

Cogdell Spencer Inc.  
Form 424B5  
May 28, 2009

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**PROSPECTUS SUPPLEMENT**  
(To Prospectus dated November 15, 2006)

Filed Pursuant to Rule 424(b)(5)  
Registration No. 333-138426

**20,000,000 Shares**

**Common Stock**  
**\$3.50 per share**

We are offering 20,000,000 shares of our common stock to be sold in this offering.

We have granted the underwriters an option to purchase up to 3,000,000 additional shares to cover over-allotments.

Our common stock is listed on the New York Stock Exchange under the symbol **CSA** . On May 26, 2009, the last reported sale price of our common stock on the New York Stock Exchange was \$4.33.

**Investing in our common stock involves a high degree of risk. Before buying any of these shares you should carefully read the discussion of material risks of investing in our common stock in Risk Factors beginning on page S-4 of this prospectus supplement and on page 10 of our Annual Report on Form 10-K for the year ended December 31, 2008.**

Neither the Securities and Exchange Commission 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.

	<b>Per Share</b>	<b>Total</b>
Public offering price	\$ 3.50	\$ 70,000,000
Underwriting discounts and commissions(1)	\$ 0.1575	\$ 2,992,500
Proceeds (before expenses) to us	\$ 3.3425	\$ 67,007,500

(1) The underwriters have reserved for sale by us at the public offering price 1,000,000 of the shares of our common stock offered by this prospectus supplement for David J. Lubar, one of our directors. The underwriters will receive no underwriting discount with respect to the shares of common stock sold by us to Mr. Lubar. Mr. Lubar has entered into a lock-up agreement, as described in the Underwriting section beginning on page S-10 of this

prospectus supplement.

The underwriters expect to deliver the shares to purchasers on or about June 1, 2009, through the book-entry facilities of The Depository Trust Company.

**Citi**

**KeyBanc Capital Markets**

**Raymond James**

**BB&T Capital Markets**

**Morgan Keegan & Company, Inc.**

The date of this prospectus supplement is May 27, 2009.

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**You should rely only on the information contained in or incorporated by reference into this prospectus supplement and the accompanying prospectus. We have not, and the underwriters have not, authorized any other person to provide you with information different from that contained in this prospectus supplement and the accompanying prospectus. We are offering to sell and are seeking offers to buy shares of common stock only in jurisdictions where offers and sales are permitted. The information contained in this prospectus supplement and the accompanying prospectus is accurate only as of the date such information is presented regardless of the time of delivery of this prospectus supplement and the accompanying prospectus or any sale of common stock.**

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**ABOUT THIS PROSPECTUS SUPPLEMENT**

This prospectus supplement is a supplement to the accompanying base prospectus that is also a part of this document. This prospectus supplement and the accompanying base prospectus are part of a registration statement that we filed with the Securities and Exchange Commission ( SEC ) using a shelf registration process. The shelf registration statement was declared effective by the SEC on November 15, 2006. Under the shelf registration statement, we may sell any combination of the securities described in the accompanying base prospectus up to an aggregate amount of \$400 million of which this offering is a part. In this prospectus supplement, we provide you with specific information about the terms of this offering. Both this prospectus supplement and the accompanying base prospectus include important information about us, our common stock and other information you should know before investing in our common stock. This prospectus supplement also adds, updates and changes information contained in the accompanying base prospectus. To the extent that any statement that we make in this prospectus supplement is inconsistent with the statements made in the accompanying base prospectus, the statements made in the accompanying base prospectus are deemed modified or superseded by the statements made in this prospectus supplement. You should read both this prospectus supplement and the accompanying base prospectus as well as the additional information described under the headings Information Incorporated by Reference on page S-15 and Where You Can Find More Information on page S-15 of this prospectus supplement before investing in our common stock.

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**PROSPECTUS SUPPLEMENT SUMMARY**

*This summary highlights selected information contained elsewhere in this prospectus supplement and the accompanying prospectus. This summary may not contain all the information that you should consider before investing in our common stock. You should read the entire prospectus supplement and the accompanying prospectus carefully, including Risk Factors and the consolidated financial statements included, and incorporated by reference, into this prospectus supplement and the accompanying prospectus, before making an investment decision. Except where we state otherwise, the information we present in this prospectus supplement assumes no exercise of the underwriters' option to purchase additional shares. Unless the context indicates otherwise, references in this prospectus supplement to we, our Company, the Company, our and us refer to Cogdell Spencer Inc. and its subsidiaries; and references to Erdman refer to Erdman Company and MEA Holdings, Inc., the parent company of Erdman Company.*

**Overview**

Cogdell Spencer Inc., incorporated in Maryland in July 2005, is a fully-integrated, self-administered, and self-managed real estate investment trust ( REIT ) that invests in specialty office buildings for the medical profession, including medical offices and ambulatory surgery and diagnostic centers. We focus on the ownership, delivery, acquisition, and management of strategically located medical office buildings ( MOB ) and other healthcare related facilities in the United States of America. We have been built around understanding and addressing the specialized real estate needs of the healthcare industry.

Our management team has developed long-term and extensive relationships through developing and maintaining modern, customized MOB's and healthcare related facilities. As of March 31, 2009, approximately 80.9% of the net rentable square feet of our wholly-owned properties were situated on hospital campuses. We believe that our assets occupy a premier franchise location in relation to local hospitals, providing our properties with a distinct competitive advantage over alternative medical office space in an area. We believe that our property locations and relationships with hospitals will allow us to capitalize on the increasing healthcare trend of outpatient services.

As of March 31, 2009, we owned and/or managed 116 MOB's and healthcare related facilities, serving 23 hospital systems in 13 states. As of March 31, 2009, our portfolio consisted of:

62 properties, comprised of approximately 3.3 million net rentable square feet, each of which we wholly-owned or was a consolidated real estate partnership:

three properties, comprised of approximately 0.2 million net rentable square feet, in which we owned a minority interest; and

51 properties, comprised of approximately 2.3 million net rentable square feet, that we managed for third parties.

As of March 31, 2009, our 61 in-service, consolidated wholly-owned and joint venture properties were approximately 91.5% occupied, with a weighted average remaining lease term of approximately 4.4 years.

**Dividend Policy**

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During the first quarter of 2009, we paid a cash dividend and distribution of \$0.225 per share of common stock and operating partnership unit, respectively. In order to maintain financial flexibility in light of the current state of the capital markets, and after taking into account the dividend and distribution payments for the increased number of shares of common stock and operating partnership units expected to be outstanding upon completion of this offering, we expect to reduce our dividend and distribution payments per share of common stock and operating partnership unit for the balance of 2009.

Assuming the completion of this offering, we currently expect to pay dividends and distributions of \$0.10 per share of common stock and operating partnership unit, respectively, for each of the second, third and fourth quarters of 2009. Through the third quarter of 2008, we had funded dividends on our common stock

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and distributions on operating partnership units through a combination of funds from operations and borrowings under our secured revolving credit facility. We have used borrowings available under our secured revolving credit facility to fund dividend and distribution payments when the timing of our cash flows available from operations is insufficient to meet these dividend and distribution requirements. Beginning with our fourth quarter of 2008, our dividends and distributions were funded entirely out of funds from operations and we expect to continue to fund dividends and distributions out of cash flow from operations for the balance of 2009. We currently expect to pay all future 2009 dividends and distributions in cash.

While the statements above concerning the remaining dividends and distributions for 2009 are our current expectations, the actual dividends and distributions payable will be determined by our board of directors based upon circumstances at the time of authorization, and the actual dividend paid may vary from currently expected amounts.

**Corporate Information**

Our principal corporate offices are located at 4401 Barclay Downs Drive, Suite 300, Charlotte, North Carolina 28209-4670, our website address is [www.cogdellspencer.com](http://www.cogdellspencer.com) and our telephone number is (704) 940-2900. The information included in our website is not considered to be a part of this prospectus supplement or the accompanying prospectus. Substantially all of our business is conducted through Cogdell Spencer LP, our operating partnership, and our primary assets are our general partner and limited partner interests in Cogdell Spencer LP.

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**The Offering**

Common stock offered by us	20,000,000 Shares(1)
Common stock to be outstanding prior to completion of the offering	19,488,061 Shares(2)
Common stock to be outstanding after the offering	39,488,061 Shares(1)(2)
Common stock and operating partnership units to be outstanding after the offering	47,070,230 Shares and operating partnership units(1)(3)
Use of proceeds	We will contribute the proceeds from this offering to our operating partnership in exchange for operating partnership units. Our operating partnership intends to (1) contribute \$50.0 million of the net proceeds from this offering to Erdman, which will use such proceeds to reduce borrowings under its senior secured term loan, (2) use a portion of the net proceeds to reduce borrowings under our secured revolving credit facility and (3) use the remaining net proceeds for working capital purposes. See Use of Proceeds.
NYSE symbol	CSA

- (1) Excludes 3,000,000 shares of common stock that may be issued by us upon exercise of the underwriters' option to purchase additional shares.
- (2) Based on the number of shares of common stock outstanding as of May 26, 2009. Excludes 281,858 shares of common stock available for future issuance under our 2005 Equity Incentive Plan and 7,582,169 shares of common stock that may be issued by us upon redemption of 7,582,169 operating partnership units outstanding (including operating partnership units issuable upon a conversion of long-term incentive plan units).
- (3) Excludes 281,858 shares of common stock available for future issuance under our 2005 Equity Incentive Plan.

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**RISK FACTORS**

You should carefully consider the risks described below and the risks described under the caption "Risk Factors" on page 10 of our Annual Report on Form 10-K for the year ended December 31, 2008, before making an investment decision. You should also refer to the other information in this prospectus supplement, the accompanying prospectus, our Annual Report on Form 10-K for the year ended December 31, 2008 and our Quarterly Report on Form 10-Q for the quarter ended March 31, 2009, including our financial statements and the related notes included, and incorporated by reference, into this prospectus supplement and the accompanying prospectus. The risks and uncertainties described below are not the only risks and uncertainties we face. Additional risks and uncertainties not presently known to us or that we currently deem immaterial also may impair our business operations. If any of the following risks actually occur, our business, results of operations and financial condition would suffer. In that event the trading price of our common stock could decline, and you may lose all or part of your investment in our common stock. The risks discussed below also include forward-looking statements and our actual results may differ substantially from those discussed in these forward-looking statements.

***The market price for our common stock after this offering may be lower than the offering price, and our stock price may be volatile.***

The price at which the shares of our common stock may sell in the public market after this offering may be lower than the price at which they are sold by the underwriters. Fluctuations in our stock price may not be correlated in a predictable way to our performance or operating results. Our stock price may fluctuate as a result of factors that are beyond our control or unrelated to our operating results.

***Future sales of our common stock may depress the price of our common stock.***

We cannot predict whether future issuances of our common stock or the availability of shares for resale in the open market will decrease the market price per share of our common stock. Any sales of a substantial number of shares of our common stock in the public market, including upon the redemption of operating partnership units, or the perception that such sales might occur, may cause the market price of our shares to decline. Upon completion of the offering, all common stock sold in the offering will be freely tradable without restriction (other than any restrictions set forth in our charter relating to our qualification as a REIT). The exercise of the underwriters' option to purchase additional shares, the redemption of operating partnership units for common stock, the exercise of any options or the vesting of any restricted stock granted to directors, executive officers and other employees, the issuance of our common stock or operating partnership units in connection with property, portfolio or business acquisitions and other issuances of our common stock could have an adverse effect on the market price of our common stock, and the existence of operating partnership units, options and our common stock reserved for issuance as shares of restricted stock or upon redemption of operating partnership units or exercise of options may adversely affect the terms upon which we may be able to obtain additional capital through the sale of equity securities. In addition, future sales of our common stock may be dilutive to existing stockholders.

***We may incur additional impairment charges on goodwill or other intangible assets.***

We review the value of our goodwill on an annual basis upon the completion of the fourth quarter of our fiscal year and when events or changes in circumstances indicate that the carrying value of goodwill or other intangible assets may exceed the fair value of such assets. As a result of a decline in our stock price, a decline in the cash flow multiples for comparable public engineering and construction companies, and changes in the cash flow projections for Erdman's Design-Build and Development business due to a decline in backlog and delays and cancellations of client

building projects, we performed an interim impairment review of our goodwill related to this business segment as of March 31, 2009. As was previously disclosed, based on this review, during the first quarter of 2009, we recorded a pre-tax, non-cash impairment charge of (\$120.9 million), resulting in an after-tax impairment charge of (\$101.7 million). There is no assurance that continuing adverse economic conditions will not result in additional future impairments of goodwill or other intangible assets which could have a material adverse effect on our financial condition and results of operations.

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**STATEMENTS REGARDING FORWARD-LOOKING INFORMATION**

When used in this discussion and elsewhere in this prospectus supplement, the words believes, anticipates, projects, should, estimates, expects and similar expressions are intended to identify forward-looking statements within the meaning of that term in Section 27A of the Securities Act of 1933, as amended (the Securities Act ), and in Section 21F of the Securities and Exchange Act of 1934, as amended (the Exchange Act ). Actual results may differ materially due to uncertainties including:

- our business strategy;
- our ability to comply with financial covenants in debt instruments;
- our access to capital;
- our ability to obtain future financing arrangements;
- estimates relating to our future distributions;
- our understanding of our competition;
- our ability to renew our ground leases;
- legislative and regulatory changes (including changes to laws governing the taxation of REITs and individuals);
- increases in costs of borrowing as a result of changes in interest rates and other factors;
- our ability to maintain our qualification as a REIT due to economic, market, legal, tax or other considerations;
- changes in the reimbursement available to our tenants by government or private payors;
- our tenants' ability to make rent payments;
- defaults by tenants;
- Erdman's customers' access to financing;
- delays in project starts and cancellations by Erdman's customers;
- the timing of capital expenditures by healthcare systems and providers;
- market trends; and
- projected capital expenditures.

Forward-looking statements are based on estimates as of the date of this prospectus supplement. We disclaim any obligation to publicly release the results of any revisions to these forward-looking statements reflecting new estimates,

events or circumstances after the date of this prospectus supplement.

The risks included above are not exhaustive. Other sections of this prospectus supplement and the accompanying prospectus may include additional factors that could adversely affect our business and financial performance. Moreover, we operate in a very competitive and rapidly changing environment. New risk factors emerge from time to time and it is not possible for management to predict all such risk factors, nor can it assess the impact of all such risk factors on our business or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in any forward-looking statements. Given these risks and uncertainties, investors should not place undue reliance on forward-looking statements as a prediction of actual results.

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**USE OF PROCEEDS**

We expect to receive net proceeds from this offering of approximately \$66.8 million after deducting underwriting discounts and commissions and estimated transaction expenses payable by us of approximately \$3.2 million (or approximately \$76.8 million if the underwriters exercise their option to purchase shares in full). We will contribute the net proceeds from this offering to our operating partnership in exchange for operating partnership units. Our operating partnership intends to (1) contribute \$50.0 million of the net proceeds from this offering to Erdman, which will use such proceeds to reduce borrowings under its senior secured term loan, (2) use a portion of the net proceeds to reduce borrowings under our secured revolving credit facility and (3) use the remaining net proceeds for working capital purposes. As of May 26, 2009, the stated interest rate on the borrowings under Erdman's senior secured term loan was 3.9% and the stated interest rate on the borrowings under our secured revolving credit facility was 1.5%. Erdman's senior secured term loan and our secured revolving credit facility each mature on March 10, 2011, and each is subject to a one-time right to a one-year extension at our option, subject to certain conditions.

**Table of Contents****CAPITALIZATION**

The following table sets forth our capitalization as of March 31, 2009:

on an actual basis; and

on a pro forma adjusted basis to reflect the sale of the 20,000,000 shares of common stock offered by us at a public offering price of \$3.50 per share, less estimated underwriting discounts and commissions and offering expenses payable by us, and the application of these proceeds as set forth in the Use of Proceeds section.

The information set forth below should be read in conjunction with our consolidated financial statements and related notes incorporated by reference in this prospectus supplement.

	<b>March 31, 2009</b>		<b>Pro Forma</b>
	<b>Actual</b>	<b>Adjustments(1)</b>	<b>As</b>
	<b>(In thousands, except per share amounts)</b>		
Cash and cash equivalents	\$ 12,400	\$	\$ 12,400
Restricted cash	12,686		12,686
Total cash	25,086		25,086
<b>Debt:</b>			
Mortgage notes payable	243,030		243,030
Revolving credit facility	112,000	(16,308)(4)	95,692
Term loan	100,000	(50,000)	50,000
Total debt(2)	455,030	(66,308)	388,722
<b>Equity:</b>			
Preferred stock, \$.01 par value per share; 50,000 shares authorized, none issued or outstanding			
Common stock; \$.01 par value per share; 200,000 shares authorized, 19,488 shares issued and outstanding	195	200	395
Additional paid-in capital	292,971	66,558 (3)	359,529
Accumulated other comprehensive loss	(5,806)	1,847 (4)	(3,959)
Accumulated deficit	(152,042)	(2,347)(4)	(154,389)
Total Cogdell Spencer Inc. stockholders equity	135,318	66,258	201,576
Noncontrolling interests:			
Real estate partnerships	4,658		4,658
Operating partnership	35,035	(96)(4)	34,939
Total noncontrolling interests	39,693	(96)	39,597
<b>Total capitalization</b>	<b>\$ 655,127</b>	<b>\$ (146)</b>	<b>\$ 654,981</b>



- (1) Assumes no exercise of the underwriters' option to purchase up to an additional 3,000,000 shares of our common stock.
- (2) We expect that the weighted average interest rate on our pro forma total debt will be approximately 4.69%.
- (3) Represents additional paid-in capital, net of estimated issuance costs.
- (4) Reflects debt extinguishment expenses related to the reduction of borrowings under the Erdman senior secured term loan.

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

The following is a summary of certain material additional U.S. federal income tax considerations with respect to our qualification and taxation as a REIT and the ownership of our common stock. This summary supplements the discussion under the heading "U.S. Federal Income Tax Considerations" in the accompanying prospectus.

**Taxation of the Company**

***Annual Distribution Requirements***

As a REIT, we are required to distribute at least 90% of our net taxable income (excluding net capital gains) to our stockholders. To satisfy this requirement and to prevent the imposition of entity level tax on any retained net income, from time to time, we may declare taxable dividends payable in cash or our common stock at the election of each stockholder, where the aggregate amount of cash to be distributed in such dividend may be limited to 10% or more of the aggregate amount of such dividend. Under IRS Revenue Procedure 2009-15, up to 90% of any taxable dividend for 2009 could be payable in our shares. In such case, for U.S. federal income tax purposes, the amount of the dividend paid in stock would be equal to the amount of cash that could have been received instead of stock. Please see the section entitled "U.S. Federal Income Tax Considerations - Taxation of Our Company - Annual Distribution Requirements" in the accompanying prospectus for a more detailed discussion of the annual distribution requirements.

**Taxation of Stockholders**

As discussed above, we may satisfy our distribution requirements by declaring a taxable stock dividend. If we were to make such a taxable distribution of shares of our stock, stockholders would be required to include the full amount of such distribution into income. As a result, a stockholder may be required to pay tax with respect to such dividends in excess of cash received. Accordingly, stockholders receiving a distribution of our shares may be required to sell shares received in such distribution or may be required to sell other stock or assets owned by them, at a time that may be disadvantageous, in order to satisfy any tax imposed on such distribution. If a stockholder sells the shares it receives as a dividend in order to pay such tax, the sale proceeds may be less than the amount included in income with respect to the dividend, depending on the market price of shares of our stock at the time of sale. Moreover, in the case of a taxable distribution of shares of our stock with respect to which any withholding tax is imposed on a stockholder, we may have to withhold or dispose of part of the shares in such distribution and use such withheld shares or the proceeds of such disposition to satisfy the withholding tax imposed. For more information on the tax consequences of distributions with respect to our common stock, see "U.S. Federal Income Tax Considerations - Taxation of Stockholders" in the accompanying prospectus.

**Recent Tax Law Changes**

The Housing and Economic Recovery Act of 2008 (the "Act") contains a number of provisions applicable to REITs and is generally effective for our taxable year beginning on January 1, 2009. As noted below, however, certain provisions are effective after the date of enactment. Some of the provisions address the treatment of foreign currency gains and income from hedging transactions for purposes of the REIT 75% and 95% income tests, while other provisions modify the REIT asset tests and the method for calculating amounts subject to the prohibited transaction penalty tax. The following is a summary of the Act's changes that are relevant to us. Investors should review the discussion in the accompanying prospectus under the heading "Certain U.S. Federal Income Tax Considerations" for a more detailed summary of the U.S. federal income tax consequences of the purchase, ownership and disposition of our common stock.

***Gross Income Tests***

The Act revised the tax treatment of certain foreign currency gains for purposes of the REIT 75% and 95% gross income tests. In general, if foreign currency gain is recognized after July 30, 2008 with respect to income which otherwise qualifies for purposes of the 75% or 95% gross income test, then such foreign

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currency gain will not constitute gross income for purposes of the 75% or 95% gross income tests, respectively. No assurance can be given that any foreign currency gains recognized by us directly or through pass through subsidiaries will not adversely affect our ability to satisfy the REIT qualification requirements.

The Act provides that qualified hedging income (as described below) derived from transactions entered into by us after July 30, 2008 is excluded from both the REIT 75% and 95% income tests. Historically, qualified hedging income was defined as income derived from transactions that hedge indebtedness incurred or to be incurred by us to acquire or carry real estate assets. Under the Act, qualified hedging income is expanded to include income recognized by us from a transaction primarily entered into to manage the risk of currency fluctuations with respect to any item of income or gain that would be qualifying income under the REIT 75% or 95% income tests. Under both prior law and the Act we are also required to properly identify any such hedges in our books and records.

***Asset Tests***

Under the Act, commencing with our taxable years beginning January 1, 2009, we may hold up to 25% (as opposed to 20% under prior law) of our assets in the form of securities issued by taxable REIT subsidiaries.

***Prohibited Transactions***

We are subject to a 100% penalty tax on income from prohibited transactions (generally, income derived from the sale of property (other than foreclosure property) primarily held for sale to customers in the ordinary course of business).

With respect to prohibited transactions occurring after July 30, 2008, any foreign currency gain (as defined in Section 988(b)(1) of the Code) and any foreign currency loss (as defined in Section 988(b)(2) of the Code) will be taken into account in determining the amount of income subject to the 100% penalty tax.

The Code provides a safe harbor that, if met, allows us to avoid being treated as engaged in a prohibited transaction. In order to meet the safe harbor, among other things, (i) we must have held the property for at least 2 years (and, in the case of property which consists of land or improvements not acquired through foreclosure, we must have held the property for 2 years for the production of rental income) and (ii) during the taxable year the property is disposed of, we must not have made more than 7 property sales or, alternatively, the aggregate adjusted basis or fair market value of all of the properties sold by us during the taxable year must not exceed 10% of the aggregate adjusted basis or 10% of the fair market value, respectively, of all of our assets as of the beginning of the taxable year.

**Table of Contents****UNDERWRITING**

Citigroup Global Markets Inc. and KeyBanc Capital Markets Inc. are acting as joint book-running managers of the offering and as representatives of the underwriters named below. Subject to the terms and conditions stated in the underwriting agreement dated the date of this prospectus supplement, each underwriter named below has severally agreed to purchase, and we have agreed to sell to that underwriter, the number of shares set forth opposite the underwriter's name.

<b>Underwriter</b>	<b>Number of Shares</b>
Citigroup Global Markets Inc.	8,500,000
KeyBanc Capital Markets Inc.	8,500,000
Raymond James & Associates, Inc.	2,000,000
BB&T Capital Markets, a division of Scott & Stringfellow, LLC	500,000
Morgan Keegan & Company, Inc.	500,000
 Total	 20,000,000

The underwriting agreement provides that the obligations of the underwriters to purchase the shares included in this offering are subject to approval of legal matters by counsel and to other conditions. The underwriters are obligated to purchase all the shares (other than those covered by the over-allotment option described below) if they purchase any of the shares.

Shares sold by the underwriters to the public will initially be offered at the public offering price set forth on the cover of this prospectus supplement. Any shares sold by the underwriters to securities dealers may be sold at a discount from the public offering price not to exceed \$0.0945 per share. If all the shares are not sold at the initial offering price, the underwriters may change the offering price and the other selling terms.

If the underwriters sell more shares than the total number set forth in the table above, we have granted to the underwriters an option, exercisable for 30 days from the date of this prospectus supplement, to purchase up to 3,000,000 additional shares at the public offering price less the underwriting discount. The underwriters may exercise the option solely for the purpose of covering over-allotments, if any, in connection with this offering. To the extent the option is exercised, each underwriter must purchase a number of additional shares approximately proportionate to that underwriter's initial purchase commitment. Any shares issued or sold under the option will be issued and sold on the same terms and conditions as the other shares that are the subject of this offering.

The underwriters have reserved for sale by us at the public offering price 1,000,000 of the shares of our common stock offered by this prospectus supplement for David J. Lubar, one of our directors. The underwriters will receive no underwriting discount with respect to the shares of common stock sold by us to Mr. Lubar. Mr. Lubar may purchase these shares directly or through entities he owns and controls. Mr. Lubar has entered into a lock-up agreement, as described below.

We have agreed that, for a period of 60 days from the date of this prospectus supplement, we will not, without the prior written consent of Citi and KeyBanc Capital Markets, offer, sell, contract to sell, pledge or otherwise dispose of

(or enter into any transaction that would have the same effect), directly or indirectly, including the filing with the SEC of a registration statement (except for amendments or supplements to the registration statement on Form S-8 relating to our 2005 Equity Incentive Plan, amendments or supplements to specified registration statements on Form S-3 relating to the sale of common stock by the selling stockholders specified therein and a registration statement on Form S-4 relating to the acquisition of real property, a real property company or a property management company), in respect of, or establish or increase a put equivalent position or liquidate or decrease a call equivalent position within the meaning of Section 16 of the Securities Exchange Act of 1934, as amended, or the Exchange Act, with respect to, any shares of our common stock or any securities convertible into, exercisable or exchangeable for, shares of our common stock, or publicly disclose an intention to effect any such transaction, except that we may:

grant stock options, restricted stock or long-term incentive units to employees, consultants or directors pursuant to the terms of a plan in effect as of the date of this prospectus supplement and issue shares of common stock pursuant to the exercise of such options and the redemption of operating partnership units upon the conversion of such long-term incentive units;

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issue shares of common stock pursuant to the exercise of any employee stock options or the redemption of operating partnership units upon the conversion of any long-term incentive units outstanding as of the date of this prospectus supplement;

issue shares of common stock pursuant to the redemption of operating partnership units outstanding as of the date of this prospectus supplement;

issue shares of common stock pursuant to our dividend reinvestment plan (if any); and

issue shares of common stock or securities convertible into or exchangeable or exercisable for shares of common stock in connection with acquisitions of real property, real property companies or property management companies.

Our executive officers and directors have agreed, subject to certain limited exceptions, that, for a period of 60 days from the date of this prospectus supplement, they will not, without the prior written consent of Citi and KeyBanc Capital Markets, offer, sell, contract to sell, pledge or otherwise dispose of (or enter into any transaction that would have the same effect), directly or indirectly, including the filing with the SEC of a registration, in respect of, 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 with respect to, any shares of our common stock or any securities convertible into, exercisable or exchangeable for, shares of our common stock, enter into any swap, hedge or other arrangement that transfers, in whole or in part, any of the economic consequences of ownership of shares of our common stock, whether settled by delivery of shares of our common stock or other securities, or publicly disclose an intention to effect any such transaction.

Citi and KeyBanc Capital Markets in their sole discretion may release any of the securities subject to these lock-up agreements at any time without notice. Notwithstanding the foregoing, if (i) during the last 17 days of the 60-day restricted period, we issue an earnings release or material news or a material event relating to our company occurs; or (ii) prior to the expiration of the 60-day restricted period, we announce that we will release earnings results during the 16-day period beginning on the last day of the 60-day restricted period, the restrictions described above shall continue to apply until the expiration of the 18-day period beginning on the issuance of the earnings release or the occurrence of the material news or material event.

The shares are listed on the New York Stock Exchange under the symbol **CSA** .

The following table shows the underwriting discounts that we are to pay to the underwriters in connection with this offering. These amounts are shown assuming both no exercise and full exercise of the underwriters' over-allotment option. The underwriters will receive no underwriting discount with respect to the shares of common stock sold by us to one of our directors, as described above.

	<b>Paid by Us</b>	
	<b>No Exercise</b>	<b>Full Exercise</b>
Per share	\$ 0.1575	\$ 0.1575
Total	\$ 2,992,500	\$ 3,465,000

We estimate that our portion of the total expenses of this offering will be approximately \$250,000.

In connection with the offering, the underwriters may purchase and sell shares in the open market. Purchases and sales in the open market may include short sales, purchases to cover short positions, which may include purchases pursuant to the over-allotment option, and stabilizing purchases.

Short sales involve secondary market sales by the underwriters of a greater number of shares than they are required to purchase in the offering.

Covered short sales are sales of shares in an amount up to the number of shares represented by the underwriters over-allotment option.

Naked short sales are sales of shares in an amount in excess of the number of shares represented by the underwriters over-allotment option.

Covering transactions involve purchases of shares either pursuant to the over-allotment option or in the open market after the distribution has been completed in order to cover short positions.



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To close a naked short position, the underwriters must purchase shares in the open market after the distribution has been completed. 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 in the open market after pricing that could adversely affect investors who purchase in the offering.

To close a covered short position, the underwriters must purchase shares in the open market after the distribution has been completed or must exercise the over-allotment option. In determining the source of shares to close the covered short position, the underwriters will consider, among other things, the price of shares available for purchase in the open market as compared to the price at which they may purchase shares through the over-allotment option.

Stabilizing transactions involve bids to purchase shares so long as the stabilizing bids do not exceed a specified maximum.

Purchases to cover short positions and stabilizing purchases, as well as other purchases by the underwriters for their own accounts, may have the effect of preventing or retarding a decline in the market price of the shares. They may also cause the price of the shares to be higher than the price that would otherwise exist in the open market in the absence of these transactions. The underwriters may conduct these transactions on the New York Stock Exchange, in the over-the-counter market or otherwise. If the underwriters commence any of these transactions, they may discontinue them at any time.

The maximum discount to be received by any member of the Financial Industry Regulatory Authority or independent broker/dealer will not be greater than 8% for the sale of any shares of our common stock covered by this prospectus supplement.

Some of the underwriters have performed commercial banking, investment banking and advisory services for us from time to time for which they have received customary fees and reimbursement of expenses. Some of the underwriters may, from time to time, engage in transactions with and perform services for us in the ordinary course of their business for which they may receive customary fees and reimbursement of expenses. In addition, affiliates of some of the underwriters are lenders, and in some cases agents or managers for the lenders, under our secured revolving credit facility and Erdman's senior secured term loan. Affiliates of Citi are a lender under our secured revolving credit facility and Erdman's senior secured term loan. Affiliates of KeyBanc Capital Markets are acting as a syndication agent and lender under our secured revolving credit facility, and as sole lead arranger, sole book manager and a lender under Erdman's senior secured term loan. Affiliates of BB&T Capital Markets are acting as a co-documentation agent and lender under our secured revolving credit facility and Erdman's senior secured term loan.

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

## **Notice to Prospective Investors in the European Economic Area**

In relation to each member state of the European Economic Area that has implemented the Prospectus Directive (each, a relevant 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), an offer of shares described in this prospectus supplement may not be made to the public in that relevant member state prior to the publication of a prospectus in relation to the shares that has been approved by the competent authority in that 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 the relevant

implementation date, an offer of securities may be offered to the public in that relevant member state at any time:

to any legal entity that is authorized or regulated to operate in the financial markets or, if not so authorized or regulated, whose corporate purpose is solely to invest in securities;

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to any legal entity that has two or more of (1) an average of at least 250 employees during the last financial year; (2) a total balance sheet of more than 43,000,000 and (3) an annual net turnover of more than 50,000,000, as shown in its last annual or consolidated accounts;

to fewer than 100 natural or legal persons (other than qualified investors as defined below) subject to obtaining the prior consent of the representatives for any such offer; or

in any other circumstances that do not require the publication of a prospectus pursuant to Article 3 of the Prospectus Directive.

Each purchaser of shares described in this prospectus supplement located within a relevant member state will be deemed to have represented, acknowledged and agreed that it is a qualified investor within the meaning of Article 2(1)(e) of the Prospectus Directive.

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

The sellers of the shares have not authorized and do not authorize the making of any offer of shares through any financial intermediary on their behalf, other than offers made by the underwriters with a view to the final placement of the shares as contemplated in this prospectus supplement. Accordingly, no purchaser of the shares, other than the underwriters, is authorized to make any further offer of the shares on behalf of the sellers or the underwriters.

### **Notice to Prospective Investors in the United Kingdom**

This prospectus supplement and the accompanying prospectus are only being distributed to, and is only directed at, persons in the United Kingdom that are qualified investors within the meaning of Article 2(1)(e) of the Prospectus Directive that are also (i) investment professionals falling within Article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (the Order) or (ii) high net worth entities, and other persons to whom it may lawfully be communicated, falling within Article 49(2)(a) to (d) of the Order (each such person being referred to as a relevant person). This prospectus supplement and its contents are confidential and should not be distributed, published or reproduced (in whole or in part) or disclosed by recipients to any other persons in the United Kingdom. Any person in the United Kingdom that is not a relevant person should not act or rely on this document or any of its contents.

### **Notice to Prospective Investors in France**

Neither this prospectus supplement nor any other offering material relating to the shares described in this prospectus supplement has been submitted to the clearance procedures of the *Autorité des Marchés Financiers* or of the competent authority of another member state of the European Economic Area and notified to the *Autorité des Marchés Financiers*. The shares have not been offered or sold and will not be offered or sold, directly or indirectly, to the public in France. Neither this prospectus supplement nor any other offering material relating to the shares has been or will be:

released, issued, distributed or caused to be released, issued or distributed to the public in France; or

used in connection with any offer for subscription or sale of the shares to the public in France.

Such offers, sales and distributions will be made in France only:

to qualified investors (*investisseurs qualifiés*) and/or to a restricted circle of investors (*cercle restreint d'investisseurs*), in each case investing for their own account, all as defined in, and in accordance with articles L.411-2, D.411-1, D.411-2, D.734-1, D.744-1, D.754-1 and D.764-1 of the French *Code monétaire et financier*;

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to investment services providers authorized to engage in portfolio management on behalf of third parties; or

in a transaction that, in accordance with article L.411-2-II-1<sup>o</sup>-or-2<sup>o</sup>-or 3<sup>o</sup> of the French *Code monétaire et financier* and article 211-2 of the General Regulations (*Règlement Général*) of the *Autorité des Marchés Financiers*, does not constitute a public offer (*appel public à l'épargne*).

The shares may be resold directly or indirectly, only in compliance with articles L.411-1, L.411-2, L.412-1 and L.621-8 through L.621-8-3 of the French *Code monétaire et financier*.

**LEGAL MATTERS**

Certain legal matters, including the validity of common stock offered hereby and our qualification as a real estate investment trust, will be passed upon for us by Clifford Chance US LLP, New York, New York, and certain legal matters will be passed upon for the underwriters by Goodwin Procter LLP, Boston, Massachusetts. Venable LLP, Baltimore, Maryland, will issue an opinion to us regarding certain matters of Maryland law. Clifford Chance US LLP and Goodwin Procter LLP may rely upon the opinion of Venable LLP.

**EXPERTS**

The financial statements, the related financial statement schedule, incorporated in this prospectus supplement by reference from Cogdell Spencer Inc.'s Annual Report on Form 10-K for the year ended December 31, 2008, and the effectiveness of Cogdell Spencer Inc.'s internal control over financial reporting as of December 31, 2008 have been audited by Deloitte & Touche LLP, an independent registered public accounting firm, as stated in their reports, which are incorporated herein by reference. Such financial statements and financial statement schedule have been so incorporated in reliance upon the reports of such firm given upon their authority as experts in accounting and auditing.

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**WHERE YOU CAN FIND MORE INFORMATION**

We are subject to the informational requirements of the Exchange Act and, in accordance therewith, we file annual, quarterly and current reports, proxy statements and other information with the SEC. You may read and copy any reports, statements or other information we file at the SEC's Public Reference Room located at 100 F Street, NE, Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information on the Public Reference Room. Our SEC filings are also available to the public from commercial document retrieval services and at the website maintained by the SEC at <http://www.sec.gov>. We maintain a website at [www.cogdellspencer.com](http://www.cogdellspencer.com). The information on our website is not, and you must not consider the information to be, a part of this prospectus supplement. Our securities are listed on the NYSE and all such material filed by us with the NYSE also can be inspected at the offices of the NYSE, 20 Broad Street, New York, N.Y. 10005.

We have filed with the SEC a registration statement on Form S-3, of which this prospectus supplement is a part, under the Securities Act with respect to the securities. This prospectus supplement does not contain all of the information set forth in the registration statement, certain parts of which are omitted in accordance with the rules and regulations of the SEC. For further information concerning us and the securities, reference is made to the registration statement. Statements contained in this prospectus supplement as to the contents of any contract or other documents are not necessarily complete, and in each instance, reference is made to the copy of such contract or documents filed as an exhibit to the registration statement, each such statement being qualified in all respects by such reference.

**INFORMATION INCORPORATED BY REFERENCE**

The SEC allows us to incorporate by reference information into this prospectus supplement, which means that we can disclose important information to you by referring you to another document filed separately with the SEC. The information incorporated by reference herein is deemed to be part of this prospectus supplement, except for any information superseded by information in this prospectus supplement. This prospectus supplement incorporates by reference the documents set forth below that we have previously filed with the SEC. These documents contain important information about us, our business and our finances.

<b>Document</b>	<b>Period</b>
Annual Report on Form 10-K (File No. 001-32649)	Year ended December 31, 2008
Quarterly Report on Form 10-Q (File No. 001-32649)	Quarter ended March 31, 2009
Definitive Proxy Statement on Schedule 14A (File No. 001-32649)	March 25, 2009

All documents that we file pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act after the date of this prospectus supplement but before the end of any offering of securities made under this prospectus supplement will also be considered to be incorporated by reference.

If you request, either orally or in writing, we will provide you with a copy of any or all documents that are incorporated by reference. Such documents will be provided to you free of charge, but will not contain any exhibits, unless those exhibits are incorporated by reference into the document. Requests should be addressed to Cogdell Spencer Inc., 4401 Barclay Downs Drive, Suite 300, Charlotte, North Carolina 28209-4670, Telephone: (704) 940-2900.



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**PROSPECTUS**

**\$400,000,000  
Cogdell Spencer Inc.  
Common Stock,  
Preferred Stock,  
Depository Shares, Warrants and Rights**

We 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:

shares of common stock and/or preferred stock, par value \$0.01 per share;

depository shares representing entitlement to all rights and preferences of fractions of shares of preferred stock of a specified series and represented by depository receipts;

warrants to purchase shares of common stock, preferred stock or depository shares; or

rights to purchase common stock.

We refer to the common stock, preferred stock, depository shares, warrants and rights, collectively, as the securities in this prospectus. The securities will have an aggregate initial offering price of up to \$400,000,000, or its equivalent in a foreign currency based on the exchange rate at the time of sale, in amounts, at initial prices and on terms determined at the time of the offering.

The specific terms of the securities will be set forth in the applicable prospectus supplement and will include, as applicable: (i) in the case of our common stock, any public offering price; (ii) in the case of our preferred stock, the specific designation and any dividend, liquidation, redemption, conversion, voting and other rights, and any public offering price; (iii) in the case of depository shares, the fractional share of preferred stock represented by each such depository share; (iv) in the case of warrants, the duration, offering price, exercise price and detachability; and (v) in the case of rights, the number being issued, the exercise price and the expiration date. In addition, we are organized and conduct our operations so as to qualify as a real estate investment trust, or REIT, for U.S. federal income tax purposes, and such specific terms may include limitations on actual or constructive ownership and restrictions on transfer of the securities, in each case as may be appropriate to preserve our qualification as a REIT.

The applicable prospectus supplement will also contain information, where applicable, about certain U.S. federal income tax consequences relating to, and any listing on a securities exchange of, the securities covered by such prospectus supplement. It is important that you read both this prospectus and the applicable prospectus supplement before you invest.

We may offer the securities directly, through agents, or to or through underwriters. The prospectus supplement will describe the terms of the plan of distribution and set forth the names of any underwriters involved in the sale of the securities. See Plan of Distribution beginning on page 52 for more information on this topic. No securities may be sold without delivery of a prospectus supplement describing the method and terms of the offering of those securities.



Our common stock is listed on the New York Stock Exchange, or the NYSE, under the symbol CSA. On November 1, 2006, the closing sale price of our common stock on the NYSE was \$21.50 per share.

**An investment in these securities entails certain material risks and uncertainties that should be considered. See Risk Factors beginning on page 1 of our Form 10-K for the year ended December 31, 2005.**

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

Prospectus dated November 15, 2006

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**You should rely only on the information provided or incorporated by reference in this prospectus or any applicable prospectus supplement. We have not authorized anyone to provide you with different or additional information. We are not making an offer to sell these securities in any jurisdiction where the offer or sale of these securities is not permitted. You should not assume that the information appearing in this prospectus supplement, the accompanying prospectus or the documents incorporated by reference herein or therein is accurate as of any date other than their respective dates. Our business, financial condition, results of operations and prospects may have changed since those dates.**

**You should read carefully the entire prospectus, as well as the documents incorporated by reference in the prospectus, before making an investment decision.**

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**COGDELL SPENCER INC.**

We are a fully-integrated, self-administered and self-managed REIT that invests in specialty office buildings for the medical profession, including medical offices, ambulatory surgery and diagnostic centers. We focus on the ownership, development, redevelopment, acquisition and management of strategically located medical office buildings and other healthcare related facilities primarily in the southeastern United States. We have built our company around understanding and addressing the specialized real estate needs of the healthcare industry. We believe the southeastern United States is a large and growing market with favorable macro healthcare trends and favorable demographic trends that prompt expanding healthcare needs.

Our principal executive offices are located at 4401 Barclay Downs Drive, Suite 300, Charlotte, North Carolina 28209-4670. Our telephone number at that location is (704) 940-2900. Our website is located at [www.cogdellspencer.com](http://www.cogdellspencer.com). The information found on, or otherwise accessible through, our website is not incorporated into, and does not form a part of, this prospectus or any other report or document we file with or furnish to the Securities and Exchange Commission, or the SEC.

**RISK FACTORS**

Investment in our securities involves a high degree of risk. You should carefully consider the risks described in the section **Risk Factors** contained in our Annual Report on Form 10-K for the year ended December 31, 2005, which has been filed with the Securities and Exchange Commission, or the SEC, as well as other information in this prospectus and any accompanying prospectus supplement before purchasing our shares of common stock. The section **Risk Factors** contained in our Annual Report on Form 10-K for the year ended December 31, 2005, is incorporated herein by reference. Each of the risks described could materially adversely affect our business, financial condition, results of operations, or ability to make distributions to our stockholders. In such case, you could lose all or a portion of your original investment.

**STATEMENTS REGARDING FORWARD-LOOKING INFORMATION**

This prospectus contains various forward-looking statements. You can identify forward-looking statements by the use of forward-looking terminology such as *believes, expects, may, will, would, could, should, seeks, anticipates, intends, plans, projects, estimates or anticipates* or the negative of these words and phrases or similar words or phrases. You can also identify forward-looking statements by discussions of strategy, plans or intentions. Statements regarding the following subjects may be impacted by a number of risks and uncertainties:

our business strategy;

our ability to obtain future financing arrangements;

estimates relating to our future distributions;

our understanding of our competition;

our ability to renew our ground leases;

changes in the reimbursement available to our tenants by government or private payors;

our tenants' ability to make rent payments;

defaults by tenants;

market trends;

projected capital expenditures; and

use of the proceeds of the offering.

The forward-looking statements contained in this prospectus reflect our beliefs, assumptions and expectations of our future performance, taking into account all information currently available to us. These beliefs,

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assumptions and expectations are subject to risks and uncertainties and can change as a result of many possible events or factors, not all of which are known to us. If a change occurs, our business, financial condition, liquidity and results of operations may vary materially from those expressed in our forward-looking statements. You should carefully consider these risks before you make an investment decision with respect to our common stock.

For more information regarding risks that may cause our actual results to differ materially from any forward-looking statements, see Risk Factors of our Form 10-K for the year ended December 31, 2005. We do not intend to publicly update or revise any forward-looking statements to reflect changes in underlying assumptions or factors, new information, future events or other changes.

**USE OF PROCEEDS**

Unless otherwise specified in the applicable prospectus supplement, we intend to use the net proceeds from the sale of the securities for general corporate purposes, which may include developing and buying additional properties, expanding and improving certain of our existing properties and repaying debt. Further details relating to the use of the net proceeds will be set forth in the applicable prospectus supplement.

**EARNINGS RATIOS**

The following table sets forth our ratios of earnings to combined fixed charges and preferred stock dividends for the periods indicated.

	Company			Predecessor			
	Six Months Ended June 30, 2006	November 1, 2005- December 31, 2005	January 1, 2005- October 31, 2005	2004	2003	2002	2001
Ratio of earnings to combined fixed charges and preferred stock dividends	*	*	1.5x	1.9x	1.3x	*	1.0x

\* Earnings (as defined) were insufficient to cover fixed charges by \$5,729,000 and \$11,720,000 for the six month period ended June 30, 2006 and the period from November 1, 2005 through December 31, 2005, respectively, in the case of the Company, and by \$49,000 for the year ended December 31, 2002 with respect to the Predecessor.

We computed the ratio of earnings to combined fixed charges and preferred stock dividends by dividing earnings by fixed charges. We have not issued any preferred stock as of the date of this prospectus, and therefore there were no preferred dividends included in our calculation of ratios of earnings to combined fixed charges and preferred stock dividends for these periods. Earnings have been calculated by adding fixed charges to income before provision for income taxes. Fixed charges consist of interest expense, amortization of deferred financing costs and the portion of rental expense deemed to be the equivalent of interest.

**DESCRIPTION OF COMMON STOCK**

The following summary of the material terms of the stock of our company does not purport to be complete and is subject to and qualified in its entirety by reference to Maryland law and our charter and bylaws. See [Where You Can Find More Information](#).

**General**

Cogdell Spencer Inc. was formed on July 5, 2005. Our charter provides that we may issue up to 200,000,000 shares of common stock, \$0.01 par value per share. Our charter authorizes our board of directors to amend our charter to increase the aggregate number of authorized shares or the number of authorized shares of any class or series without stockholder approval. As of July 31, 2006, 7,995,574 shares of our common stock were issued and outstanding and no shares of preferred stock were issued and outstanding. Under Maryland law, stockholders generally are not liable for a corporation's debts or obligations.

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### **Common Stock**

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

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

Holders of shares of our common stock have no preference, conversion, exchange, sinking fund, redemption or appraisal rights and have no preemptive rights to subscribe for any securities of our company. Subject to the provisions of the charter regarding the restrictions on transfer of stock, shares of our common stock will have equal dividend, liquidation and other rights.

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

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

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

### **Restrictions on Ownership and Transfer**

In order for us to qualify as a REIT under the Internal Revenue Code of 1986, as amended, or Code, our stock must be beneficially owned by 100 or more persons during at least 335 days of a taxable year of 12 months (other than the first year for which an election to be a REIT has been made) or during a proportionate part of a shorter taxable year. Also, not more than 50% of the value of the outstanding shares of stock may be owned, directly or indirectly, by five or

fewer individuals (as defined in the Code to include certain entities such as qualified pension plans) during the last half of a taxable year (other than the first year for which an election to be a REIT has been made). To qualify as a REIT, we must satisfy other requirements as well. See U.S. Federal Income Tax Considerations Taxation of the Company Requirements for Qualification General.



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Our charter contains restrictions on the ownership and transfer of our common stock and outstanding capital stock which are intended to assist us in complying with these requirements and continuing to qualify as a REIT. The relevant sections of our charter provide that, subject to the exceptions described below, no person or entity may beneficially own, or be deemed to own by virtue of the applicable constructive ownership provisions of the Code, more than 7.75% (by value or by number of shares, whichever is more restrictive) of our outstanding common stock (the common stock ownership limit) or 7.75% (by value or by number of shares, whichever is more restrictive) of our outstanding capital stock (the aggregate stock ownership limit). We refer to this restriction as the ownership limit. In addition, different ownership limits will apply to Mr. Cogdell, certain of his affiliates, family members and estates and trusts formed for the benefit of the foregoing and Mr. Spencer, certain of his affiliates, family members and estates and trusts formed for the benefit of the foregoing. These ownership limits, which our board has determined do not jeopardize our REIT qualification, allow Mr. Cogdell, certain of his affiliates, family members and estates and trusts formed for the benefit of the foregoing, as an excepted holder, to hold up to 18.0% (by value or by number of shares, whichever is more restrictive) of our common stock or up to 18.0% (by value or by number of shares, whichever is more restrictive) of our outstanding capital stock. A person or entity that becomes subject to the ownership limit by virtue of a violative transfer that results in a transfer to a trust, as set forth below, is referred to as a purported beneficial transferee if, had the violative transfer been effective, the person or entity would have been a record owner and beneficial owner or solely a beneficial owner of our common stock, or is referred to as a purported record transferee if, had the violative transfer been effective, the person or entity would have been solely a record owner of our common stock.

The constructive ownership rules under the Code are complex and may cause stock owned actually or constructively by a group of related individuals and/or entities to be owned constructively by one individual or entity. As a result, the acquisition of less than 7.75% (by value or by number of shares, whichever is more restrictive) of our outstanding common stock or 7.75% (by value or by number of shares, whichever is more restrictive) of our outstanding capital stock (or the acquisition by an individual or entity of an interest in an entity that owns, actually or constructively, our capital stock) could, nevertheless, cause that individual or entity, or another individual or entity, to own constructively in excess of 7.75% (by value or by number of shares, whichever is more restrictive) of our outstanding common stock or 7.75% (by value or by number of shares, whichever is more restrictive) of our outstanding capital stock and thereby subject the common stock or capital stock to the applicable ownership limit.

Our board of directors may, in its sole discretion, waive the above-referenced 7.75% ownership limits with respect to a particular stockholder if:

our board of directors obtains such representations and undertakings from such stockholder as are reasonably necessary to ascertain that no individual's beneficial or constructive ownership of our stock will result in our being closely held under Section 856(h) of the Code or otherwise failing to qualify as a REIT;

such stockholder does not, and represents that it will not, own, actually or constructively, an interest in a tenant of ours (or a tenant of any entity owned in whole or in part by us) that would cause us to own, actually or constructively, more than a 9.9% interest (as set forth in Section 856(d)(2)(B) of the Code) in such tenant (or the board of directors determines that revenue derived from such tenant will not affect our ability to qualify as a REIT) and our board of directors obtains such representations and undertakings from such stockholder as are reasonably necessary to ascertain this fact; and

such stockholder agrees that any violation or attempted violation of such representations or undertakings will result in shares of stock being automatically transferred to a charitable trust.

As a condition of its waiver, our board of directors may require the applicant to submit such information as the board of directors may reasonably need to make the determination regarding our REIT qualification and an opinion of

counsel or IRS ruling satisfactory to our board of directors with respect to our REIT qualification.

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In connection with the waiver of an ownership limit or at any other time, our board of directors may from time to time increase or decrease the ownership limit for all other persons and entities; provided, however, that any decrease may be made only prospectively as to subsequent holders (other than a decrease as a result of a retroactive change in existing law, in which case the decrease shall be effective immediately); and the ownership limit may not be increased if, after giving effect to such increase, five persons (other than a designated investment entity) could beneficially own or constructively own in the aggregate, more than 49.9% of the shares then outstanding. A reduced ownership limit will not apply to any person or entity whose percentage ownership in our common stock or capital stock, as applicable, is in excess of such decreased ownership limit until such time as such person or entity's percentage of our common stock or capital stock, as applicable, equals or falls below the decreased ownership limit, but any further acquisition of our common stock or capital stock, as applicable, in excess of such percentage ownership of our common stock or capital stock will be in violation of the ownership limit.

Our charter provisions further prohibit:

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

any person from constructively owning shares of our stock that would cause any income of the company to be considered related party rent under Section 856(d)(2)(B) of the Code; and

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

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

If any transfer of shares of our stock occurs which, if effective, would result in any person beneficially or constructively owning shares of our stock in excess or in violation of the above transfer or ownership limitations, then that number of shares of our stock the beneficial or constructive ownership of which otherwise would cause such person to violate such limitations (rounded to the nearest whole share) shall be automatically transferred to a trust for the exclusive benefit of one or more charitable beneficiaries, and the purported beneficial transferee shall not acquire any rights in such shares. The automatic transfer will be effective as of the close of business on the business day prior to the date of the violative transfer or other event that results in a transfer to the trust. Any dividend or other distribution paid to the purported record transferee, prior to our discovery that the shares had been automatically transferred to a trust as described above, must be repaid to the trustee upon demand for distribution to the beneficiary of the trust. If the transfer to the trust as described above is not automatically effective, for any reason, to prevent violation of the applicable ownership limit or as otherwise permitted by our board of directors, then our charter provides that the transfer of the excess shares will be void.

Shares of our common stock transferred to the trustee are deemed offered for sale to us, or our designee, at a price per share equal to the lesser of (1) the price paid by the purported record transferee for the shares (or, if the event which resulted in the transfer to the trust did not involve a purchase of such shares of our common stock at market price, the last reported sales price reported on the NYSE on the trading day immediately preceding the day of the event which resulted in the transfer of such shares of our common stock to the trust) and (2) the market price on the date we, or our designee, accepts such offer. We have the right to accept such offer until the trustee has sold the shares of our

common stock held in the trust pursuant to the clauses discussed below. Upon a sale to us, the interest of the charitable beneficiary in the shares sold terminates and the trustee must distribute the net proceeds of the sale to the purported record transferee and

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any dividends or other distributions held by the trustee with respect to such common stock will be paid to the charitable beneficiary.

If we do not buy the shares, the trustee must, within 20 days of receiving notice from us of the transfer of shares to the trust, sell the shares to a person or entity designated by the trustee who could own the shares without violating the ownership limits. After that, the trustee must distribute to the purported record transferee an amount equal to the lesser of (1) the price paid by the purported record transferee for the shares (or, if the event which resulted in the transfer to the trust did not involve a purchase of such shares at market price, the last reported sales price reported on the NYSE on the trading day immediately preceding the relevant date) and (2) the sales proceeds (net of commissions and other expenses of sale) received by the trust for the shares. The purported beneficial transferee or purported record transferee has no rights in the shares held by the trustee.

The trustee shall be designated by us and shall be unaffiliated with us and with any purported record transferee or purported beneficial transferee. Prior to the sale of any excess shares by the trust, the trustee will receive, in trust for the beneficiary, all dividends and other distributions paid by us with respect to the excess shares, and may also exercise all voting rights with respect to the excess shares.

Subject to Maryland law, effective as of the date that the shares have been transferred to the trust, the trustee shall have the authority, at the trustee's sole discretion:

to rescind as void any vote cast by a purported record transferee prior to our discovery that the shares have been transferred to the trust; and

to recast the vote in accordance with the desires of the trustee acting for the benefit of the beneficiary of the trust.

However, if we have already taken irreversible corporate action, then the trustee may not rescind and recast the vote.

Any beneficial owner or constructive owner of shares of our common stock and any person or entity (including the stockholder of record) who is holding shares of our common stock for a beneficial owner must, on request, provide us with a completed questionnaire containing the information regarding their ownership of such shares, as set forth in the applicable Treasury Regulations. In addition, any person or entity that is a beneficial owner or constructive owner of shares of our common stock and any person or entity (including the stockholder of record) who is holding shares of our common stock for a beneficial owner or constructive owner shall, on request, be required to disclose to us in writing such information as we may request in order to determine the effect, if any, of such stockholder's actual and constructive ownership of shares of our common stock on our qualification as a REIT and to ensure compliance with the ownership limit, or as otherwise permitted by our board of directors.

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

These ownership limits could delay, defer or prevent a transaction or a change of control of our company that might involve a premium price for our common stock or otherwise be in the best interests of our stockholders.

**Transfer Agent and Registrar**

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

**DESCRIPTION OF PREFERRED STOCK**

**General**

Our charter provides that we may issue up to 50,000,000 shares of preferred stock, \$0.01 par value per share. On June 30, 2006, we had no outstanding series of preferred stock.

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The following description of the preferred stock sets forth general terms and provisions of the preferred stock to which any prospectus supplement may relate. The statements below describing the preferred stock are in all respects subject to and qualified in their entirety by reference to the applicable provisions of our charter and bylaws and any applicable articles supplementary to the charter designating terms of a series of preferred stock. The issuance of preferred stock could adversely affect the voting power, dividend rights and other rights of holders of common stock. Although our board of directors does not have this intention at this present time, it could establish another series of preferred stock, that could, depending on the terms of the series, delay, defer or prevent a transaction or a change in control of our company that might involve a premium price for the common stock or otherwise be in the best interest of the holders thereof. Management believes that the availability of preferred stock will provide us with increased flexibility in structuring possible future financing and acquisitions and in meeting other needs that might arise.

## **Terms**

Subject to the limitations prescribed by our charter, our board of directors is authorized to classify any unissued shares of preferred stock and to reclassify any previously classified but unissued shares of any series of preferred stock previously authorized by our board of directors. Prior to issuance of shares of each class or series of preferred stock, our board of directors is required by the MGCL and our charter to fix the preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications and terms or conditions of redemption for each class or series.

Reference is made to the prospectus supplement relating to the series of preferred stock offered thereby for the specific terms thereof, including:

The title and par value of the preferred stock;

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

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

The date from which dividends on the preferred stock shall accumulate, if applicable;

The procedures for any auction and remarketing, if any, for the preferred stock;

The provision for a sinking fund, if any, for the preferred stock;

The provision for redemption, if applicable, of the preferred stock;

Any listing of the preferred stock on any securities exchange;

The terms and conditions, if applicable, upon which the preferred stock may or will be convertible into our common stock, including the conversion price or manner of calculation thereof;

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

Any limitations on direct or beneficial ownership and restrictions on transfer;

A discussion of U.S. federal income tax considerations applicable to the preferred stock; and

Any other specific terms, preferences, rights, limitations or restrictions of the preferred stock.

**Rank**

Unless otherwise specified in the applicable prospectus supplement, the preferred stock will, with respect to dividend rights and rights upon liquidation, dissolution or winding up of our company, rank:

(a) senior to all classes or series of common stock and to all equity securities issued by us the terms of which provide that the equity securities shall rank junior to the preferred stock;



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(b) on a parity with all equity securities issued by us other than those referred to in clauses (a) and (c); and

(c) junior to all equity securities issued by us which the terms of the preferred stock provide will rank senior to it. The term equity securities does not include convertible debt securities.

**Dividends**

Unless otherwise specified in the applicable prospectus supplement, the preferred stock will have the rights with respect to payment of dividends set forth below.

Holders of the preferred stock of each series will be entitled to receive, when, as and if authorized by our board of directors and declared by us, out of our assets legally available for payment, cash dividends in the amounts and on the dates as will be set forth in, or pursuant to, the applicable prospectus supplement. Each dividend shall be payable to holders of record as they appear on our share transfer books on the record dates as shall be fixed by our board of directors.

Dividends on any series of preferred stock may be cumulative or non-cumulative, as provided in the applicable prospectus supplement. Dividends, if cumulative, will be cumulative from and after the date set forth in the applicable prospectus supplement. If the board of directors fails to declare a dividend payable on a dividend payment date on any series of preferred stock for which dividends are non-cumulative, then the holders of this series of preferred stock will have no right to receive a dividend in respect of the related dividend period and we will have no obligation to pay the dividend accrued for the period, whether or not dividends on this series of preferred stock are declared payable on any future dividend payment date.

If preferred stock of any series is outstanding, no full dividends will be declared or paid or set apart for payment on any of our stock of any other series ranking, as to dividends, on a parity with or junior to the preferred stock of this series for any period unless:

if this series of preferred stock has a cumulative dividend, full cumulative dividends have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof set apart for the payment for all past dividend periods; or

if this series of preferred stock does not have a cumulative dividend, full dividends for the then current dividend period have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof set apart for the payment on the preferred stock of this series.

When dividends are not paid in full or a sum sufficient for the full payment is not so set apart upon preferred stock of any series and the shares of any other series of preferred stock ranking on a parity as to dividends with the preferred stock of this series, all dividends declared upon the preferred stock of this series and any other series of preferred stock ranking on a parity as to dividends with the preferred stock shall be declared pro rata so that the amount of dividends declared per share of preferred stock of this series and the other series of preferred stock shall in all cases bear to each other the same ratio that accrued dividends per share on the preferred stock of this series and the other series of preferred stock, which shall not include any accumulation in respect of unpaid dividends for prior dividend periods if the preferred stock does not have a cumulative dividend, bear to each other. No interest, or sum of money in lieu of interest, shall be payable in respect of any dividend payment or payments on preferred stock of this series which may be in arrears.

Except as provided in the immediately preceding paragraph, unless (a) if this series of preferred stock has a cumulative dividend, full cumulative dividends on the preferred stock of this series have been or contemporaneously

are declared and paid or declared and a sum sufficient for the payment thereof set apart for payment for all past dividend periods, or (b) if this series of preferred stock does not have a cumulative dividend, full dividends on the preferred stock of this series have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof set apart for payment for the then current dividend period, no dividends, other than in shares of common stock or other stock ranking junior to the preferred stock of this series as to dividends and upon liquidation, shall be declared or paid or set aside for payment or other distribution shall be declared or made upon the common stock, or any of our other stock

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ranking junior to or on a parity with the preferred stock of this series as to dividends or upon liquidation, nor shall any shares of common stock, or any other of our capital stock ranking junior to or on a parity with the preferred stock of this series as to dividends or upon liquidation, be redeemed, purchased or otherwise acquired for any consideration or any moneys be paid to or made available for a sinking fund for the redemption of any of the shares by us except:

by conversion into or exchange for other shares of our stock ranking junior to the preferred stock of this series as to dividends and upon liquidation; or

redemptions for the purpose of preserving our qualification as a REIT.

## **Redemption**

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

The prospectus supplement relating to a series of preferred stock that is subject to mandatory redemption will specify the number of shares of the preferred stock that shall be redeemed by us in each year commencing after a date to be specified, at a redemption price per share to be specified, together with an amount equal to all accumulated and unpaid dividends thereon which shall not, if the preferred stock does not have a cumulative dividend, include any accumulation in respect of unpaid dividends for prior dividend periods, to the date of redemption. The redemption price may be payable in cash or other property, as specified in the applicable prospectus supplement.

Notwithstanding the foregoing, unless (a) if this series of preferred stock has a cumulative dividend, full cumulative dividends on all shares of any series of preferred stock shall have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof set apart for payment for all past dividend periods, or (b) if this series of preferred stock does not have a cumulative dividend, full dividends on the preferred stock of any series have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof set apart for payment for the then current dividend period, no shares of any series of preferred stock shall be redeemed unless all outstanding preferred stock of this series is simultaneously redeemed; provided, however, that the foregoing shall not prevent the purchase or acquisition of preferred stock of this series to preserve our REIT qualification or pursuant to a purchase or exchange offer made on the same terms to holders of all outstanding preferred stock of this series. In addition, unless (a) if this series of preferred stock has a cumulative dividend, full cumulative dividends on all outstanding shares of any series of preferred stock have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof set apart for payment for all past dividend periods, or (b) if this series of preferred stock does not have a cumulative dividend, full dividends on the preferred stock of any series have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof set apart for payment for the then current dividend period, we shall not purchase or otherwise acquire, directly or indirectly, any shares of preferred stock of this series except by conversion into or exchange for our capital stock ranking junior to the preferred stock of this series as to dividends and upon liquidation; provided, however, that the foregoing shall not prevent the purchase or acquisition of preferred stock of this series to preserve our REIT qualification or pursuant to a purchase or exchange offer made on the same terms to holders of all outstanding preferred stock of this series.

If fewer than all of the outstanding shares of preferred stock of any series are to be redeemed, the number of shares to be redeemed will be determined by us and the shares may be redeemed pro rata from the holders of record of the shares in proportion to the number of the shares held or for which redemption is requested by the holder, with adjustments to avoid redemption of fractional shares, or by lot in a manner determined by us.

Notice of redemption will be mailed at least 30 days but not more than 60 days before the redemption date to each holder of record of preferred stock of any series to be redeemed at the address shown on our share transfer books. Each notice shall state:

the redemption date;

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the number of shares and series of the preferred stock to be redeemed;

the redemption price;

the place or places where certificates for the preferred stock are to be surrendered for payment of the redemption price;

that dividends on the shares to be redeemed will cease to accumulate on the redemption date; and

the date upon which the holder's conversion rights, if any, as to the shares shall terminate.

If fewer than all the shares of preferred stock of any series are to be redeemed, the notice mailed to each holder thereof shall also specify the number of shares of preferred stock to be redeemed from each holder. If notice of redemption of any preferred stock has been given and if the funds necessary for the redemption have been set aside by us in trust for the benefit of the holders of any preferred stock so called for redemption, then from and after the redemption date dividends will cease to accumulate on the preferred stock, and all rights of the holders of the preferred stock will terminate, except the right to receive the redemption price.

## **Liquidation Preference**

Upon any voluntary or involuntary liquidation, dissolution or winding up of our affairs, then, before any distribution or payment shall be made to the holders of any common stock or any other class or series of our stock ranking junior to the preferred stock of this series in the distribution of assets upon any liquidation, dissolution or winding up of our company, the holders of the preferred stock shall be entitled to receive out of our assets of our company legally available for distribution to stockholders liquidating distributions in the amount of the liquidation preference per share that is set forth in the applicable prospectus supplement, plus an amount equal to all dividends accumulated and unpaid thereon, which shall not include any accumulation in respect of unpaid dividends for prior dividend periods if the preferred stock does not have a cumulative dividend. After payment of the full amount of the liquidating distributions to which they are entitled, the holders of preferred stock will have no rights or claim to any of our remaining assets. In the event that, upon any voluntary or involuntary liquidation, dissolution or winding up, our available assets are insufficient to pay the amount of the liquidating distributions on all outstanding preferred stock of this series and the corresponding amounts payable on all shares of other classes or series of capital stock of our company ranking on a parity with the preferred stock in the distribution of assets, then the holders of the preferred stock and all other classes or series of capital stock shall share ratably in any distribution of assets in proportion to the full liquidating distributions to which they would otherwise be respectively entitled.

Our consolidation or merger with or into any other entity, or the merger of another entity with or into our company, or a statutory share exchange by us, or the sale, lease or conveyance of all or substantially all of our property or business, shall not be deemed to constitute a liquidation, dissolution or winding up of our company.

In determining whether a distribution (other than upon voluntary or involuntary liquidation), by dividend, redemption or other acquisition of shares of our stock or otherwise, is permitted under Maryland law, amounts that would be needed, if we were to be dissolved at the time of distribution, to satisfy the preferential rights upon dissolution of holders of shares of the preferred stock will not be added to our total liabilities.

## **Voting Rights**

Holders of the preferred stock will not have any voting rights, except as set forth below or as indicated in the applicable prospectus supplement.

Whenever dividends on any series of preferred stock shall be in arrears for six or more quarterly periods, the holders of the preferred stock, voting separately as a class with all other series of preferred stock upon which like voting rights have been conferred and are exercisable, will be entitled to vote for the election of two additional directors of our company at a special meeting called by the holders of record of at least ten percent of any series of preferred stock so in arrears, unless the request is received less than 90 days before the date fixed for the next annual or special meeting of the stockholders, or at the next annual meeting of

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stockholders, and at each subsequent annual meeting until (a) if this series of preferred stock has a cumulative dividend, all dividends accumulated on these shares of preferred stock for the past dividend periods shall have been fully paid or declared and a sum sufficient for the payment thereof set aside for payment or (b) if this series of preferred stock does not have a cumulative dividend, four quarterly dividends shall have been fully paid or declared and a sum sufficient for the payment thereof set aside for payment. In these cases, the entire board of directors will be increased by two directors.

Unless provided otherwise for any series of preferred stock, so long as any shares of the preferred stock remain outstanding, we will not, without the affirmative vote or consent of the holders of at least two-thirds of the shares of this series of preferred stock outstanding at the time, given in person or by proxy, either in writing or at a meeting with this series voting separately as a class:

(a) authorize or create, or increase the number of authorized or issued shares of, any class or series of stock ranking senior to the preferred stock with respect to payment of dividends or the distribution of assets upon liquidation, dissolution or winding up of our company, or reclassify any of our authorized stock into this series of preferred stock, or create, authorize or issue any obligation or security convertible into or evidencing the right to purchase any of this series of preferred stock; or

(b) amend, alter or repeal the provisions of the charter or the articles supplementary for this series of preferred stock, whether by merger, consolidation or otherwise, so as to materially and adversely affect any right, preference, privilege or voting power of this series of preferred stock;

provided, however, with respect to the occurrence of any of the events set forth in (b) above, so long as this series of preferred stock remains outstanding with the terms thereof materially unchanged, taking into account that upon the occurrence of an event we may not be the surviving entity, the occurrence of any similar event shall not be deemed to materially and adversely affect the rights, preferences, privileges or voting powers of this series of preferred stock; and provided, further, that (x) any increase in the number of authorized shares of preferred stock or the creation or issuance of any other series of preferred stock, or (y) any increase in the number of authorized shares of this series of preferred stock or any other series of preferred stock, in each case ranking on a parity with or junior to the preferred stock of this series with respect to payment of dividends or the distribution of assets upon liquidation, dissolution or winding up of our company, shall not be deemed to materially and adversely affect the rights, preferences, privileges or voting powers.

The foregoing voting provisions will not apply if, at or prior to the time when the act with respect to which the vote or consent would otherwise be required shall be effected, all outstanding shares of this series of preferred stock shall have been converted, redeemed or called for redemption and sufficient funds shall have been deposited in trust to effect the redemption.

## **Conversion Rights**

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

## **Stockholder Liability**

Maryland law provides that no stockholder, including holders of preferred stock, shall be personally liable for our acts and obligations and that our funds and property shall be the only recourse for these acts or obligations.

**Restrictions on Ownership**

In order for us to qualify as a REIT under the Code, our stock must be beneficially owned by 100 or more persons during at least 335 days of a taxable year of 12 months (other than the first year for which an



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election to be a REIT has been made) or during a proportionate part of a shorter taxable year. Also, not more than 50% of the value of the outstanding shares of stock may be owned, directly or indirectly, by five or fewer individuals (as defined in the Code to include certain entities such as qualified pension plans) during the last half of a taxable year (other than the first year for which an election to be a REIT has been made). The charter contains restrictions on the ownership and transfer of shares of our stock, including preferred stock. The articles supplementary for each series of preferred stock may contain additional provisions restricting the ownership and transfer of the preferred stock. The applicable prospectus supplement will specify any additional ownership limitation relating to a series of preferred stock.

## **Registrar and Transfer Agent**

The Registrar and Transfer Agent for the preferred stock is Continental Stock Trust & Transfer Company.

## **DESCRIPTION OF DEPOSITARY SHARES**

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

The summary of terms of the depositary shares contained in this prospectus does not purport to be complete and is subject to, and qualified in its entirety by, the provisions of the deposit agreement and the form of articles supplementary for the applicable series of preferred stock.

## **Dividends**

The depositary will distribute all cash dividends or other cash distributions received in respect of the series of preferred stock represented by the depositary shares to the record holders of depositary receipts in proportion to the number of depositary shares owned by such holders on the relevant record date, which will be the same date as the record date fixed by our company for the applicable series of preferred stock. The depositary, however, will distribute only such amount as can be distributed without attributing to any depositary share a fraction of one cent, and any balance not so distributed will be added to and treated as part of the next sum received by the depositary for distribution to record holders of depositary receipts then outstanding.

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

No distribution will be made in respect of any depositary share to the extent that it represents any preferred stock converted into excess stock.

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### **Liquidation Preference**

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

### **Redemption**

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

### **Voting**

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

### **Withdrawal of Preferred Stock**

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

### **Amendment and Termination of Deposit Agreement**

The form of depositary receipt evidencing the depositary shares and any provision of the deposit agreement may at any time and from time to time be amended by agreement between our company and the depositary. However, any amendment which materially and adversely alters the rights of the holders (other than any change in fees) of depositary shares will not be effective unless such amendment has been approved by at least a majority of the depositary shares then outstanding. No such amendment may impair the right, subject to the terms of the deposit agreement, of any owner of any depositary shares to surrender the depositary receipt evidencing such depositary shares with instructions to the depositary to deliver to the holder of the preferred stock and all money and other

property, if any, represented thereby, except in order to comply with mandatory provisions of applicable law.

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

## **Charges of Depository**

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

## **Miscellaneous**

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

Neither the depository nor our company assumes any obligation or will be subject to any liability under the deposit agreement to holders of depository receipts other than for its negligence or willful misconduct. Neither the depository nor our company will be liable if it is prevented or delayed by law or any circumstance beyond its control in performing its obligations under the deposit agreement. The obligations of our company and the depository under the deposit agreement will be limited to performance in good faith of their duties thereunder, and they will not be obligated to prosecute or defend any legal proceeding in respect of any depository shares or preferred stock unless satisfactory indemnity is furnished. Our company and the depository may rely on written advice of counsel or accountants, on information provided by holders of the depository receipts or other persons believed in good faith to be competent to give such information and on documents believed to be genuine and to have been signed or presented by the proper party or parties.

In the event the depository shall receive conflicting claims, requests or instructions from any holders of depository receipts, on the one hand, and our company, on the other hand, the depository shall be entitled to act on such claims, requests or instructions received from our company.

## **Resignation and Removal of Depository**

The depositary may resign at any time by delivering to us notice of its election to do so, and we may at any time remove the depositary, any such resignation or removal to take effect upon the appointment of a

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successor depositary and its acceptance of such appointment. Such successor depositary must be appointed within 60 days after delivery of the notice for resignation or removal and must be a bank or trust company having its principal office in the United States of America and having a combined capital and surplus of at least \$150,000,000.

**U.S. Federal Income Tax Consequences**

Owners of depositary shares will be treated for U.S. federal income tax purposes as if they were owners of the preferred stock represented by such depositary shares. Accordingly, such owners will be entitled to take into account, for U.S. federal income tax purposes, income and deductions to which they would be entitled if they were holders of such preferred stock. In addition, (i) no gain or loss will be recognized for U.S. federal income tax purposes upon the withdrawal of preferred stock by an owner of depositary shares, (ii) the tax basis of each share of preferred stock to a withdrawing owner of depositary shares will, upon such withdrawal, be the same as the aggregate tax basis of the depositary shares in respect thereof, and (iii) the holding period for preferred stock in the hands of a withdrawing owner of depositary shares will include the period during which such person owned such depositary shares.

**DESCRIPTION OF WARRANTS**

We may issue warrants for the purchase of common stock, preferred stock or depositary shares and may issue warrants independently or together with common stock, preferred stock, depositary shares or attached to or separate from such securities. We will issue each series of warrants under a separate warrant agreement between us and a bank or trust company as warrant agent, as specified in the applicable prospectus supplement.

The warrant agent will act solely as our agent in connection with the warrants and will not act for or on behalf of warrant holders. The following sets forth certain general terms and provisions of the warrants that may be offered under this registration statement. Further terms of the warrants and the applicable warrant agreement will be set forth in the applicable prospectus supplement.

The applicable prospectus supplement will describe the terms of the warrants in respect of which this prospectus is being delivered, including, where applicable, the following:

- the title of such warrants;
- the aggregate number of such warrants;
- the price or prices at which such warrants will be issued;
- the type and number of securities purchasable upon exercise of such warrants;
- the designation and terms of the other securities, if any, with which such warrants are issued and the number of such warrants issued with each such offered security;
- the date, if any, on and after which such warrants and the related securities will be separately transferable;
- the price at which each security purchasable upon exercise of such warrants may be purchased;
- the date on which the right to exercise such warrants shall commence and the date on which such right shall expire;
- the minimum or maximum amount of such warrants that may be exercised at any one time;

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

any anti-dilution protection;

a discussion of certain U.S. federal income tax considerations; and



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

Warrant certificates will be exchangeable for new warrant certificates of different denominations and warrants may be exercised at the corporate trust office of the warrant agent or any other office indicated in the applicable prospectus supplement. Prior to the exercise of their warrants, holders of warrants will not have any of the rights of holders of the securities purchasable upon such exercise or to any dividend payments or voting rights as to which holders of the shares of common stock or preferred stock purchasable upon such exercise may be entitled.

Each warrant will entitle the holder to purchase for cash such number of shares of common stock or preferred stock, at such exercise price as shall, in each case, be set forth in, or be determinable as set forth in, the applicable prospectus supplement relating to the warrants offered thereby. Unless otherwise specified in the applicable prospectus supplement, warrants may be exercised at any time up to 5:00 p.m. New York City time on the expiration date set forth in applicable prospectus supplement. After 5:00 p.m. New York City time on the expiration date, unexercised warrants will be void.

Warrants may be exercised as set forth in the applicable prospectus supplement relating to the warrants. Upon receipt of payment and the warrant certificate properly completed and duly executed at the corporate trust office of the warrant agent or any other office indicated in the applicable prospectus supplement, we will, as soon as practicable, forward the securities purchasable upon such exercise. If less than all of the warrants are presented by such warrant certificate of exercise, a new warrant certificate will be issued for the remaining amount of warrants.

**DESCRIPTION OF RIGHTS**

We may issue rights to our stockholders for the purchase of shares of common stock. Each series of rights will be issued under a separate rights agreement to be entered into between us and a bank or trust company, as rights agent, all as set forth in the prospectus supplement relating to the particular issue of rights. The rights agent will act solely as our agent in connection with the certificates relating to the rights of such series and will not assume any obligation or relationship of agency or trust for or with any holders of rights certificates or beneficial owners of rights. The rights agreement and the rights certificates relating to each series of rights will be filed with the SEC and incorporated by reference as an exhibit to the Registration Statement of which this prospectus is a part.

The applicable prospectus supplement will describe the terms of the rights to be issued, including the following, where applicable:

the date for determining the stockholders entitled to the rights distribution;

the aggregate number of shares of common stock purchasable upon exercise of such rights and the exercise price;

the aggregate number of rights being issued;

the date, if any, on and after which such rights may be transferable separately;

the date on which the right to exercise such rights shall commence and the date on which such right shall expire;

any special U.S. federal income tax consequences; and

any other terms of such rights, including terms, procedures and limitations relating to the distribution, exchange and exercise of such rights.

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**CERTAIN PROVISIONS OF MARYLAND LAW AND OF OUR CHARTER AND BYLAWS**

*The following summary of certain provisions of Maryland law and of our charter and bylaws does not purport to be complete and is subject to and qualified in its entirety by reference to Maryland law and our charter and bylaws, copies of which are exhibits to the registration statement of which this prospectus is a part. See [Where You Can Find More Information](#).*

**Our Board of Directors**

Our charter and bylaws provide that the number of directors of our company will not be less than the minimum number permitted under the MGCL and, unless our bylaws are amended, not more than 15 and may be increased or decreased pursuant to our bylaws by a vote of the majority of our directors. Subject to the rights of holders of one or more classes or series of preferred stock, any vacancy may be filled, at any regular meeting or at any special meeting called for that purpose, only by a majority of the remaining directors, even if the remaining directors do not constitute a quorum, and any director elected to fill a vacancy shall serve for the full term of the directorship in which such vacancy occurred and until a successor is elected and qualified.

Pursuant to our charter and bylaws, each of our directors is elected by our common stockholders entitled to vote to serve until the next annual meeting and until his/her successor is duly elected and qualified. Holders of shares of our common stock will have no right to cumulative voting in the election of directors. Consequently, at each annual meeting of stockholders, the holders of a majority of the shares of our common stock entitled to vote will be able to elect all of our directors.

**Removal of Directors**

Our charter provides that a director may be removed only for cause (as defined in our charter) and only by the affirmative vote of at least two-thirds of the votes of common stockholders entitled to be cast generally in the election of directors. This provision, when coupled with the exclusive power of our board of directors to fill vacant directorships, may preclude stockholders from removing incumbent directors and filling the vacancies created by such removal with their own nominees.

**Business Combinations**

Under the MGCL, certain business combinations (including a merger, consolidation, share exchange or, in certain circumstances, an asset transfer or issuance or reclassification of equity securities) between a Maryland corporation and an interested stockholder (*i.e.*, any person who beneficially owns 10% or more of the voting power of the corporation's shares or an affiliate or associate of the corporation who, at any time within the two-year period prior to the date in question, was the beneficial owner of 10% or more of the voting power of the then outstanding voting stock of the corporation, or an affiliate of such an interested stockholder) are prohibited for five years after the most recent date on which the interested stockholder becomes an interested stockholder. Thereafter, any such business combination must be recommended by the board of directors of such corporation and approved by the affirmative vote of at least (1) 80% of the votes entitled to be cast by holders of outstanding shares of voting stock of the corporation and (2) two-thirds of the votes entitled to be cast by holders of voting stock of the corporation other than shares held by the interested stockholder with whom (or with whose affiliate) the business combination is to be effected or held by an affiliate or associate of the interested stockholder, unless, among other conditions, the corporation's common stockholders receive a minimum price (as defined in the MGCL) for their shares and the consideration is received in cash or in the same form as previously paid by the interested stockholder for its shares. A person is not an interested

stockholder under the statute if the board of directors approved in advance the transaction by which the person otherwise would have become an interested stockholder. The board of directors may provide that its approval is subject to compliance with any terms and conditions determined by it.

These provisions of the MGCL do not apply, however, to business combinations that are approved or exempted by a board of directors prior to the time that the interested stockholder becomes an interested stockholder. Pursuant to the statute, our board of directors has by resolution exempted James W. Cogdell, his affiliates and associates and all persons acting in concert with the foregoing and Frank C. Spencer, his

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affiliates and associates and all persons acting in concert with the foregoing, from these provisions of the MGCL and, consequently, the five-year prohibition and the supermajority vote requirements will not apply to business combinations between us and any person described above. As a result, any person described above may be able to enter into business combinations with us that may not be in the best interests of our stockholders without compliance by our company with the supermajority vote requirements and the other provisions of the statute.

### **Control Share Acquisitions**

The MGCL provides that control shares of a Maryland corporation acquired in a control share acquisition have no voting rights except to the extent approved at a special meeting by the affirmative vote of two-thirds of the votes entitled to be cast on the matter, excluding shares of stock in a corporation in respect of which any of the following persons is entitled to exercise or direct the exercise of the voting power of shares of stock of the corporation in the election of directors: (1) a person who makes or proposes to make a control share acquisition, (2) an officer of the corporation or (3) an employee of the corporation who is also a director of the corporation. Control shares are voting shares of stock which, if aggregated with all other such shares of stock previously acquired by the acquirer or in respect of which the acquirer is able to exercise or direct the exercise of voting power (except solely by virtue of a revocable proxy), would entitle the acquirer to exercise voting power in electing directors within one of the following ranges of voting power: (1) one-tenth or more but less than one-third, (2) one-third or more but less than a majority, or (3) a majority or more of all voting power. Control shares do not include shares the acquiring person is then entitled to vote as a result of having previously obtained stockholder approval. A control share acquisition means the acquisition of control shares, subject to certain exceptions.

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

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

The control share acquisition statute does not apply (1) to shares acquired in a merger, consolidation or share exchange if the corporation is a party to the transaction or (2) to acquisitions approved or exempted by the charter or bylaws of the corporation.

Our bylaws contain a provision exempting from (opting out of) the control share acquisition statute any acquisition by any person of shares of stock of the company. There can be no assurance that such provision will not be amended or eliminated at any time in the future.

### **Subtitle 8**

Subtitle 8 of Title 3 of the MGCL permits a Maryland corporation with a class of equity securities registered under the Exchange Act and at least three independent directors to elect to be subject, by provision in its charter or bylaws or a

resolution of its board of directors and notwithstanding any contrary provision in the charter or bylaws, to any or all of five of the following provisions:

a classified board;

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a two-thirds vote requirement for removing a director;

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

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

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

Pursuant to Subtitle 8, we have elected to provide that vacancies on our board be filled only by the remaining directors and for the remainder of the full term of the directorship in which the vacancy occurred. Through provisions in our charter and bylaws unrelated to Subtitle 8, we already (1) require the affirmative vote of the holders of not less than two-thirds of all of the votes entitled to be cast on the matter for the removal of any director from the board, which removal shall only be allowed for cause, (2) vest in the board the exclusive power to fix the number of directorships and (3) require, unless called by our Chairman of the board, our president, our chief executive officer of the board, the written request of the stockholders entitled to cast not less than 35% of all votes entitled to be cast at such meeting to call a special meeting. We have not elected to create a classified board; however, our board may elect to do so in the future without stockholder approval.

## **Charter Amendments and Extraordinary Transactions**

Under the MGCL, a Maryland corporation generally cannot dissolve, amend its charter, merge, sell all or substantially all of its assets, engage in a share exchange or engage in similar transactions outside the ordinary course of business unless approved by the affirmative vote of stockholders entitled to cast at least two-thirds of the votes entitled to be cast on the matter unless a lesser percentage (but not less than a majority of all of the votes entitled to be cast on the matter) is set forth in the corporation's charter. Our charter generally provides that charter amendments requiring stockholder approval must be declared advisable by our board of directors and approved by the affirmative vote of stockholders entitled to cast a majority of all of the votes entitled to be cast on the matter. However, our charter's provisions regarding removal of directors and stock ownership restrictions may be amended only if such amendment is declared advisable by our board of directors and approved by the affirmative vote of stockholders entitled to cast not less than two-thirds of all the votes entitled to be cast on the matter. In addition, we generally may not merge with or into another company, sell all or substantially all of our assets, engage in a share exchange or engage in similar transactions outside the ordinary course of business unless such transaction is declared advisable by our board of directors and approved by the affirmative vote of stockholders entitled to cast a majority of all of the votes entitled to be cast on the matter. However, because operating assets may be held by a corporation's subsidiaries, as in our situation, this may mean that a subsidiary of a corporation can transfer all of its assets without any vote of the corporation's stockholders.

## **Bylaw Amendments**

Our board of directors has the exclusive power to adopt, alter or repeal any provision of our bylaws and to make new bylaws.

## **Advance Notice of Director Nominations and New Business**

Our bylaws provide that with respect to an annual meeting of stockholders, nominations of individuals for election to our board of directors and the proposal of business to be considered by stockholders may be made at a special meeting of stockholders at which directors are to be elected only (1) pursuant to our notice of the meeting, (2) by or at the

direction of our board of directors or (3) by a stockholder who was a stockholder of record both at the time of provision of notice and at the time of the meeting, is entitled to vote at the meeting and has complied with the advance notice procedures set forth in our bylaws.

With respect to special meetings of stockholders, only the business specified in our notice of meeting may be brought before the meeting. Nominations of individuals for election to our board of directors may be made at a special meeting of stockholders at which directors are to be elected only (1) pursuant to our notice



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of the meeting, (2) by or at the direction of our board of directors or (3) provided that our board of directors has determined that directors shall be elected at such meeting, by a stockholder who was a stockholder of record both at the time of provision of notice and at the time of the meeting, is entitled to vote at the meeting and has complied with the advance notice provisions set forth in our bylaws.

### **Anti-Takeover Effect of Certain Provisions of Maryland Law and of our Charter and Bylaws**

Our charter and bylaws and Maryland law contain provisions that may delay, defer or prevent a change of control or other transaction that might involve a premium price for our common stock or otherwise be in the best interests of our stockholders, including business combination provisions, supermajority vote and cause requirements for removal of directors, the power of our board to issue additional shares of capital stock, ability of our board to create a classified board, the restrictions on ownership and transfer of our shares of capital stock and advance notice requirements for director nominations and stockholder proposals. Likewise, if the provision in the bylaws opting out of the control share acquisition provisions of the MGCL were rescinded, these provisions of the MGCL could have similar anti-takeover effects.

### **Indemnification and Limitation of Directors and Officers Liability**

Our charter and the partnership agreement of our operating partnership provide for indemnification of our officers and directors against liabilities to the fullest extent permitted by the MGCL, as amended from time to time, and Delaware law, as applicable.

The MGCL permits a Maryland corporation to include in its charter a provision limiting the liability of its directors and officers to the corporation and its stockholders for money damages except for liability resulting from (1) actual receipt of an improper benefit or profit in money, property or services or (2) active and deliberate dishonesty established by a final judgment as being material to the cause of action. Our charter contains such a provision which eliminates such liability to the maximum extent permitted by Maryland law.

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

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

was committed in bad faith; or

was the result of active and deliberate dishonesty.

the director or officer actually received an improper personal benefit in money, property or services; or

in the case of any criminal proceeding, the director or officer had reasonable cause to believe that the act or omission was unlawful.

However, under the MGCL, a Maryland corporation may not indemnify for an adverse judgment in a suit by or in the right of the corporation or for a judgment of liability on the basis that personal benefit was improperly received, unless

in either case a court orders indemnification and then only for expenses. In addition, the MGCL permits us to advance reasonable expenses to a director or officer upon our receipt of:

a written affirmation by the director or officer of his or her good faith belief that he or she has met the standard of conduct necessary for indemnification by the corporation; and

a written undertaking by the director or officer or on the director's or officer's behalf to repay the amount paid or reimbursed by the corporation if it is ultimately determined that the director or officer did not meet the standard of conduct.

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

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

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

Our charter and bylaws also permit us to indemnify and advance expenses to any person who served our predecessor in any of the capacities described above and to any employee or agent of our company or our predecessor.

The partnership agreement provides that our wholly owned business trust subsidiary, the general partner, and our and its officers and directors are indemnified to the fullest extent permitted by applicable law. See Cogdell Spencer LP Partnership Agreement Management Liability and Indemnification.

Insofar as the foregoing provisions permit indemnification of directors, officers or persons controlling us for liability arising under the Securities Act, we have been informed that in the opinion of the SEC, this indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable. See Management Indemnification Agreements.

## **REIT Qualification**

Our charter provides that our board of directors may revoke or otherwise terminate our REIT election, without approval of our stockholders, if it determines that it is no longer in our best interests to attempt to qualify, or to continue to qualify, as a REIT.

## **COGDELL SPENCER LP PARTNERSHIP AGREEMENT**

*The following is a summary of the material terms of the partnership agreement, a copy of which is filed as an exhibit to the registration statement of which this prospectus is a part. See Where You Can Find More Information. For the purposes of this section, references to the general partner refer to CS Business Trust I, our wholly owned Maryland business trust subsidiary.*

## **General; Management**

Our operating partnership is a Delaware limited partnership that was formed on July 18, 2005. Our wholly owned business trust subsidiary is the sole general partner of our operating partnership. Pursuant to the partnership agreement, through the sole general partner of the operating partnership, we have, subject to certain protective rights of limited partners described below, full, exclusive and complete responsibility and discretion in the management and control of our operating partnership, including the ability to cause the partnership to enter into certain major transactions including a merger of our operating partnership or a sale of substantially all of the assets of our operating partnership. The limited partners have no power to remove the general partner without the general partner's consent.

Our company is under no obligation to give priority to the separate interests of the limited partners or our stockholders in deciding whether to cause our operating partnership to take or decline to take any actions. If there is a conflict between the interests of our stockholders on one hand and the limited partners on the other, we will endeavor in good faith to resolve the conflict in a manner not adverse to either our stockholders or the limited partners. We are not liable under the partnership agreement to our operating partnership or to any

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partner for monetary damages for losses sustained, liabilities incurred, or benefits not derived by limited partners in connection with such decisions, provided that we have acted in good faith.

All of our business activities, including all activities pertaining to the acquisition and operation of properties, must be conducted through our operating partnership, and our operating partnership must be operated in a manner that will enable us to satisfy the requirements for qualification as a REIT.

## **Management Liability and Indemnification**

Neither we nor the general partner of our operating partnership, nor our directors and officers or its trustees and officers are liable to our operating partnership for losses sustained, liabilities incurred or benefits not derived as a result of errors in judgment or mistakes of fact or law or of any act or omission, so long as such person acted in good faith. The partnership agreement provides for indemnification of us, our affiliates and each of our respective trustees, officers, directors, employees and any persons we may designate from time to time in our sole and absolute discretion to the fullest extent permitted by applicable law against any and all losses, claims, damages, liabilities (whether joint or several), expenses (including, without limitation, attorneys' fees and other legal fees and expenses), judgments, fines, settlements and other amounts arising from any and all claims, demands, actions, suits or proceedings, civil, criminal, administrative or investigative, that relate to the operations of the operating partnership, provided that our operating partnership will not indemnify such person, for (1) willful misconduct or a knowing violation of the law, (2) any transaction for which such person received an improper personal benefit in violation or breach of any provision of the partnership agreement, or (3) in the case of a criminal proceeding, the person had reasonable cause to believe the act or omission was unlawful, as set forth in the partnership agreement (subject to the exceptions described below under "Fiduciary Responsibilities").

## **Fiduciary Responsibilities**

Our directors and officers have duties under applicable Maryland law to manage us in a manner consistent with the best interests of our stockholders. At the same time, the general partner of our operating partnership has fiduciary duties to manage our operating partnership in a manner beneficial to our operating partnership and its partners. Our duties, through the general partner, to our operating partnership and its limited partners, therefore, may come into conflict with the duties of our directors and officers to our stockholders. We will be under no obligation to give priority to the separate interests of the limited partners of our operating partnership or our stockholders in deciding whether to cause the operating partnership to take or decline to take any actions.

The limited partners of our operating partnership expressly acknowledged that through our wholly owned Maryland business trust, which is the general partner of our operating partnership, we are acting for the benefit of the operating partnership, the limited partners and our stockholders collectively.

## **Distributions**

The partnership agreement provides that holders of OP units and LTIP units are entitled to receive quarterly distributions of available cash (1) first, with respect to any OP units and LTIP units that are entitled to any preference in accordance with the rights of such OP unit or LTIP unit (and, within such class, pro rata according to their respective percentage interests) and (2) second, with respect to any OP units and LTIP units that are not entitled to any preference in distribution, in accordance with the rights of such class of OP unit or LTIP units (and, within such class, pro rata in accordance with their respective percentage interests).

## **Allocations of Net Income and Net Loss**

Net income and net loss of our operating partnership are determined and allocated with respect to each fiscal year of our operating partnership as of the end of the year. Except as otherwise provided in the partnership agreement, an allocation of a share of net income or net loss is treated as an allocation of the same share of each item of income, gain, loss or deduction that is taken into account in computing net income or net loss. Except as otherwise provided in the partnership agreement, net income and net loss are allocated to

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the holders of OP units or LTIP units holding the same class of OP units or LTIP units in accordance with their respective percentage interests in the class at the end of each fiscal year. In particular, upon the occurrence of certain specified events, our operating partnership will revalue its assets and any net increase in valuation will be allocated first to the holders of LTIP units to equalize the capital accounts of such holders with the capital accounts of OP unit or LTIP units holders. See Management 2005 Long-Term Stock Incentive Plan. The partnership agreement contains provisions for special allocations intended to comply with certain regulatory requirements, including the requirements of Treasury Regulations Sections 1.704-1(b) and 1.704-2. Except as otherwise provided in the partnership agreement, for U.S. federal income tax purposes under the Code and the Treasury Regulations, each operating partnership item of income, gain, loss and deduction is allocated among the limited partners of our operating partnership in the same manner as its correlative item of book income, gain, loss or deduction is allocated pursuant to the partnership agreement. In addition, under Section 704(c) of the Code, items of income, gain, loss and deduction with respect to appreciated or depreciated property which is contributed to a partnership, such as our operating partnership, in a tax-free transaction must be specially allocated among the partners in such a manner so as to take into account such variation between tax basis and fair market value. The operating partnership will allocate tax items to the holders of OP units or LTIP units taking into consideration the requirements of Section 704(c). See U.S. Federal Income Tax Considerations.

## **Redemption Rights**

After the first anniversary of becoming a holder of OP units (including any LTIP units that are converted into OP units), each limited partner of our operating partnership, other than CS Business Trust II, will have the right, subject to the terms and conditions set forth in the partnership agreement, to require our operating partnership to redeem all or a portion of the OP units held by such limited partner in exchange for a cash amount equal to the number of tendered OP units multiplied by the price of a share of our common stock, unless the terms of such OP units or a separate agreement entered into between our operating partnership and the holder of such OP units provide that they are not entitled to a right of redemption. On or before the close of business on the fifth business day after we receive a notice of redemption, we may, in our sole and absolute discretion, but subject to the restrictions on the ownership of our common stock imposed under our charter and the transfer restrictions and other limitations thereof, elect to acquire some or all of the tendered OP units from the tendering partner in exchange for shares of our common stock, based on an exchange ratio of one share of our common stock for each OP unit (subject to antidilution adjustments provided in the partnership agreement). It is our current intention to exercise this right in connection with any redemption of OP units.

## **Transferability of OP Units; Extraordinary Transactions**

The general partner of the operating partnership will not be able to voluntarily withdraw from the operating partnership or transfer or assign its interest in the operating partnership, including our limited partner interest without the consent of limited partners holding more than 50% of the partnership interests of the limited partners (other than those held by us or our subsidiaries), unless the transfer is made in connection with any merger or sale of all or substantially all of the assets or stock of our company. In addition, subject to certain limited exceptions, the general partner will not engage in any merger, consolidation or other combination, or sale of substantially all of our assets, in a transaction which results in a change of control of the operating partnership unless:

we receive the consent of limited partners holding more than 50% of the partnership interests of the limited partners (other than those held by our company or its subsidiaries); or

as a result of such transaction all limited partners will receive for each partnership unit an amount of cash, securities or other property equal in value to the greatest amount of cash, securities or other property paid in the transaction to a holder of one share of our common stock, provided that if, in connection with the transaction, a

purchase, tender or exchange offer shall have been made to and accepted by the holders of more than 50% of the outstanding shares of our common stock, each holder of partnership units shall be given the option to exchange its partnership units for the greatest amount of cash, securities or other property that a limited partner would have received had it (1) exercised its



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redemption right (described above) and (2) sold, tendered or exchanged pursuant to the offer, the shares of our common stock received upon exercise of the redemption right immediately prior to the expiration of the offer.

The operating partnership may also merge with or into or consolidate with another entity without the consent of the limited partners if immediately after such merger or consolidation (1) substantially all of the assets of the successor or surviving entity, other than partnership units held by us, are contributed, directly or indirectly, to the partnership as a capital contribution in exchange for partnership units with a fair market value equal to the value of the assets so contributed as determined by the survivor in good faith and (2) the survivor expressly agrees to assume all of the general partner's obligations under the partnership agreement and the partnership agreement shall be amended after any such merger or consolidation so as to arrive at a new method of calculating the amounts payable upon exercise of the redemption right that approximates the existing method for such calculation as closely as reasonably possible.

We also may (1) transfer all or any portion of our directly or indirectly held general partnership interest to (A) a wholly owned subsidiary or (B) a parent company, and following such transfer may withdraw as the general partner and (2) engage in a transaction required by law or by the rules of any national securities exchange on which our common stock is listed.

## **Issuance of Our Stock**

Pursuant to the partnership agreement, upon the issuance of our stock other than in connection with a redemption of OP units, we will generally be obligated to contribute or cause to be contributed the cash proceeds or other consideration received from the issuance to our operating partnership in exchange for, in the case of common stock, OP units, or in the case of an issuance of preferred stock, preferred OP units with designations, preferences and other rights, terms and provisions that are substantially the same as the designations, preferences and other rights, terms and provisions of the preferred stock.

## **Tax Matters**

Pursuant to the partnership agreement, the general partner is the tax matters partner of our operating partnership. Accordingly, through our role as the parent of our wholly owned Maryland business trust, the general partner of our operating partnership, we have the authority to handle tax audits and to make tax elections under the Code, in each case, on behalf of our operating partnership.

## **Term**

The term of the operating partnership commenced on July 18, 2005 and will continue until December 31, 2104, unless earlier terminated in the following circumstances:

a final and nonappealable judgment is entered by a court of competent jurisdiction ruling that the general partner is bankrupt or insolvent, or a final and nonappealable order for relief is entered by a court with appropriate jurisdiction against the general partner, in each case under any federal or state bankruptcy or insolvency laws as now or hereafter in effect, unless, prior to the entry of such order or judgment, a majority in interest of the remaining outside limited partners agree in writing, in their sole and absolute discretion, to continue the business of the operating partnership and to the appointment, effective as of a date prior to the date of such order or judgment, of a successor general partner;

an election to dissolve the operating partnership made by the general partner in its sole and absolute discretion, with or without the consent of a majority in interest of the outside limited partners;

entry of a decree of judicial dissolution of the operating partnership pursuant to the provisions of the Delaware Revised Uniform Limited Partnership Act;

the occurrence of any sale or other disposition of all or substantially all of the assets of the operating partnership or a related series of transactions that, taken together, result in the sale or other disposition of all or substantially all of the assets of the operating partnership;

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the redemption (or acquisition by the general partner) of all OP units that the general partner has authorized other than those held by the general partner and CS Business Trust II; or

the incapacity or withdrawal of the general partner, unless all of the remaining partners in their sole and absolute discretion agree in writing to continue the business of the operating partnership and to the appointment, effective as of a date prior to the date of such incapacity, of a substitute general partner.

**Amendments to the Partnership Agreement**

Amendments to the partnership agreement may only be proposed by the general partner. Generally, the partnership agreement may be amended with the general partner's approval and the approval of the limited partners holding a majority of all outstanding limited partner units (excluding limited partner units held by us or our subsidiaries). Certain amendments that would, among other things, have the following effects, must be approved by each partner adversely affected thereby:

convert a limited partner's interest into a general partner's interest (except as a result of the general partner acquiring such interest); or

modify the limited liability of a limited partner.

Notwithstanding the foregoing, we will have the power, without the consent of the limited partners, to amend the partnership agreement as may be required to:

add to our obligations or surrender any right or power granted to us or any of our affiliates for the benefit of the limited partners;

reflect the admission, substitution, or withdrawal of partners or the termination of the operating partnership in accordance with the partnership agreement and to amend the list of OP unit and LTIP unit holders in connection with such admission, substitution or withdrawal;

reflect a change that is of an inconsequential nature and does not adversely affect the limited partners in any material respect, or to cure any ambiguity, correct or supplement any provision in the partnership agreement not inconsistent with law or with other provisions, or make other changes with respect to matters arising under the partnership agreement that will not be inconsistent with law or with the provisions of the partnership agreement;

satisfy any requirements, conditions, or guidelines contained in any order, directive, opinion, ruling or regulation of a U.S. federal or state agency or contained in U.S. federal or state law;

set forth and reflect in the partnership agreement the designations, rights, powers, duties and preferences of the holders of any additional partnership units issued pursuant to the partnership agreement;

reflect such changes as are reasonably necessary for us to maintain or restore our qualification as a REIT or to satisfy the REIT requirements or to reflect the transfer of all or any part of a partnership interest among the general partner, CS Business Trust II, the company and any qualified REIT subsidiary;

to modify the manner in which capital accounts are computed (but only to the extent set forth in the partnership agreement by the Code or applicable income tax regulations under the Code); and

issue additional partnership interests.

Certain provisions affecting our rights and duties as general partner, either directly or indirectly (*e.g.*, restrictions relating to certain extraordinary transactions involving us or the operating partnership) may not be amended without the approval of a majority of the limited partnership units (excluding limited partnership units held by us).

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

The following is a summary of the material U.S. federal income tax consequences relating to our qualification and taxation as a REIT and the acquisition, holding, and disposition of our common stock. For purposes of this section under the heading U.S. Federal Income Tax Considerations, references to the company, we, our and us mean on Cogdell Spencer Inc. and not its subsidiaries or other lower-tier entities or predecessor, except as otherwise indicated. You are urged to both review the following discussion and to consult your tax advisor to determine the effect of ownership and disposition of our shares on your individual tax situation, including any state, local or non-U.S. tax consequences.

This summary is based upon the Code, the regulations promulgated by the U.S. Treasury Department, or the Treasury Regulations, current administrative interpretations and practices of the IRS (including administrative interpretations and practices expressed in private letter rulings which are binding on the IRS only with respect to the particular taxpayers who requested and received those rulings) and judicial decisions, all as currently in effect, and all of which are subject to differing interpretations or to change, possibly with retroactive effect. No assurance can be given that the IRS would not assert, or that a court would not sustain, a position contrary to any of the tax consequences described below. No advance ruling has been or will be sought from the IRS regarding any matter discussed in this summary. This summary is also based upon the assumption that the operation of the company, and of its subsidiaries and other lower-tier and affiliated entities, will in each case be in accordance with its applicable organizational documents or partnership agreements. This summary i