Preferred Stock in the open market after pricing that could adversely affect investors who purchase in the offering.

The underwriters may also impose a penalty bid. This occurs when a particular underwriter repays to the underwriters a portion of the underwriting discount received by it because the representative has repurchased shares sold by or for the account of such underwriter in stabilizing or short covering transactions.

Neither we nor the underwriters make any representation or prediction as to the effect the transactions described above may have on the price of the shares of Series H Preferred Stock. Any of these activities may have the effect of preventing or retarding a decline in the market price of our shares of Series H Preferred Stock. They may also cause the price of our shares of Series H Preferred Stock to be higher than the price that would otherwise exist on the open market in the absence of these transactions. The underwriters may conduct these transactions on the NYSE, in the over-the-counter market, or otherwise. If the underwriters commence any of these transactions, they may discontinue them without notice at any time.

## **Sales Outside the United States**

No action has been taken in any jurisdiction (except in the United States) that would permit a public offering of the securities, or the possession, circulation or distribution of this prospectus supplement, the accompanying prospectus or any other material relating to us or the securities in any jurisdiction where action for that purpose is required. Accordingly, the securities may not be offered or sold, directly or indirectly, and none of this prospectus supplement, the accompanying prospectus or any other offering material or advertisements in connection with the securities may be distributed or published, in or from any country or jurisdiction except in compliance with any applicable rules and regulations of any such country or jurisdiction.

Each of the underwriters may arrange to sell securities offered hereby in certain jurisdictions outside the United States, either directly or through affiliates, where they are permitted to do so. In that regard, Wells Fargo Securities, LLC may arrange to sell securities in certain jurisdictions through an affiliate, Wells Fargo Securities International Limited, or WFSIL. WFSIL is a wholly-owned indirect subsidiary of Wells Fargo & Company and an affiliate of Wells Fargo Securities, LLC. WFSIL is a U.K. incorporated investment firm regulated by the Financial Services Authority. Wells Fargo Securities is the trade name for certain corporate and investment banking services of Wells Fargo & Company and its affiliates, including Wells Fargo Securities, LLC and WFSIL.

## **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 ), including each Relevant Member State that has implemented the 2010 PD Amending Directive with regard to persons to whom an offer of securities is addressed and the denomination per unit of the offer of securities (each, an Early Implementing Member State ), with effect from and including the date on which the Prospectus Directive is implemented in that Relevant Member State (the Relevant Implementation Date ), no offer of shares will be made to the public in that Relevant Member State (other than offers (the Permitted Public Offers ) where a prospectus will be published in relation to the shares that has been approved by the competent authority in a Relevant Member State or, where appropriate, approved in another Relevant Member State and notified to the competent authority in that Relevant Member State, all in accordance with the Prospectus Directive), except that



with effect from and including that Relevant Implementation Date, offers of shares may be made to the public in that Relevant Member State at any time:

A. to qualified investors as defined in the Prospectus Directive, including:

(a) (in the case of Relevant Member States other than Early Implementing Member States), legal entities which are authorized or regulated to operate in the financial markets or, if not so authorized or

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regulated, whose corporate purpose is solely to invest in securities, or any legal entity which has two or more of (i) an average of at least 250 employees during the last financial year; (ii) a total balance sheet of more than 43.0 million and (iii) an annual turnover of more than 50.0 million as shown in its last annual or consolidated accounts; or

(b) (in the case of Early Implementing Member States), persons or entities that are described in points (1) to (4) of Section I of Annex II to Directive 2004/39/EC, and those who are treated on request as professional clients in accordance with Annex II to Directive 2004/39/EC, or recognized as eligible counterparties in accordance with Article 24 of Directive 2004/39/EC unless they have requested that they be treated as non-professional clients; or

B. to fewer than 100 (or, in the case of Early Implementing Member States, 150) natural or legal persons (other than qualified investors as defined in the Prospectus Directive), as permitted in the Prospectus Directive, subject to obtaining the prior consent of the representatives for any such offer; or

C. in any other circumstances falling within Article 3(2) of the Prospectus Directive,

provided that no such offer of shares shall result in a requirement for the publication of a prospectus pursuant to Article 3 of the Prospectus Directive or of a supplement to a prospectus pursuant to Article 16 of the Prospectus Directive.

Each person in a Relevant Member State (other than a Relevant Member State where there is a Permitted Public Offer) who initially acquires any shares or to whom any offer is made will be deemed to have represented, acknowledged and agreed that (A) it is a qualified investor, and (B) in the case of any shares acquired by it as a financial intermediary, as that term is used in Article 3(2) of the Prospectus Directive, (x) the shares 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 the prior consent of the Subscribers has been given to the offer or resale, or (y) where shares have been acquired by it on behalf of persons in any Relevant Member State other than qualified investors as defined in the Prospectus Directive, the offer of those shares to it is not treated under the Prospectus Directive as having been made to such persons.

For the purpose of the above provisions, the expression an offer to the public in relation to any shares in any Relevant Member State means the communication in any form and by any means of sufficient information on the terms of the offer of any shares to be offered so as to enable an investor to decide to purchase any shares, as the same may be varied in the Relevant Member State by any measure implementing the Prospectus Directive in the Relevant Member State and the expression Prospectus Directive means Directive 2003/71 EC (including the 2010 PD Amending Directive, in the case of Early Implementing Member States) and includes any relevant implementing measure in each Relevant Member State and the expression 2010 PD Amending Directive means Directive 2010/73/EU.

In addition, in the United Kingdom, this document 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 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 securities being offered pursuant to this prospectus supplement have not and will not be approved, and may not be licenseable, with FINMA. Therefore, the securities have not been authorized for distribution by FINMA as a foreign collective investment scheme pursuant to

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Article 119 CISA and the Shares offered hereby may not be offered to the public (as this term is defined in Article 3 CISA) in or from Switzerland. The securities 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 securities 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 issuer 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 securities 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 this prospectus supplement. The securities to which this prospectus supplement relates may be illiquid and/or subject to restrictions on their resale. Prospective purchasers of the securities offered should conduct their own due diligence on the securities. If you do not understand the contents of this prospectus supplement you should consult an authorized financial advisor.

## **Other Relationships**

The underwriters and their respective 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 and our affiliates, for which they have received and may continue to receive customary fees and commissions. Wells Fargo Bank, N.A., an affiliate of Wells Fargo Securities, LLC, is a lender under our unsecured credit facility. In addition, the underwriters and their respective affiliates are full service financial institutions engaged in various activities, which may include securities trading, commercial and investment banking, financial advisory, investment management, investment research, principal investment, hedging, financing and brokerage activities. Such instruments and securities activities may involve securities and/or instruments of ours or our affiliates. The underwriters and their respective affiliates may also make investment recommendations and/or publish or express independent research views in respect of such securities or instruments and may at any time hold, or recommend to clients that they acquire, long and/or short positions in such securities and instruments.

## **EXPERTS**

The consolidated balance sheets of Essex Property Trust, Inc. and subsidiaries as of December 31, 2010 and 2009, and the related consolidated statements of operations, stockholders' equity, noncontrolling interest and comprehensive income, and cash flows, for each of the years in the three-year period ended December 31, 2010, the related financial statement schedule III, and management's assessment of the effectiveness of internal control over financial reporting as of December 31, 2010 have been incorporated by reference herein, in reliance upon the reports of KPMG LLP,

independent registered public accounting firm, incorporated by reference herein, and upon authority of said firm as experts of said firm as experts in accounting and auditing.

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**LEGAL MATTERS**

Certain legal matters in connection with this offering will be passed upon for us by Baker & McKenzie LLP, San Francisco, California. Certain matters of Maryland law will be passed upon for us by Venable LLP, Baltimore, Maryland. Certain legal matters in connection with this offering will be passed upon for the underwriters by DLA Piper LLP (US).

**INCORPORATION OF CERTAIN INFORMATION BY REFERENCE**

The SEC allows us to incorporate by reference into this prospectus supplement and the accompanying prospectus the information we file with the SEC, which means that we can disclose important business, financial and other information to you by referring you to other documents separately filed with the SEC. All information incorporated by reference is part of this prospectus supplement and the accompanying prospectus. Any statement contained in a document which is incorporated by reference in this prospectus supplement or the accompanying prospectus is automatically updated and superseded if information contained in this prospectus supplement, the accompanying prospectus, or information we later file with the SEC, modifies or replaces that information.

We incorporate by reference the documents listed below:

our Annual Report on Form 10-K for the year ended December 31, 2010;

our Current Reports on Form 8-K, filed January 19, 2011, February 25, 2011, and April 1, 2011;

our Definitive Proxy Statement on Schedule 14A filed on April 6, 2011; and

the description of Essex's common stock contained in a Registration Statement on Form 8-A filed with the SEC on May 27, 1994, as amended on September 19, 2003.

In addition, all documents filed by us under Section 13(a), 13(c), 14 or 15(d) of the Exchange Act (excluding any documents or portions of documents that are deemed furnished and not filed with the SEC) after the date of this prospectus supplement and prior to the termination of the offering of shares of common stock covered by this prospectus supplement, are incorporated by reference herein.

To obtain a free copy of any of the documents incorporated by reference in this prospectus supplement (other than exhibits, unless they are specifically incorporated by reference in the documents) please contact us at:

Essex Property Trust, Inc.  
Attention: Investor Relations  
925 East Meadow Drive  
Palo Alto, CA 94303  
Phone: (650) 494-3700

**AVAILABLE INFORMATION**

We are subject to the information requirements of the Exchange Act. Accordingly, we file current, quarterly and annual reports, proxy statements and other information with the SEC. You may read and copy these reports, proxy statements and other information at the SEC's Public Reference Room at 100 F Street, N.E., Washington, D.C. 20549.

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Please call 1-800-SEC-0330 for further information on the operation of the SEC's Public Reference Room. Our SEC filings also are available to the public at the Internet website maintained by the SEC at [www.sec.gov](http://www.sec.gov) and from commercial document retrieval services.

We also make available free of charge through our website our annual report 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, our definitive proxy statements and Section 16 reports on Forms 3, 4 and 5, as soon as reasonably practicable after we electronically file such reports or amendments with, or furnish them to, the SEC. Our Internet website address is [www.essexpropertytrust.com](http://www.essexpropertytrust.com). The information located on, or hyperlinked or otherwise connected to, our website is not, and shall not be deemed to be, a part of this prospectus or

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incorporated into any other filings that we make with the SEC. You may also inspect the information that we file with the NYSE, at the offices of the NYSE located at 20 Broad Street, New York, New York 10005.

We have filed with the SEC a registration statement on Form S-3 (Registration File No. 333-165693) covering the shares of common stock offered by this prospectus statement. You should be aware that this prospectus supplement does not contain all of the information contained or incorporated by reference in that registration statement and its exhibits and schedules. You may inspect and obtain the registration statement, including exhibits, schedules, reports and other information that we have filed with the SEC, as described in the preceding paragraph. Statements contained in this prospectus supplement concerning the contents of any document we refer you to are not necessarily complete and in each instance we refer you to the applicable document filed with the SEC for more complete information.

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**PROSPECTUS**

**ESSEX PROPERTY TRUST, INC.**

**COMMON STOCK  
PREFERRED STOCK  
DEPOSITARY SHARES  
WARRANTS AND OTHER RIGHTS  
STOCK PURCHASE CONTRACTS  
UNITS  
GUARANTEES OF DEBT SECURITIES**

**and**

**ESSEX PORTFOLIO, L.P.**

**DEBT SECURITIES**

Essex Property Trust, Inc., a Maryland corporation ( Essex or the Company ), may from time to time offer, in one or more series or classes, separately or together, and in amounts, at prices and on terms to be set forth in one or more supplements to this prospectus, the following securities:

common stock;

preferred stock;

preferred stock represented by depositary shares;

warrants and other rights to purchase common stock;

stock purchase contracts;

units representing an interest in two or more other securities; and

guarantees of debt securities.

Essex Portfolio L.P., a California partnership (the Operating Partnership ), may from time to time offer in one or more series debt securities, which may be either senior debt securities ( Senior Securities ) or subordinated debt securities ( Subordinated Securities and, together with the Senior Securities, the Debt Securities ), guaranteed by Essex through unconditional guarantees (the Guarantees ) of the Debt Securities. The Debt Securities may be non-convertible or convertible into or exercisable or exchangeable for securities of the Company or the Operating Partnership.

The securities listed above (collectively, the Offered Securities ) may be offered, separately or together, in separate series, in amounts, at prices and on terms to be set forth in one or more prospectus supplements to this prospectus (each a Prospectus Supplement ); provided that Essex will unconditionally guarantee the payment of principal and a premium, if any, and interest on the debt securities, to the extent and on the terms described herein and in any accompanying Prospectus Supplement to this prospectus. Under this Registration Statement, Essex can issue equity securities and debt guarantees, and the Operating Partnership can issue only debt securities.

This prospectus describes some of the general terms that may apply to these securities. The specific terms of any securities to be offered will be described in a Prospectus Supplement. The specific terms may include limitations on direct or beneficial ownership and restrictions on transfer, in each case as may be appropriate to preserve our status as a real estate investment trust ( REIT ) for federal income tax purposes. It is important that you read both this prospectus and the applicable Prospectus Supplement before you invest in the securities.

The applicable Prospectus Supplement also will contain information, where applicable, about material United States federal income tax considerations relating to, and any listing on a securities exchange of, the Offered Securities covered by such Prospectus Supplement.

The Offered Securities may be offered directly, through agents designated from time to time by Essex, or to or through underwriters or dealers. If any agents or underwriters are involved in the sale of any of the Offered Securities, their names, and any applicable purchase price, fee, commission or discount arrangement between or among them, will be set forth, or will be calculable from the information set forth, in the applicable Prospectus Supplement. See Plan of Distribution. No Offered Securities may be sold without delivery of the applicable Prospectus Supplement describing the plan of distribution and the method and terms of the offering of such series of Offered Securities.

Essex's common stock is traded on the New York Stock Exchange, or the NYSE, under the symbol ESS. On March 24, 2010, the closing sale price of Essex common stock on the NYSE was \$91.75 per share.

**YOU SHOULD CONSIDER THE RISKS DISCUSSED IN RISK FACTORS BEGINNING ON PAGE 8 OF THE PROSPECTUS BEFORE YOU INVEST IN OUR SECURITIES.**

**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 March 25, 2010

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Neither Essex Property Trust, Inc. nor Essex Portfolio, L.P. have authorized any person to give any information or to make any representation not contained or incorporated by reference in this prospectus. You must not rely upon any information or representation not contained or incorporated by reference in this prospectus as if we had authorized it. This prospectus is not an offer to sell or the solicitation of an offer to buy any securities other than the registered securities to which it relates and this prospectus is not an offer to sell or the solicitation of an offer to buy securities in any jurisdiction where, or to any person to whom, it is unlawful to make such offer or solicitation. You should not assume that the information contained in this prospectus is correct on any date after the date of this prospectus, even though this prospectus is delivered or shares are sold pursuant to this prospectus on a later date.

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**WHERE YOU CAN FIND MORE INFORMATION**

Essex files annual, quarterly and special reports, proxy statements and other information with the Securities and Exchange Commission (the "SEC"). You may read and copy any document Essex files with the SEC at the SEC's public reference room at Room 1024, Judiciary Plaza, 450 Fifth Street, N.W., Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information on the public reference room. The SEC also maintains a web site that contains reports, proxy and information statements, and other information regarding registrants that file electronically with the SEC (<http://www.sec.gov>). You can inspect reports and other information we file at the offices of the New York Stock Exchange, Inc., 20 Broad Street, New York, New York 10005.

We have filed a Registration Statement of which this prospectus is a part and related exhibits with the SEC under the Securities Act of 1933, as amended (the "Securities Act"). The Registration Statement contains additional information about us. You may inspect the Registration Statement and exhibits without charge at the office of the SEC at 450 Fifth Street, N.W., Washington, D.C. 20549, and you may obtain copies from the SEC at prescribed rates.

**INCORPORATION OF CERTAIN DOCUMENTS BY REFERENCE**

The SEC allows us to incorporate by reference the information we file with the SEC, which means that we can disclose important information to you by referring to those documents. The information incorporated by reference is an important part of this prospectus. Any statement contained in a document which is incorporated by reference in this prospectus is automatically updated and superseded if information contained in this prospectus, or information that we later file with the SEC, modifies or replaces this information. We incorporate by reference the following documents we filed with the SEC:

Essex's Annual Report on Form 10-K for the year ended December 31, 2009;

Essex's Current Report on Form 8-K filed on March 9, 2010;

Essex's Definitive Proxy Statement on Schedule 14A filed on March 22, 2010;

The description of Essex's common stock contained in a Registration Statement on Form 8-A filed with the SEC on May 27, 1994, as amended on September 19, 2003;

All documents filed by us with the SEC pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act") (but excluding any documents or portions of documents that are deemed furnished and not filed with the SEC) after the date of this prospectus and prior to the termination of the offering.

To receive a free copy of any of the documents incorporated by reference in this prospectus (other than exhibits, unless they are specifically incorporated by reference in the documents), call or write Essex Property Trust, Inc., 925 East Meadow Drive, Palo Alto, California 94303, Attention: Secretary (650) 494-3700.

Unless we indicate otherwise or unless the context requires otherwise, all references in this prospectus to "Essex" mean Essex Property Trust, Inc. and all references to the "Operating Partnership" mean Essex Portfolio, L.P. Unless we indicate otherwise or unless the context requires otherwise, all references in this prospectus to "we," "us," or "our" mean Essex and its subsidiaries, including the Operating Partnership and its subsidiaries. When we refer to Essex's "Charter," we mean Essex's articles of incorporation, as amended and supplemented from time to time.



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**FORWARD-LOOKING STATEMENTS**

This prospectus contains or incorporates by reference forward-looking statements within the meaning of Section 27A of the Securities Act, and Section 21E of the Exchange Act, and are subject to the safe harbor provisions created by these statutes. All statements, other than statements of historical facts, that address activities, events or developments that we intend, expect, project, believe or anticipate will or may occur in the future are forward-looking statements. Such statements are characterized by terminology such as anticipates, believes, expects, future, intends, projects, plans and similar expressions or the negative of those terms or other comparable terminology. These forward-looking statements, which include statements about our expectations, objectives, anticipations, intentions and strategies regarding the future, expected operation results, revenues and earnings, reflect only management's current expectations and are not guarantees of future performance and are subject to risks and uncertainties, including those risks described under the heading Risk Factors in this prospectus, or in the documents incorporated by reference in this prospectus, that could cause actual results to differ materially from the results contemplated by the forward-looking statements. Some of these forward-looking statements include statements regarding our expectations as to:

The timing of completion of current development and redevelopment projects and the stabilization dates of such projects;

The total projected costs and rental rates of development and redevelopment projects;

The adequacy of future cash flows to meet operating requirements and to provide for dividend payments in accordance with real estate investment trust ( REIT ) requirements;

The amount of capital expenditures and non-revenue generating capital expenditures;

Future acquisitions and anticipated development projects in 2010 and thereafter;

The anticipated performance of Essex Apartment Value Fund II, L.P. ( Fund II );

The anticipated performance of existing properties; and

The anticipated results from various geographic regions and our investment focus in such regions.

All forward-looking statements included or incorporated by reference in this prospectus are made as of the date hereof, based on information available to us as of the date hereof, and we assume no obligation to update any forward-looking statement or statements. It is important to note that such forward-looking statements are subject to risks and uncertainties and that our actual results could differ materially from those in such forward-looking statements. The foregoing factors, as well as those under the heading Risk Factors in this prospectus and in Item 1A, Risk Factors, of our most recent Annual Report on Form 10-K and Quarterly Reports on Form 10-Q that Essex files with the SEC from time to time, among others, in some cases have affected, and in the future could affect, our actual results and could cause our actual results to differ materially from those expressed in any forward-looking statement made by us. You are cautioned not to place undue reliance on forward-looking statements contained in this prospectus.

**ESSEX AND THE OPERATING PARTNERSHIP**

Essex Property Trust, Inc. ( Essex or the Company ) is a Maryland corporation that operates as a self-administered and self-managed real estate investment trust ( REIT ). The Company owns all of its interest in its real estate investments directly or indirectly through Essex Portfolio, L.P. (the Operating Partnership ). The Company is the sole general partner of the Operating Partnership and as of December 31, 2009 owns a 92.3% general partnership interest.

The Company has elected to be treated as a REIT for federal income tax purposes, commencing with the year ended December 31, 1994 as the Company completed an initial public offering on June 13, 1994. In order to maintain compliance with REIT tax rules, the Company utilizes taxable REIT subsidiaries for various revenue generating or investment activities. All taxable REIT subsidiaries are consolidated by the Company.

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We are engaged primarily in the ownership, operation, management, acquisition, development and redevelopment of predominantly apartment communities. As of December 31, 2009, we owned or held an interest in 133 apartment communities, aggregating 27,248 units, located along the west coast of the United States, as well as five office buildings (totaling approximately 215,840 square feet), and four active development projects with 581 units in various stages of development (collectively, the Portfolio ).

**USE OF PROCEEDS**

Unless otherwise indicated in the applicable Prospectus Supplement, we intend to use the net proceeds of any sale of Offered Securities for general corporate purposes and to invest in the Operating Partnership. Unless otherwise indicated in the applicable Prospectus Supplement, the Operating Partnership intends to use any net proceeds to fund the acquisition and development of apartment communities and to repay indebtedness. Net proceeds from the sale of the Offered Securities initially may be temporarily invested in short-term securities.



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**RISK FACTORS**

Our business, operating results, cash flows and financial condition are subject to various risks and uncertainties, including, without limitation, those set forth below, any one of which could cause our actual results to vary materially from recent results or from our anticipated future results.

*We depend on our key personnel.* Our success depends on our ability to attract and retain executive officers, senior officers and company managers. There is substantial competition for qualified personnel in the real estate industry and the loss of any of our key personnel could have an adverse effect on the Company.

*Capital and credit market conditions may affect our access to sources of capital and/or the cost of capital, which could negatively affect our business, results of operations, cash flows and financial condition.* Over the past two years, the Company's financing activities have been impacted by the instability and tightening in the credit markets which has led to an increase in spreads and pricing of secured debt, unsecured debt, and lines of credit. The Company's strong balance sheet, the debt capacity available on the unsecured line of credit with a bank group and the secured line of credit with Freddie Mac, and access to Fannie Mae and Freddie Mac secured debt financing have provided some insulation to the Company from the turmoil being experienced by many other real estate companies. The Company has benefited from borrowing from Fannie Mae and Freddie Mac, and there are no assurances that these entities will lend to the Company in the future. Continued turmoil in the capital markets and further job losses could negatively impact the Company's ability to make acquisitions, develop communities, obtain new financing, and refinance existing borrowing at competitive rates.

*Debt financing has inherent risks.* At December 31, 2009, we had approximately \$1.85 billion of indebtedness (including \$490.6 million of variable rate indebtedness, of which \$197.1 million is subject to interest rate protection agreements). We are subject to the risks normally associated with debt financing, including the following:

- cash flow may not be sufficient to meet required payments of principal and interest;
- inability to refinance maturing indebtedness on encumbered apartment communities;
- inability to comply with debt covenants could cause an acceleration of the maturity date; and
- repaying debt before the scheduled maturity date could result in prepayment penalties.

*The Company is uncertain about its ability to refinance balloon payments.* As of December 31, 2009, we had approximately \$1.85 billion of mortgage loans, exchangeable bonds and line of credit borrowings, most of which are subject to balloon payments (see Notes 7 and 8 to the Company's consolidated financial statements for more details). We do not expect to have sufficient cash flows from operations to make all of these balloon payments.

We may not be able to refinance such mortgage indebtedness, bonds, or lines of credit. The communities subject to these mortgages could be foreclosed upon or otherwise transferred to the lender. This could cause us to lose income and asset value. We may be required to refinance the debt at higher interest rates or on terms that may not be as favorable as the terms of existing indebtedness.

*Debt financing of communities may result in insufficient cash flow to service debt.* Where possible, we intend to continue to use leverage to increase the rate of return on our investments and to provide for additional investments that we could not otherwise make. There is a risk that the cash flow from the communities will be insufficient to meet both

debt payment obligations and the distribution requirements of the real estate investment trust provisions of the Internal Revenue Code of 1986, as amended (the Code ). We may obtain additional debt financing in the future through mortgages on some or all of the communities. These mortgages may be recourse, non-recourse, or cross-collateralized.

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As of December 31, 2009, the Company had 77 of its 118 consolidated communities encumbered by debt. Of the 77 communities, 61 are secured by deeds of trust relating solely to those communities. With respect to the remaining 16 communities, there are 3 cross-collateralized mortgages secured by 11 communities, 3 communities, and 2 communities, respectively. The holders of this indebtedness will have rights with respect to these communities and, to the extent indebtedness is cross-collateralized, lenders may seek to foreclose upon communities which are not the primary collateral for their loan. This may accelerate other indebtedness secured by communities. Foreclosure of communities would reduce our income and net asset value.

*Rising interest rates may affect our costs of capital and financing activities and results of operation.* Interest rates could increase rapidly, which could result in higher interest expense on our variable rate indebtedness. Prolonged interest rate increases could negatively impact our ability to make acquisitions and develop apartment communities with positive economic returns on investment and our ability to refinance existing borrowings.

*Interest rate hedging arrangements may result in losses.* Periodically, we have entered into agreements to reduce the risks associated with increases in interest rates, and may continue to do so. Although these agreements may partially protect against rising interest rates, they also may reduce the benefits to us if interest rates decline. If a hedging arrangement is not indexed to the same rate as the indebtedness that is hedged, we may be exposed to losses to the extent that the rate governing the indebtedness and the rate governing the hedging arrangement change independently of each other. Finally, nonperformance by the other party to the hedging arrangement may subject us to increased credit risks. In order to minimize counterparty credit risk, our policy is to enter into hedging arrangements only with A-rated financial institutions.

*Bond compliance requirements may limit income from certain communities.* At December 31, 2009, we had approximately \$214.1 million of variable rate tax-exempt financing relating to the following apartment communities: Inglenook Court, Wandering Creek, Boulevard, Huntington Breakers, Camarillo Oaks, Fountain Park, Anchor Village, Hidden Valley and Belmont Station. This tax-exempt financing subjects these communities to certain deed restrictions and restrictive covenants. We expect to engage in tax-exempt financings in the future. The Code and rules and regulations thereunder impose various restrictions, conditions and requirements excluding interest on qualified bond obligations from gross income for federal income tax purposes. The Code also requires that at least 20% of apartment units be made available to residents with gross incomes that do not exceed a specified percentage, generally 50%, of the median income for the applicable family size as determined by the Housing and Urban Development Department of the federal government. In addition to federal requirements, certain state and local authorities may impose additional rental restrictions. These restrictions may limit income from the tax-exempt financed communities if we are required to lower rental rates to attract residents who satisfy the median income test. If the Company does not reserve the required number of apartment homes for residents satisfying these income requirements, the tax-exempt status of the bonds may be terminated, the obligations under the bond documents may be accelerated and we may be subject to additional contractual liability.

*General real estate investment risks may adversely affect property income and values.* Real estate investments are subject to a variety of risks. The yields available from equity investments in real estate depend on the amount of income generated and expenses incurred. If the communities do not generate sufficient income to meet operating expenses, including debt service and capital expenditures, cash flow and the ability to make distributions to stockholders will be adversely affected. Income from the communities may be further adversely affected by, among other things, the following factors:

the general economic climate;

local economic conditions in which the communities are located, such as oversupply of housing or a reduction in demand for rental housing;

the attractiveness of the communities to tenants;

competition from other available housing; and

the Company's ability to provide for adequate maintenance and insurance.

As leases at the communities expire, tenants may enter into new leases on terms that are less favorable to us. Income and real estate values also may be adversely affected by such factors as applicable laws (e.g., the Americans

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with Disabilities Act of 1990 and tax laws). Real estate investments are relatively illiquid and, therefore, our ability to vary our portfolio promptly in response to changes in economic or other conditions may be quite limited.

*National and regional economic environments can negatively impact our operating results.* During the past two years, a confluence of factors has resulted in job losses, turmoil and volatility in the capital markets, and caused a national and global recession. The Company's forecast for the national economy assumes the return of growth, with estimated gross domestic product growth of the national economy and the economies of the western states. In the event of a continued recession, the Company could incur continued reduction in rental rates, occupancy levels, property valuations and increases in operating costs such as advertising and turnover expenses.

*Inflation/Deflation may affect rental rates and operating expenses.* Substantial inflationary or deflationary pressures could have a negative effect on rental rates and property operating expenses.

*Acquisitions of communities may fail to meet expectations.* The Company intends to continue to acquire apartment communities. However, there are risks that acquisitions will fail to meet our expectations. The Company's estimates of future income, expenses and the costs of improvements or redevelopment that are necessary to allow us to market an acquired apartment community as originally intended may prove to be inaccurate. We expect to finance future acquisitions, in whole or in part, under various forms of secured or unsecured financing or through the issuance of partnership units by the Operating Partnership or related partnerships or additional equity by the Company. The use of equity financing, rather than debt, for future developments or acquisitions could dilute the interest of the Company's existing stockholders. If we finance new acquisitions under existing lines of credit, there is a risk that, unless we obtain substitute financing, the Company may not be able to secure further lines of credit for new development or such lines of credit may be not available on advantageous terms.

*Development and redevelopment activities may be delayed, not completed, and/or not achieve expected results.* We pursue development and redevelopment projects and these projects generally require various governmental and other approvals, which have no assurance of being received. The Company's development and redevelopment activities generally entail certain risks, including the following:

funds may be expended and management's time devoted to projects that may not be completed;

construction costs of a project may exceed original estimates possibly making the project economically unfeasible;

projects may be delayed due to, without limitation, adverse weather conditions;

occupancy rates and rents at a completed project may be less than anticipated; and

expenses at completed development projects may be higher than anticipated.

These risks may reduce the funds available for distribution to the Company's stockholders. Further, the development and redevelopment of communities is also subject to the general risks associated with real estate investments. For further information regarding these risks, please see the risk factor *General real estate investment risks may adversely affect property income and values.*

*The geographic concentration of the Company's communities and fluctuations in local markets may adversely impact our financial condition and operating results.* The Company generated significant amounts of rental revenues for the year ended December 31, 2009, from our communities concentrated in Southern California (Los Angeles, Orange, Santa Barbara, San Diego, and Ventura counties), Northern California (the San Francisco Bay Area), and the Seattle

metropolitan area. For the year ended December 31, 2009, 81% of the Company's rental revenues were generated from communities located in California. This geographic concentration could present risks if local property market performance falls below expectations. The economic condition of these markets could affect occupancy, property revenues, and expenses, from the communities and their underlying asset values. The financial results of major local employers also may impact the cash flow and value of certain of the communities. This could have a negative impact on our financial condition and operating results, which could affect our ability to pay expected dividends to our stockholders.

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*Competition in the apartment community market may adversely affect operations and the rental demand for our communities.* There are numerous housing alternatives that compete with our communities in attracting residents. These include other apartment communities and single-family homes that are available for rent in the markets in which the communities are located. If the demand for our communities is reduced or if competitors develop and/or acquire competing apartment communities on a more cost-effective basis, rental rates may drop, which may have a material adverse affect on our financial condition and results of operations. We also face competition from other real estate investment trusts, businesses and other entities in the acquisition, development and operation of apartment communities. This competition may result in an increase in costs and prices of apartment communities that we acquire and/or develop.

*The price per share of the Company's stock may fluctuate significantly.* The market price per share of the Company's common stock may fluctuate significantly in response to many factors, including:

national and global economic conditions;

actual or anticipated variations in our quarterly operating results or dividends;

changes in our funds from operations or earnings estimates;

issuances of common stock, preferred stock or convertible debt securities;

publication of research reports about us or the real estate industry;

the general reputation of real estate investment trusts and the attractiveness of their equity securities in comparison to other equity securities (including securities issued by other real estate based companies);

general stock and bond market conditions, including changes in interest rates on fixed income securities, that may lead prospective purchasers of our stock to demand a higher annual yield from dividends;

availability to credit markets and cost of credit;

a change in analyst ratings or our credit ratings; and

terrorist activity may adversely affect the markets in which our securities trade, possibly increasing market volatility and causing erosion of business and consumer confidence and spending.

Many of the factors listed above are beyond the Company's control. These factors may cause the market price of shares of the Company's common stock to decline, regardless of our financial condition, results of operations, or business prospects.

*The Company's future issuances of common stock, preferred stock or convertible debt securities could adversely affect the market price of our common stock.* In order to finance our acquisition and development activities, we have issued and sold common stock, preferred stock and convertible debt securities. For example, during 2009 and 2008, the Company issued and sold 2,740,450 and 1,209,050 shares of common stock for \$198.5 million and \$142.8 million, net of fees and commissions, respectively. The Company may in the future sell further shares of common stock, including pursuant to its controlled equity offering program with Cantor Fitzgerald & Co. and a similar program with KeyBanc Capital Markets Inc.

In 2010, the Company filed a new shelf registration statement with the SEC, allowing the Company to sell an undetermined number of equity and debt securities as defined in the prospectus. Future sales of common stock, preferred stock or convertible debt securities may dilute stockholder ownership in the Company and could adversely affect the market price of the common stock.

*The Company's Chairman is involved in other real estate activities and investments, which may lead to conflicts of interest.* Our Chairman, George M. Marcus is not an employee of the Company, and is involved in other real estate activities and investments, which may lead to conflicts of interest. Mr. Marcus owns interests in various other real estate-related businesses and investments. He is the Chairman of The Marcus & Millichap Company ( TMMC ), which is a holding company for certain real estate brokerage and services companies. TMMC has an interest in Pacific Property Company, a company that invests in apartment communities.



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Mr. Marcus has agreed not to divulge any information that may be received by him in his capacity as Chairman of the Company to any of his affiliated companies and that he will abstain his vote on any and all resolutions by the Company Board of Directors regarding any proposed acquisition and/or development of an apartment community where it appears that there may be a conflict of interest with any of his affiliated companies. Notwithstanding this agreement, Mr. Marcus and his affiliated entities may potentially compete with us in acquiring and/or developing apartment communities, which competition may be detrimental to us. In addition, due to such potential competition for real estate investments, Mr. Marcus and his affiliated entities may have a conflict of interest with us, which may be detrimental to the interests of the Company's stockholders.

*The influence of executive officers, directors and significant stockholders may be detrimental to holders of common stock.* As of December 31, 2009, George M. Marcus, the Chairman of our Board of Directors, wholly or partially owned 1,774,375 shares of common stock (including shares issuable upon exchange of limited partnership interests in the Operating Partnership and certain other partnerships and assuming exercise of all vested options). This represents approximately 5.7% of the outstanding shares of our common stock. Mr. Marcus currently does not have majority control over us. However, he currently has, and likely will continue to have, significant influence with respect to the election of directors and approval or disapproval of significant corporate actions. Consequently, his influence could result in decisions that do not reflect the interests of all our stockholders.

Under the partnership agreement of the Operating Partnership, the consent of the holders of limited partnership interests is generally required for any amendment of the agreement and for certain extraordinary actions. Through their ownership of limited partnership interests and their positions with us, our directors and executive officers, including Mr. Marcus, have substantial influence on us. Consequently, their influence could result in decisions that do not reflect the interests of all stockholders.

*The voting rights of preferred stock may allow holders of preferred stock to impede actions that otherwise benefit holders of common stock.* In general, the holders of our outstanding shares of preferred stock do not have any voting rights. However, if full distributions are not made on any outstanding preferred stock for six quarterly distributions periods, the holders of preferred stock who have not received distributions, voting together as a single class, will have the right to elect two additional directors to serve on our Board of Directors.

These voting rights continue until all distributions in arrears and distributions for the current quarterly period on the preferred stock have been paid in full. At that time, the holders of the preferred stock are divested of these voting rights, and the term and office of the directors so elected immediately terminates.

While shares of any series of our preferred stock are outstanding, the Company may not, without the consent of the holders of two-thirds of the outstanding shares of such series of preferred stock, voting separately as a single class:

authorize or create any class or series of stock that ranks senior to such preferred stock with respect to the payment of dividends, rights upon liquidation, dissolution or winding-up of our business;

amend, alter or repeal the provisions of the Company's Charter or Bylaws, including by merger or consolidation, that would materially and adversely affect the rights of such series of preferred stock; or

in the case of the preferred stock into which our preferred units are exchangeable, merge or consolidate with another entity or transfer substantially all of its assets to another entity, except if such preferred stock remains outstanding with the surviving entity and has the same terms and in certain other circumstances.

These voting rights of the preferred stock may allow holders of preferred stock to impede or veto actions that would otherwise benefit the holders of our common stock.

*The redemption rights of the Series B preferred units and Series F preferred stock may be detrimental to holders of the Company's common stock. Upon the occurrence of one of the following events, the terms of the Operating Partnership's Series B Preferred Units require it to redeem all of such units and the terms of the*

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Company's Series F Preferred Stock provide the holders of the majority of the outstanding Series F Preferred Stock the right to require the Company to redeem all of such stock:

the Company completes a going private transaction and its common stock is no longer registered under the Securities Exchange Act of 1934, as amended;

the Company completes a consolidation or merger or sale of substantially all of its assets and the surviving entity's debt securities do not possess an investment grade rating;

the Company fails to qualify as a REIT.

The aggregate redemption price of the Series B Preferred Units would be \$80 million and the aggregate redemption price of the Series F Preferred Stock would be \$25 million, plus, in each case, any accumulated distributions.

These redemption rights may discourage or impede transactions that might otherwise be in the interest of holders of common stock. Further, these redemption rights might trigger situations where the Company needs to conserve its cash reserves, in which event such redemption might adversely affect the Company and its common holders.

*The Maryland business combination law may not allow certain transactions between the Company and its affiliates to proceed without compliance with such law.* Under Maryland law, business combinations between a Maryland corporation and an interested stockholder or an affiliate of an interested stockholder are prohibited for five years after the most recent date on which the interested stockholder becomes an interested stockholder. These business combinations include a merger, consolidation, share exchange, or, in circumstances specified in the statute, an asset transfer or issuance or reclassification of equity securities. An interested stockholder is defined as any person (and certain affiliates of such person) who beneficially owns ten percent or more of the voting power of the then-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 ten percent or more of the voting power of the then outstanding voting stock of the corporation.

After the five year period, the law requires a supermajority stockholder vote for such transactions. This means that the transaction must be approved by at least:

80% of the votes entitled to be cast by holders of outstanding voting shares; and

Two-thirds of the votes entitled to be cast by holders of outstanding voting shares other than shares held by the interested stockholder with whom the business combination is to be effected or an affiliate or associate of the interested stockholder.

The statute permits various exemptions from its provisions, including business combinations that are exempted by the board of directors prior to the time that the interested stockholder becomes an interested stockholder. These voting provisions do not apply if the stockholders receive a minimum price, as defined under Maryland law. As permitted by the statute, the Board of Directors of the Company irrevocably has elected to exempt any business combination by the Company, George M. Marcus, who is the chairman of the Company, and TMMC or any entity owned or controlled by Mr. Marcus and TMMC. Consequently, the five-year prohibition and supermajority vote requirement described above will not apply to any business combination between the Company, Mr. Marcus, or TMMC. As a result, the Company may in the future enter into business combinations with Mr. Marcus and TMMC, without compliance with the supermajority vote requirements and other provisions of the Maryland Business Combination Act.

*Anti-takeover provisions contained in the Operating Partnership agreement, charter, bylaws, and certain provisions of Maryland law could delay, defer or prevent a change in control.* While the Company is the sole general partner of the Operating Partnership, and generally has full and exclusive responsibility and discretion in the management and control of the Operating Partnership, certain provisions of the Operating Partnership agreement place limitations on the Company's ability to act with respect to the Operating Partnership. Such limitations could delay, defer or prevent a transaction or a change in control that might involve a premium price for our stock or otherwise be in the best interest of the stockholders or that could otherwise adversely affect the interest of the

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Company's stockholders. The partnership agreement provides that if the limited partners own at least 5% of the outstanding units of partnership interest in the Operating Partnership, the Company cannot, without first obtaining the consent of a majority-in-interest of the limited partners in the Operating Partnership, transfer all or any portion of our general partner interest in the Operating Partnership to another entity. Such limitations on the Company's ability to act may result in our being precluded from taking action that the Board of Directors believes is in the best interests of the Company's stockholders. As of December 31, 2009, the limited partners held or controlled approximately 7.7% of the outstanding units of partnership interest in the Operating Partnership, allowing such actions to be blocked by the limited partners.

The Company's Charter authorizes the issuance of additional shares of common stock or preferred stock and the setting of the preferences, rights and other terms of such preferred stock without the approval of the holders of the common stock. We may establish one or more series of preferred stock that could delay, defer or prevent a transaction or a change in control. Such a transaction might involve a premium price for our stock or otherwise be in the best interests of the holders of common stock. Also, such a class of preferred stock could have dividend, voting or other rights that could adversely affect the interest of holders of common stock.

The Company's Charter contains other provisions that may delay, defer or prevent a transaction or a change in control that might be in the best interest of the Company's stockholders. The Charter contains ownership provisions limiting the transferability and ownership of shares of capital stock, which may have the effect of delaying, deferring or preventing a transaction or a change in control. For example, subject to receiving an exemption from the Board of Directors, potential acquirers may not purchase more than 6% in value of the stock (other than qualified pension trusts which can acquire 9.9%). This may discourage tender offers that may be attractive to the holders of common stock and limit the opportunity for stockholders to receive a premium for their shares of common stock.

The Maryland General Corporations Law restricts the voting rights of shares deemed to be control shares. Under the Maryland General Corporations Law, control shares are those which, when aggregated with any other shares held by the acquirer, entitle the acquirer to exercise voting power within specified ranges. Although the Bylaws exempt acquisitions by any person from the control share provisions of the Maryland General Corporations Law, the Board of Directors may amend or eliminate the provisions of the Bylaws at any time in the future. Moreover, any such amendment or elimination of such provision of the Bylaws may result in the application of the control share provisions of the Maryland General Corporations Law not only to control shares which may be acquired in the future, but also to control shares previously acquired. If the provisions of the Bylaws are amended or eliminated, the control share provisions of the Maryland General Corporations Law could delay, defer or prevent a transaction or change in control that might involve a premium price for the stock or otherwise be in the best interests of the Company's stockholders.

Our Charter and bylaws also contain other provisions that may impede various actions by stockholders without approval of our board of directors, which in turn may delay, defer or prevent a transaction, including a change in control. Those provisions include:

the Company's directors have terms of office of three years and the board of directors is divided into three classes with staggered terms; as a result, less than a majority of directors are up for re-election to the board in any one year;

directors may be removed, without cause, only upon a two-thirds vote of stockholders, and with cause, only upon a majority vote of stockholders;

the Company's board can fix the number of directors and fill vacant directorships upon the vote of a majority of the directors;

stockholders must give advance notice to nominate directors or propose business for consideration at a stockholders meeting; and

for stockholders to call a special meeting, the meeting must be requested by not less than a majority of all the votes entitled to be cast at the meeting.

*The Company's joint ventures and joint ownership of communities and partial interests in corporations and limited partnerships could limit the Company's ability to control such communities and partial interests. Instead*

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