

GLADSTONE COMMERCIAL CORP

Form S-3

September 09, 2010

As filed with the Securities and Exchange Commission on September 9, 2010

Registration No. 333-

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

Form S-3

REGISTRATION STATEMENT

UNDER

THE SECURITIES ACT OF 1933

GLADSTONE COMMERCIAL CORPORATION

(Exact name of registrant as specified in its charter)

Maryland

*(State or other jurisdiction of
incorporation or organization)*

02-0681276

*(IRS Employer
Identification Number)*

1521 Westbranch Drive, Suite 200

McLean, Virginia 22102

(703) 287-5800

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

David J. Gladstone

Chairman and Chief Executive Officer

1521 Westbranch Drive, Suite 200

McLean, Virginia 22102

(703) 287-5800

(Name, address, including zip code, and telephone number, including area code, of agent for service)

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Approximate date of commencement of proposed sale to the public: From time to time after the registration statement becomes effective.

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest

reinvestment plans, check the following box:

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box.

If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box.

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

Large accelerated filer Accelerated filer Non-accelerated filer Smaller reporting company
 (Do not check if a smaller reporting company)

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered	Amount to be Registered(1)	Proposed Maximum Offering Price per Share(1)(2)	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
Common Stock, \$0.001 par value per share(3)				
Senior Common Stock, \$0.001 par value per share(3)				
Preferred Stock, \$0.001 par value per share(3)				
Debt Securities(3)				
Depository Shares(4)				
Subscription Rights(3)				
Total			\$ 300,000,000	\$ (5)

(1) Omitted pursuant to General Instruction II.D of Form S-3 under the Securities Act of 1933, as amended.

- (2) The registrant will determine the proposed maximum offering price per share from time to time in connection with, and at the time of, the issuance of the securities registered hereunder. Securities registered hereby may be offered for U.S. dollars or in foreign currencies or currency units and may be sold separately or together in units with other securities registered hereby.
- (3) Also includes such indeterminate principal amount, liquidation amount or number of securities as may be issued upon conversion or exchange of any securities that provide for conversion or exchange into other securities. Separate consideration may or may not be received by the registrant for securities that are issuable upon exercise, conversion or exchange of other securities. The aggregate maximum offering price of all securities offered and sold by the registrant pursuant to this registration statement shall not have a maximum aggregate offering price that exceeds \$300,000,000 in U.S. dollars or the equivalent at the time of offering in any other currency.
- (4) Each depositary share will be issued under a deposit agreement, will represent an interest in a fractional share or multiple shares of preferred shares and will be evidenced by a depositary receipt.
- (5) In accordance with Rule 415(a)(6) under the Securities Act of 1933, as amended, the registrant may potentially include unsold securities previously registered on its Registration Statement on Form S-3, File No. 333-147856, which was declared effective on December 19, 2007 by the Securities and Exchange Commission. The registrant will identify in a pre-effective amendment to this registration statement the exact amount of unsold securities to be carried forward pursuant to Rule 415(a)(6) and the amount of any new securities to be registered on this registration statement.

The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the Registration Statement shall become effective on such date as the Commission acting pursuant to said Section 8(a), may determine.

The information in this prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any jurisdiction where the offer or sale is not permitted.

SUBJECT TO COMPLETION, DATED SEPTEMBER 9, 2010

PROSPECTUS

\$300,000,000

**Common Stock
Senior Common Stock
Preferred Stock
Debt Securities
Depository Shares
Subscription Rights**

We may offer, from time to time, one or more series or classes of common stock, senior common stock, preferred stock, debt securities, depository shares and subscription rights. We refer to our common stock, senior common stock, preferred stock, debt securities, depository shares and subscription rights collectively as the securities. We may offer these securities with an aggregate initial public offering price of up to \$300,000,000, or its equivalent in a foreign currency based upon the exchange rate at the time of sale, in amounts, at initial prices and on terms determined at the time of the offering.

We may offer and sell these securities to or through one or more underwriters, dealers and agents, or directly to purchasers, on a continuous or delayed basis. If any underwriters, dealers or agents are involved in the sale of any of the securities, their names, and any applicable purchase price, fee, commission or discount arrangement with, between or among them, will be set forth, or will be calculable from the information set forth, in an accompanying prospectus supplement. For more detailed information, see Plan of Distribution beginning on page 47 of this prospectus.

No securities may be sold without delivery of an accompanying prospectus supplement describing the method and terms of the offering of those securities. Accordingly, we will deliver this prospectus together with an accompanying prospectus supplement setting forth the specific terms of the securities that we are offering. The accompanying prospectus supplement also will contain information, where applicable, about federal income tax considerations relating to, and any listing on a securities exchange of, the securities covered by the prospectus supplement. In addition, the specific terms may include limitations on direct or beneficial ownership and restrictions on transfer of the securities offered by this prospectus, in each case as may be appropriate to preserve our status as a real estate investment trust for federal income tax purposes, among other purposes.

Our common stock is traded on the NASDAQ Global Select Market under the symbol GOOD.

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

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

The date of this prospectus is _____, 2010

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

ABOUT THIS PROSPECTUS

This prospectus is part of a registration statement on Form S-3 that we filed with the Securities and Exchange Commission, or SEC, using a shelf registration process for the offering and sale of securities pursuant to Rule 415 under the Securities Act of 1933, as amended, or the Securities Act. Under the shelf registration process, we may, over time, sell any combination of the securities described in this prospectus in one or more offerings. This prospectus provides you with a general description of the securities that we may offer. As allowed by SEC rules, this prospectus does not contain all of the information that you can find in the registration statement or the exhibits thereto. For further information, we refer you to the registration statement, including any amendments thereto, including its exhibits.

We will not use this prospectus to offer and sell securities unless it is accompanied by a prospectus supplement that more fully describes the securities being offered and the terms of such offering. Any accompanying prospectus supplement or free writing prospectus may also update, amend or supersede other information contained in this prospectus. Before purchasing any securities, you should carefully read this prospectus, any accompanying prospectus supplement and any free writing prospectus together with the information incorporated or deemed to be incorporated by reference herein as described under the heading *Where You Can Find More Information* below.

Unless the context otherwise requires or indicates, all references to *we*, *our*, *us* and the *Company* in this prospectus mean Gladstone Commercial Corporation, a Maryland corporation, and its consolidated subsidiaries. All references to the *Operating Partnership* in this prospectus mean Gladstone Commercial Limited Partnership, a subsidiary of the Company and a Delaware limited partnership. All references to *Adviser* in this prospectus mean, Gladstone Management Corporation, a Delaware corporation.

FORWARD-LOOKING STATEMENTS

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

our business and financing strategy;

our ability to implement our business plan;

pending transactions;

our projected operating results;

our ability to obtain future financing arrangements;

estimates relating to our future distributions;

our understanding of our competition and our ability to compete effectively;

market and industry trends;

interest and insurance rates;

estimates of our future operating expenses, including payments to our Adviser under the terms of our advisory agreement;

projected capital expenditures; and

use of the proceeds of our credit facilities, mortgage notes payable and other future capital resources, if any.

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

the loss of any of our key employees, such as Mr. David Gladstone, our Chairman and Chief Executive Officer, Mr. Terry Lee Brubaker, our Vice Chairman and Chief Operating Officer, or Mr. George Stelljes III, our President and Chief Investment Officer;

general volatility of the capital markets and the market price of our common stock;

risks associated with negotiation and consummation of pending and future transactions;

changes in our business strategy;

the adequacy of our cash reserves and working capital;

our failure to successfully integrate and operate acquired properties and operations;

defaults upon or non-renewal of leases by tenants;

decreased rental rates or increased vacancy rates;

the degree and nature of our competition;

availability, terms and deployment of capital, including the ability to maintain and borrow under our existing credit facility, arrange for long-term mortgages on our properties, secure one or more additional long-term credit facilities and raise equity capital;

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

changes in our industry or the general economy;

changes in real estate and zoning laws and increases in real property tax rates;

changes in governmental regulations, tax rates and similar matters; and

environmental uncertainties and risks related to natural disasters.

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

THE COMPANY

We were incorporated under the Maryland General Corporation Law, or MGCL, on February 14, 2003 primarily for the purpose of investing in and owning net leased industrial and commercial real estate property and selectively making long-term industrial and commercial mortgage loans to creditworthy entities. Subject to certain restrictions and limitations, the business of the Company is managed by the Adviser. Most of the portfolio of real estate that we own is leased to a wide cross section of tenants ranging from small businesses to large public companies, many of which do not have publicly-rated debt. We have in the past entered into, and intend in the future to enter into, purchase agreements for real estate that have triple net leases with terms of 10 to 15 years and built in rental increases. Under a triple net lease, the tenant is required to pay all operating, maintenance and insurance costs and real estate taxes with respect to the leased property. We actively communicate with buyout funds, real estate brokers and other third parties to locate properties for potential acquisition or mortgage financing in an effort to build our portfolio.

We conduct substantially all of our activities, including the ownership of all of our properties, through our Operating Partnership. We control our Operating Partnership through our ownership of GCLP Business Trust II, a subsidiary of the Company and a Massachusetts business trust which holds the sole general partnership interest in our Operating Partnership, and of GCLP Business Trust I, a subsidiary of the Company and a Massachusetts business trust which holds all of the limited partnership interests of our Operating Partnership.

The Operating Partnership is also the sole member of Gladstone Commercial Lending, LLC, a subsidiary of the Company and a Delaware limited liability company. Gladstone Commercial Lending, LLC was formed to conduct all operations related to our real estate mortgage loans.

Our Adviser is an affiliated registered investment adviser under the Investment Advisers Act of 1940. Our Adviser is responsible for managing our business on a daily basis and for identifying and making acquisitions and dispositions that it believes satisfy our investment criteria.

Our executive offices are located at 1521 Westbranch Drive, Suite 200, McLean, Virginia 22102, and our telephone number is (703) 287-5800. Our website address is <http://www.GladstoneCommercial.com>. However, the information located on, or accessible from, our website is not, and shall not be deemed to be, a part of this prospectus, any accompanying prospectus supplement or any free writing prospectus or incorporated into any other filings that we make with the SEC.

RISK FACTORS

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

USE OF PROCEEDS

Unless we specify otherwise in an accompanying prospectus supplement, we intend to use the net proceeds from the sale of securities by us to provide additional funds for general corporate purposes. Any specific allocation of the net

proceeds of an offering of securities to a specific purpose will be determined at the time of such offering and will be described in the accompanying prospectus supplement to this prospectus.

RATIO OF EARNINGS TO FIXED CHARGES AND PREFERRED DIVIDENDS

Our ratios of earnings to fixed charges and preferred dividends for the six months ended June 30, 2010 and the years ended December 31, 2005, 2006, 2007, 2008 and 2009 are set forth below. For purposes of calculating the ratio of earnings to fixed charges and preferred dividends, earnings consist of income (loss) from continuing operations before income taxes and fixed charges. Fixed charges consist of interest expense and the portion of operating lease expense that represents interest.

	Six Months Ended June 30, 2010	2009	Year Ended December 31,			
			2008	2007	2006	2005
Ratio of Earnings to Fixed Charges and Preferred Dividends	1.0x	1.0x	1.0x	1.1x	1.1x	2.4x

DESCRIPTION OF CAPITAL STOCK

General

Our authorized capital stock consists of 50,000,000 shares of capital stock, \$0.001 par value per share, 40,200,000 of which are classified as common stock, 1,150,000 of which are classified as 7.75% Series A Cumulative Redeemable Preferred Stock, 1,150,000 of which are classified as 7.50% Series B Cumulative Redeemable Preferred Stock and 7,500,000 of which are classified as Senior Common Stock. Under our charter, our board of directors is authorized to classify and reclassify any unissued shares of capital stock by setting or changing in any one or more respects, from time to time before issuance of such stock, the preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications and terms and conditions of redemption of such stock. Our board of directors may also, without stockholder approval, amend our charter to increase or decrease the aggregate number of shares of stock or the number of shares of stock of any class that we have authority to issue.

For purposes of this section Description of Capital Stock, we refer to our common stock which is listed on the NASDAQ Global Select Market under the symbol GOOD as our Listed Common Stock. Further, we refer to our (i) 7.75% Series A Cumulative Redeemable Preferred Stock which is listed on the NASDAQ Global Select Market under the symbol GOOD.P as our Series A Preferred Stock and (ii) 7.50% Series B Cumulative Redeemable Preferred Stock which is listed on the NASDAQ Global Select Market under the symbol GOOD.O as our Series B Preferred Stock.

The following summary description of our capital stock is not necessarily complete and is qualified in its entirety by reference to our charter and bylaws, each of which has been filed with the SEC, as well as applicable provisions of the MGCL.

Common Stock

Listed Common Stock

Voting Rights

Each share of Listed Common Stock is entitled to one vote on each matter to be voted upon by our stockholders, including the election of directors, and, except as provided with respect to any other class or series of capital stock, the holders of the Listed Common Stock possess exclusive voting power. There is no cumulative voting in the election of directors which means that the holders of a majority of the outstanding Listed Common Stock can elect all of the directors then standing for election and that the holders of the remaining shares are not able to elect any directors.

Dividends, Liquidations and Other Rights

Holders of Listed Common Stock are entitled to receive distributions, when authorized by our board of directors and declared by us, out of assets legally available for the payment of distributions. They also are entitled to share ratably in our assets 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 of our known debts and liabilities. These rights are subject to the preferential rights of any other class or series of our shares, including the Senior Common Stock, our Series A Preferred Stock and our Series B Preferred Stock and the provisions of our charter regarding restrictions on transfer and ownership of shares of our capital stock.

Holders of our Listed Common Stock have no preference, conversion, exchange, sinking fund, redemption or appraisal rights and have no preemptive rights to subscribe for any of our securities. Subject to the restrictions on transfer and ownership of shares of our capital stock contained in our charter, all shares of Listed Common Stock have equal distribution, liquidation and other rights.

Senior Common Stock

Voting Rights

Holders of our Senior Common Stock have no voting rights, except as set forth below or as otherwise from time to time required by law. So long as any shares of Senior Common Stock remain outstanding, we will not, without the affirmative vote or consent of the holders of a least a majority of the shares of the Senior Common Stock outstanding at the time, given in person or by proxy, either in writing or at a meeting (voting separately by class), amend, alter or repeal the provisions of our charter, whether by merger, consolidation or otherwise, so as to materially and adversely affect any right, preference, privilege or voting power of the Senior Common Stock or the holders thereof.

Dividends, Liquidations and Other Rights

The Senior Common Stock has priority over the Listed Common Stock with respect to payment of distributions and is pari passu with the Listed Common Stock with respect to distribution of amounts upon liquidation, dissolution or winding up; however, the Senior Common Stock ranks junior to our Series A Preferred Stock and Series B Preferred Stock with respect to payment of distributions and distribution of amounts upon liquidation, dissolution or winding up. The Senior Common Stock will be entitled to receive, subject to the preferential rights of the Series A Preferred Stock and the Series B Preferred Stock and any other preferred stock that we may issue in the future, when and as authorized by our board of directors and declared by us, out of funds legally available for payment of distributions, cash distributions in an amount equal to \$1.05 per share per annum, declared daily and paid at the rate of \$0.0875 per share per month. Distributions are cumulative from the date of issue of the shares and are payable monthly on or about the 5th business day of the month following the month in which such distributions are earned.

Exchange Option

Holders of Senior Common Stock have the right, but not the obligation, after the 5th anniversary of the issuance of the shares of Senior Common Stock proposed to be exchanged, to exchange any or all of such shares of Senior Common Stock for our Listed Common Stock at a predetermined exchange ratio, or the Exchange Ratio. The Exchange Ratio will be calculated by dividing \$15.00 by the greatest of (i) the Closing Trading Price of the Listed Common Stock on the date on which such shares of Senior Common Stock were originally issued, (ii) the Book Value Per Share of the Listed Common Stock as determined as of the date on which such shares of Senior Common Stock were originally issued, and (iii) \$13.68. For this purpose, Book Value Per Share means, as of a given date, the common stockholders equity (as reflected in our most recent public filing with the SEC) divided by the number of outstanding shares of common stock as of the same date. Closing Trading Price means, on any date of determination, (i) the most recently reported closing price per share of the Listed Common Stock as of such date on the NASDAQ Global Select Market, or (ii) if, as of such date, the Listed Common Stock is not traded on the NASDAQ Global Select Market, the most recently reported closing price per share of the Listed Common Stock on the primary stock exchange on which the Listed Common Stock is then listed for trading, or (iii) if, as of such date, the Listed Common Stock is not listed for

trading on any stock exchange, the closing bid price for the Listed Common Stock on the Over-the-Counter Bulletin Board, over-the-counter market or on the Pink Sheets, or (iv) if there is no longer any public market for the Listed Common Stock as of such date, the fair market value of a share of Listed Common Stock as determined in good faith by our board of directors.

Solely for purposes of determining when shares of Senior Common Stock become exchangeable, shares of Senior Common Stock purchased by a holder on dates subsequent to such holder's initial purchase of Senior Common Stock (excluding shares issued pursuant to such holder's participation in a distribution reinvestment plan of the Company, if any) will be deemed to have been issued on their respective issuance dates and, accordingly, the 5-year holding periods for such shares will commence from their respective issuance dates. In addition, any shares issued pursuant to a distribution reinvestment plan of the Company, if any, will be deemed to have been issued, and the five-year holding periods for such shares will be deemed to commence, on the date of issuance of the shares of Senior Common Stock purchased by the holder to which the shares issued pursuant to such Company's distribution reinvestment plan relate.

All accumulated and unpaid distributions on the Senior Common Stock shall be paid to the holder through the date of exchange.

Automatic Conversion

Each share of Senior Common Stock will be converted into Listed Common Stock in accordance with the Exchange Ratio automatically upon any of the following events:

an acquisition of the Company by another company by means of any transaction or series of related transactions to which we are a party (including, without limitation, any stock acquisition, reorganization, merger or consolidation, but excluding any sale of stock for capital raising purposes) other than a transaction or series of transactions in which the holders of our voting securities outstanding immediately prior to such transaction continue to retain at least 50% of the total voting power represented by our voting securities or those of such other surviving entity outstanding immediately after such transaction or series of transactions;

a sale of all or substantially all of our assets; or

a liquidation, dissolution or winding up of the Company.

All accumulated and unpaid distributions on the Senior Common Stock shall be paid to the holder through the date of conversion.

Call Protection

Shares of Senior Common Stock will be callable at our sole option upon the earlier of (i) September 1, 2017 or (ii) the 5th anniversary of the date on which \$100 million of Senior Common Stock is sold. At such time the shares of Senior Common Stock will be callable for cash at our option, in whole or in part, at a redemption price equivalent to \$15.30 per share, plus accrued and unpaid distributions. We may not call shares of Senior Common Stock prior to such date, except in certain limited circumstances relating to maintaining our ability to qualify as a real estate investment trust, or REIT.

Anti-Dilution

If the outstanding Listed Common Stock is increased or decreased or changed into or exchanged for a different number or kind of shares or other securities of the Company or of any other company by reason of any reclassification, recapitalization, share split up, combination of shares, or share distribution, appropriate adjustment will be made to the number of shares and relative terms of the Senior Common Stock. There will be no anti-dilution adjustment upon the future sale of additional shares of Listed Common Stock, regardless of the price at which the Senior Common Stock is sold.

Valuation

We may consider implementing a valuation process to provide an estimate of the value per share of Senior Common Stock on either a monthly or quarterly basis.

Common Stock

Certificates

We will not issue certificates. Shares of Common Stock will be held in uncertificated form, which will eliminate the physical handling and safekeeping responsibilities inherent in owning transferable stock certificates and eliminate the need to return a duly executed stock certificate to the transfer agent to effect a transfer. Transfers can be effected simply by mailing to us a duly executed transfer form. Upon the issuance of shares of Common Stock, we will send to each stockholder a written statement which will include all information that is required to be written upon stock certificates pursuant to the MGCL.

Meetings and Special Voting Requirements

An annual meeting of the stockholders will be held each year for the purpose of electing the class of directors whose term is up for election and to conduct other business that may properly be before the stockholders. Special meetings of stockholders may be called only upon the request of a majority of our directors, a majority of our independent directors, our chairman or our president and must be called by our secretary upon the written request of stockholders entitled to cast at least a majority of all the votes entitled to be cast at a meeting. In general, the presence in person or by proxy of a majority of the outstanding shares, exclusive of excess shares (described in Certain Provisions of Maryland Law and of Our Charter and Bylaws Restrictions on Ownership of Shares, below), shall constitute a quorum. Generally, the affirmative vote of a majority of the votes cast at a meeting at which a quorum is present is necessary to take stockholder action, except that a plurality of all votes cast at such a meeting is sufficient to elect a director.

Under Maryland law, 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. However, a Maryland corporation may provide in its charter for approval of these matters by a lesser percentage, but not less than a majority of all of the votes entitled to be cast on the matter. Our charter provide for a majority vote in these situations.

Stockholders may, by the affirmative vote of two-thirds of the shares entitled to vote generally in the election of directors, elect to remove a director for cause. Stockholders do not have the ability to vote to replace our Adviser or to select a new adviser.

Information Rights

Any stockholder may, during normal business hours and for any lawful and proper purpose, inspect and copy our bylaws, minutes of the proceedings of our stockholders, our annual financial statements and any voting trust agreement that is on file at our principal office. In addition, one or more stockholders who together are, and for at least six months have been, record holders of 5% of any class of our common stock are entitled to inspect a copy of our stockholder list upon written request. The list will include the name and address of, and the number of shares owned by, each stockholder and will be available at our principal office within 20 days of the stockholder's request.

The rights of stockholders described above are in addition to, and do not adversely affect rights provided to investors under, Rule 14a-7 promulgated under the Exchange Act, which provides that, upon request of investors and the payment of the expenses of the distribution, we are required to distribute specific materials to stockholders in the context of the solicitation of proxies for voting on matters presented to stockholders, or, at our option, provide requesting stockholders with a copy of the list of stockholders so that the requesting stockholders may make the

distribution themselves.

Distributions

Distributions will be paid to investors who are stockholders as of the record date selected by our board of directors. Distributions on the Listed Common Stock will be paid on a monthly basis regardless of the frequency with which such distributions are declared. We are required to make distributions to our stockholders sufficient to

satisfy the REIT requirements. Generally, income distributed to our stockholders will not be taxable to us under federal income tax laws unless we fail to comply with the REIT requirements.

Distributions will be paid at the discretion of our board of directors based upon our earnings, cash flow and general financial condition. The directors' discretion will be governed, in substantial part, by their obligation to cause us to comply with the REIT requirements. Because we may receive income from interest or rents at various times during our fiscal year, distributions may not reflect our income earned in that particular distribution period but may be made in anticipation of cash flow which we expect to receive during a later period of the year and may be made in advance of actual receipt in an attempt to make distributions relatively uniform. We may borrow to make distributions if the borrowing is necessary to maintain our REIT status, or if the borrowing is part of a liquidation strategy whereby the borrowing is done in anticipation of the sale of properties and the proceeds will be used to repay the loan.

Repurchases of Excess Shares

We have the authority to redeem excess shares (as defined in our charter) immediately upon becoming aware of the existence of excess shares or after giving the holder of the excess shares 30 days to transfer the excess shares to a person whose ownership of such shares would not exceed the ownership limit, and therefore such shares would no longer be considered excess shares. The price paid upon redemption by us shall be the lesser of the price paid for such excess shares by the stockholder holding the excess shares or the fair market value of the excess shares. We may purchase excess shares or otherwise repurchase shares if the repurchase does not impair our capital or operations. For additional information regarding excess shares, see Certain Provisions of Maryland Law and of Our Charter and Bylaws Restrictions on Ownership of Shares.

Other Matters

The transfer and distribution paying agent and registrar for our common stock is BNY Mellon Shareowner Services.

Preferred Stock

General

Subject to limitations prescribed by the MGCL and our charter, our board of directors is authorized to issue, from the authorized but unissued shares of stock, shares of preferred stock in class or series and to establish from time to time the number of shares of preferred stock to be included in the class or series and to fix the designation and any preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends and other distributions, qualifications and terms and conditions of redemption of the shares of each series, and any other subjects or matters as may be fixed by resolution of our board of directors or one of its duly authorized committees.

Existing Series of Preferred Stock

Our board of directors has classified:

1,150,000 shares of 7.75% Series A Preferred Stock; and