CBL & ASSOCIATES PROPERTIES INC
Form S-3/A
May 23, 2003
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As filed with the Securities and Exchange Commission on May 23, 2003

Registration No. 333-104882

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Amendment No. 1

to

Form S-3

REGISTRATION STATEMENT

UNDER

THE SECURITIES ACT OF 1933

CBL & ASSOCIATES PROPERTIES, INC.

(Exact name of registrant as specified in its charter)

Delaware	**62-1545718**
(State or other jurisdiction of Incorporation or Organization)	**(I.R.S. Employer Identification No.)**

CBL Center

2030 Hamilton Place Blvd., Suite 500

Chattanooga, Tennessee 37421-6000

(423) 855-0001

(Address, including Zip Code; and Telephone Number, including Area Code, of Registrant s Principal Executive Office)

Stephen D. Lebovitz

President and Secretary

Watermill Center

800 South Street, Suite 395

Waltham, MA 02453-1436

(781) 647-3330

(Name, Address, including Zip Code, and Telephone Number, including Area Code, of Agent for Service)

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with copies to:

Yaacov M. Gross, Esq.	**Jeffery V. Curry, Esq.**
Willkie Farr & Gallagher	**Shumacker Witt Gaither & Whitaker, P.C.**
787 Seventh Avenue	**2030 Hamilton Place Blvd., Suite 210**
New York, New York 10019	**Chattanooga, Tennessee 37421**
(212) 728-8225	**(423) 855-1814**

Approximate date of commencement of proposed sale to the public: From time to time after the effective date of this Registration Statement as determined by market conditions and other factors.

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, please check the following box. x

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 delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box. ¨

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CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to Be Registered(1)	Amount to Be Registered	Proposed Maximum Offering Price Per Security	Proposed Maximum Aggregate Offering Price (2)	Amount of Registration Fee
Preferred Stock (par value $.01 per share)(3) Common Stock (par value $.01 per share)(4) Depositary Shares, representing Preferred Stock (par value $.01 per share)(5) Common Stock Warrants(6)	$499,713,203(7)	(8)	$499,713,203(7)	$40,427(9)

(1) Pursuant to General Instruction II.D. of Form S-3 under the Securities Act of 1933, as amended (the Securities Act), the fee table does not specify by each class of securities to be registered information as to the amount to be registered, proposed maximum offering price per unit, and proposed maximum aggregate offering price. Securities registered hereunder may be sold separately, together or as units with other securities registered hereunder.

(2) Estimated solely for purposes of calculating the registration fee. The aggregate maximum offering price of all securities issued pursuant to this Registration Statement will not exceed $499,713,203.

(3) There is being registered hereunder an indeterminate number of shares of Preferred Stock as may be sold, from time to time, by the Registrant.

(4) There is being registered hereunder an indeterminate number of shares of Common Stock as may be sold, from time to time, by the Registrant. There are also being registered hereunder an indeterminate number of shares of Common Stock as shall be issuable upon exercise of Common Stock Warrants or conversion of Preferred Stock registered hereunder.

(5) To be represented by Depositary Receipts representing an interest in Common Stock or Preferred Stock.

(6) There is being registered an indeterminate amount and number of Common Stock Warrants, representing rights to purchase Common Stock registered hereunder.

(7) In no event will the aggregate initial offering price of all securities issued from time to time pursuant to this Registration Statement exceed $499,713,203. The aggregate amount of Common Stock registered hereunder may be further limited to that which is permissible under Rule 415(a)(4) under the Securities Act. The securities registered hereunder may be sold separately or as units with other securities registered hereunder.

(8) Omitted pursuant to General Instruction II.D of Form S-3 under the Securities Act.

(9) Pursuant to Rule 429 under the Securities Act under the Securities Act of 1933, as amended, the Prospectus included in this Registration Statement also relates to $62,286,797 of securities previously registered under the Registrant s Registration Statement on Form S-3 (File No. 333-47041) for which a registration fee of $18,375 was previously paid to the Commission. If any such previously registered securities are offered prior to the effective date of this Registration Statement, the amount of such securities will not be included in a prospectus under this Registration Statement. The amount of securities being registered hereby, together with the remaining securities registered under Registration Statement on From S-3 (No. 333-47041), represents the maximum amount of securities that are expected to be offered for sale. This registration statement also constitutes post-effective amendment No. 1 with respect to the Registrant s Registration Statement on From S-3 (File No. 333-47041).

THE REGISTRANT HEREBY AMENDS THE 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.

Pursuant to Rule 429 under the Securities Act, the combined Prospectus included in this Registration Statement also relates to equity securities covered by CBL & Associates Properties, Inc. s Registration Statement on Form S-3 (File No. 333-47041).

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PROSPECTUS

CBL & ASSOCIATES PROPERTIES, INC.

$562,000,000

PREFERRED STOCK, COMMON STOCK, DEPOSITARY SHARES AND COMMON STOCK WARRANTS

We may from time to time offer in one or more series (i) shares of preferred stock, par value $.01 per share, (ii) shares of common stock, par value $.01 per share, (iii) common stock or preferred stock represented by depositary shares, and (iv) warrants to purchase shares of common stock, with an aggregate public offering price of up to $562,000,000 in amounts, at prices and on terms to be determined at the time or times of offering. We may offer the preferred stock, depositary shares, common stock and common stock warrants, separately or together, in separate classes or series, in amounts, at prices and on terms to be set forth in a supplement to this Prospectus.

The specific terms of the offered securities in respect of which this Prospectus is being delivered will be set forth in the applicable prospectus supplement and will include, where applicable, (i) in the case of preferred stock, the specific series designation, number of shares, title and stated value, any dividend, liquidation, optional or mandatory redemption, conversion, voting and other rights, and any initial public offering price; (ii) in the case of common stock, any initial public offering price; (iii) in the case of depositary shares, the number of shares, the whole or fractional common stock or preferred stock represented by each such depositary share and any initial public offering price; and (iv) in the case of common stock warrants, the number, duration, offering price, exercise price and detachability. In addition, such specific terms may include limitations on direct or beneficial ownership and restrictions on transfer of the offered securities, in each case as may be appropriate to preserve our status as a real estate investment trust, or REIT, for federal income tax purposes. The applicable prospectus supplement will also contain information, where applicable, about certain United States federal income tax considerations relating to, and any listing on a securities exchange of, the offered securities covered by such prospectus supplement.

Our common stock is listed on the New York Stock Exchange under the symbol CBL. Our 9.0% Series A cumulative redeemable preferred stock is listed on the New York Stock Exchange under the symbol CBLprA. Our 8.75% Series B cumulative redeemable preferred stock is listed on the New York Stock Exchange under the symbol CBLprB. Any common stock offered pursuant to a prospectus supplement will be listed on such exchange, subject to official notice of issuance.

We may offer our securities directly, through agents we will designate from time to time, or to or through underwriters or dealers. If any agents or underwriters are involved in the sale of any of the offered securities, their names, and any applicable purchase price, fee, commission or discount arrangement with, between or among them, will be set forth, or will be calculable from the information set forth, in the applicable prospectus supplement. See Plan of Distribution.

INVESTING IN OUR SECURITIES INVOLVES CERTAIN RISKS. SEE RISK FACTORS ON PAGE 3.

THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION NOR HAS THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

Our securities may not be sold without delivery of the applicable prospectus supplement describing the method and terms of the offering of such offered securities.

The date of this Prospectus is May 23, 2003

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WHERE TO FIND MORE INFORMATION

We are subject to the informational requirements of the Securities Exchange Act of 1934, as amended, and in accordance with those requirements, we file reports and other information with the SEC. The reports and other information can be inspected and copied at the public reference facilities maintained by the SEC at Room 1024, Judiciary Plaza, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of this material can be obtained by mail from the Public Reference Section of the SEC at Room 1024, Judiciary Plaza, 450 Fifth Street, N.W., Washington, D.C. 20549 at prescribed rates. The SEC maintains a Web site (http://www.sec.gov) that contains reports, proxy and information statements and other materials that are filed through the SEC Electronic Data Gathering, Analysis and Retrieval (EDGAR) system. In addition, our common stock and Series A and Series B preferred stock are listed on the New York Stock Exchange and we are required to file reports, proxy and information statements and other information with the New York Stock Exchange. These documents can be inspected at the principal office of the New York Stock Exchange, 20 Broad Street, New York, New York 10005.

We have filed with the SEC a registration statement on Form S-3 covering the securities offered by this Prospectus. You should be aware that this Prospectus does not contain all of the information contained or incorporated by reference in that registration statement and its exhibits and schedules, particular portions of which have been omitted as permitted by the SEC s rules. For further information about our company and our securities, we refer you to the registration statement and its exhibits and schedules. You may inspect and obtain the registration statement, including exhibits, schedules, reports and other information that we have filed with the SEC, as described in the preceding paragraph. Statements contained in this Prospectus concerning the contents of any document we refer you to are not necessarily complete and in each instance we refer you to the applicable document filed with the SEC for more complete information.

INCORPORATION OF CERTAIN DOCUMENTS BY REFERENCE

We have filed the documents listed below with the SEC under the Securities Exchange Act of 1934 and they are incorporated herein by reference: (i) Annual Report on Form 10-K for the fiscal year ended December 31, 2002; (ii) Current Report on Form 8-K filed on April 24, 2003; (iii) the description of our common stock contained in our Registration Statement on Form 8-A dated October 25, 1993; (iv) the description of our series A preferred stock contained in our Registration Statement on Form 8-A dated October 25, 1993; and (v) the description of our series B preferred stock contained in our Registration Statement on Form 8-A dated June 11, 2002.

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Any document which we file pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act after the date of this Prospectus and prior to the termination of this offering of securities will be deemed to be incorporated by reference into, and to be part of, this Prospectus from the date of filing of each such document.

Any statement contained in this Prospectus or in a document incorporated or deemed to be incorporated by reference into this Prospectus will, to the extent applicable, be deemed to be modified, superseded or replaced by later statements included in supplements or amendments to this Prospectus or in subsequently filed documents which are in, or deemed to be incorporated by reference in, this Prospectus.

We will provide without charge to each person, including any beneficial owner, to whom a copy of this Prospectus is delivered, upon the written or oral request of any such person, a copy of any or all documents incorporated by reference herein (other than exhibits to those documents, unless such exhibits are specifically incorporated by reference into such documents). Such requests should be addressed to our Investor Relations Department, CBL Center, 2030 Hamilton Place Blvd., Suite 500, Chattanooga, Tennessee 37421-6000 (telephone number (423) 855-0001).

CBL & ASSOCIATES PROPERTIES, INC.

We are a self-managed, self-administered, fully integrated real estate company. We own, operate, market, manage, lease, expand, develop, redevelop, acquire and finance regional malls and community and neighborhood shopping centers. We have elected to be taxed as a REIT for federal income tax purposes. We are one of the largest mall REITs in the United States. We currently own controlling interests in a portfolio of properties consisting of 51 enclosed regional malls, 18 associated centers, each of which is part of a regional shopping mall complex, 60 community centers, one office building, joint venture investments in four regional malls, two associated centers and two community centers and income from eleven mortgages. Additionally, we have one regional mall, one associated center and three community centers currently under construction. We also own options to acquire certain shopping center development sites.

We conduct substantially all of our business through our operating partnership, CBL & Associates Limited Partnership, a Delaware limited partnership. We currently own an indirect majority interest in the operating partnership, and one of our wholly owned subsidiaries, CBL Holdings I, Inc., a Delaware corporation, is its sole general partner. To comply with certain technical requirements of the Internal Revenue Code of 1986, as amended, applicable to REITs, our property management and development activities, sales of peripheral land and maintenance operations are carried out through a separate management company, CBL & Associates Management, Inc. Currently, our operating partnership owns 100% of the preferred stock of the management company, which entitles the operating partnership to substantially all of the management company s earnings. Our operating partnership also owns 6% of the management company s common stock. Certain of our executive officers and their children hold the remaining 94% of the management company s common stock.

In order to maintain our qualification as a REIT for federal income tax purposes, we must distribute each year at least 90% of our taxable income, computed without regard to net capital gains or the dividends-paid deduction.

We were organized on July 13, 1993 as a Delaware corporation to acquire substantially all of the real estate properties owned by our predecessor company, CBL & Associates, Inc., and its affiliates. Our principal executive offices are located at CBL Center, 2030 Hamilton Place Blvd., Suite 500, Chattanooga, Tennessee 37421-6000, and our telephone number is (423) 855-0001. Our website can be found at www.cblproperties.com. The information contained in our website is not part of this Prospectus.

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RATIOS OF EARNINGS TO FIXED CHARGES

AND PREFERRED STOCK DIVIDENDS

Actual				
Years Ended December 31,				
2002	2001	2000	1999	1998
1.82	1.57	1.74	1.64	1.62

We compute the ratios of earnings to combined fixed charges and preferred stock dividends by dividing earnings by combined fixed charges and preferred stock dividends. For this purpose, earnings consist of pre-tax income from continuing operations before extraordinary items and fixed charges (excluding capitalized interest), adjusted, as applicable, for our proportionate share of earnings of 50 percent-owned affiliates and distributed earnings from less than 50 percent-owned affiliates. Fixed charges consist of interest expense (including interest costs capitalized), amortization of debt costs and the portion of rent expense representing an interest factor.

RISK FACTORS

This Prospectus and those documents incorporated by reference herein may include certain forward-looking information statements within the meaning of Section 27A of the Securities Act and Section 21E of the Exchange Act, including (without limitation) statements with respect to anticipated future operating and financial performance, growth and acquisition opportunities and other similar forecasts and statements of expectation. Words such as expects, estimates, plans, anticipates, predicts, intends, believes, seeks, should and other similar expr variations of these expressions are intended to identify these forward-looking statements. Forward-looking statements made by us are based on our estimates, projections, beliefs and assumptions at the time of the statements and are not guarantees of future performance. We disclaim any obligation to update or revise any forward-looking statement based on the occurrence of future events, the receipt of new information or otherwise.

Actual future performance, outcomes and results may differ materially from those expressed in forward-looking statements made by us as a result of a number of risks, uncertainties and assumptions. Representative examples of these factors include (without limitation) general industry and economic conditions, interest rate trends, costs of capital, capital requirements, availability of real estate properties, competition from other companies and venues for the sale/distribution of goods and services, shifts in customer demands, tenant bankruptcies, changes in operating expenses, including employee wages, benefits and training, governmental and public policy changes, changes in applicable laws, rules and regulations (including changes in tax laws), the ability to obtain suitable equity and/or debt financing, and the continued availability of financing in the amounts and on the terms necessary to support our future business.

Risks of Expansion and Development Activities

We intend to pursue development and expansion activities as opportunities arise. In connection with any development or expansion, we will incur various risks including the risk that development or expansion opportunities explored by us may be abandoned and the risk that construction costs of a project may exceed original estimates, possibly making the project not profitable. Other risks include the risk that we may not be able to refinance construction loans which are generally with full recourse to us, the risk that occupancy rates and rents at a completed project will not meet projections and will be insufficient to make the project profitable, and the risk that we will not be able to obtain anchor, mortgage lender and property partner approvals for certain expansion activities. In the event of an unsuccessful development project, our loss could exceed our investment in the project.

We have in the past elected not to proceed with certain development projects and anticipate that we will do so again from time to time in the future. If we elect not to proceed with a development opportunity, the

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development costs ordinarily will be charged against income for the then-current period. Any such charge could have a material adverse effect on our results of operations for the period in which the charge is taken.

General Factors Affecting Investments in Shopping Center Properties; Effect of Economic and Real Estate Conditions

A shopping center s revenues and value may be adversely affected by a number of factors, including:

- The national and regional economic climates
- Local real estate conditions (such as an oversupply of retail space)
- Perceptions by retailers or shoppers of the safety, convenience and attractiveness of the shopping center
- The willingness and ability of the shopping center s owner to provide capable management and maintenance services

In addition, other factors may adversely affect a shopping center s value without affecting its current revenues, including:

- Changes in governmental regulations, zoning or tax laws
- Potential environmental or other legal liabilities
- Availability of financing
- Changes in interest rate levels

There are numerous shopping facilities that compete with our properties in attracting retailers to lease space. In addition, retailers at our properties face continued competition from:

- Discount shopping centers
- Outlet malls
- Wholesale clubs

Direct mail

Telemarketing

Television shopping networks

Shopping via the Internet

Competition could adversely affect revenues and funds available for distribution.

Geographic Concentration

Our properties are located principally in the southeastern United States (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee and Virginia). The properties located in the southeastern United States accounted for approximately 59.4% of our total revenues from all properties for the year ended December 31, 2002. Our results of operations and funds available for distribution to stockholders therefore will be subject generally to economic conditions in the southeastern United States. We have mitigated our dependence on the Southeast through our 2001 acquisition of interests in 21 malls and two associated centers which are primarily located in the Midwest region of the United States. These properties accounted for approximately 26.9% of our total revenues from all properties for the year ended December 31, 2002.

Third-Party Interests in Certain Properties

We own partial interests in eight malls, six associated centers, three community centers and one office building. We manage all of these properties except for Governor s Square, Governor s Plaza and Kentucky Oaks.

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A property manager affiliated with the managing general partner performs the property management services for these properties.

Where we serve as managing general partner of the partnerships that own our properties, we may have certain fiduciary responsibilities to the other partners in those partnerships. In certain cases, the approval or consent of the other partners is required before we may sell, finance, expand or make other significant changes in the operations of such properties. To the extent such approvals or consents are required, we may experience difficulty in, or may be prevented from, implementing our plans with respect to expansion, development, financing or other similar transactions with respect to such properties.

With respect to Governor s Square, Governor s Plaza and Kentucky Oaks, we do not have day-to-day operational control or control over certain major decisions, including the timing and amount of distributions, which could result in decisions by the managing general partner that do not fully reflect our interests. This includes decisions relating to the requirements that we must satisfy in order to maintain our status as a REIT for tax purposes. However, decisions relating to sales, expansion and disposition of all or substantially all of the assets and financings are subject to approval by the operating partnership.

We have generally agreed not to sell an acquired property for a number of years if such sale would trigger adverse tax consequences for the seller.

Dependence on Key Tenants

In the year ended December 31, 2002, no tenant accounted for 5% or more of revenues except for The Limited Stores Inc. (including Intimate Brands, Inc.), which accounted for approximately 6.4% of our total revenues. The loss or bankruptcy of this key tenant could negatively affect our financial position and results of operations.

Dependence on Significant Markets

Our properties located at Nashville, Tennessee accounted for more than 9% of our revenues for the year ended December 31, 2002. No other market accounted for more than 5% of our revenues for the year ended December 31, 2002.

Our financial position and results of operations will therefore be affected by the results experienced at properties located at the Nashville, Tennessee area.

Rising Interest Rates and Other Factors Could Adversely Affect Our Stock Price and Borrowing Costs

Any significant increase in market interest rates from their current levels could lead holders of our securities to seek higher yields through other investments, which could adversely affect the market price of our stock. One of the factors that may influence the price of our stock in public

markets is the annual distribution rate we pay as compared with the yields on alternative investments. Numerous other factors, such as governmental regulatory action and tax laws, could have a significant impact on the future market price of our stock. In addition, increases in market interest rates could result in increased borrowing costs for us, which may adversely affect our cash flow and the amounts available for distributions to our stockholders.

Dependence on Management

Certain of the operating partnership s lines of credit are conditioned upon the operating partnership continuing to be managed by certain members of its current senior management and by such members of senior management continuing to own a significant direct or indirect equity interest in the operating partnership (including any shares of our common stock and preferred stock owned by such members of senior management may hold in us).

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Conflict of Interest: Retained Property Interests

Members of our senior management own interests in certain real estate properties that were retained by them at the time of our initial public offering. These consist primarily of outparcels at certain of our properties, which are being offered for sale through our management company.

Conflict of Interest: Tax Consequences of Sales of Properties

Since certain of our properties had unrealized gain attributable to the difference between the fair market value and adjusted tax basis in such properties immediately prior to their contribution to the operating partnership, the sale of any such properties, or a significant reduction in the debt encumbering such properties, could cause adverse tax consequences to the members of our senior management who owned interests in our predecessor entities. As a result, members of our senior management might not favor a sale of a property or a significant reduction in debt even though such a sale or reduction could be beneficial to us and the operating partnership. Our bylaws provide that any decision relating to the potential sale of any property that would result in a disproportionately higher taxable income for members of our senior management than for us and our stockholders, or that would result in a significant reduction in such property s debt, must be made by a majority of the independent directors of the Board of Directors. The operating partnership is required, in the case of such a sale, to distribute to its partners, at a minimum, all of the net cash proceeds from such sale up to an amount reasonably believed necessary to enable members of our senior management to pay any income tax liability arising from such sale.

Conflicts of Interest: Policies of Board of Directors

Certain entities owned in whole or in part by members of our senior management, including the construction company which built or renovated most of our properties, may continue to perform services for, or transact business with, us and the operating partnership. Furthermore, certain property tenants are affiliated with members of our senior management. Our bylaws provide that any contract or transaction between us or the operating partnership and one or more of our directors or officers, or between us or the operating partnership and any other entity in which one or more of our directors or officers are directors or officers or have a financial interest, must be approved by our disinterested directors or stockholders after the material facts of the relationship or interest of the contract or transaction are disclosed or are known to them.

Federal Tax Consequences: REIT Classification

We intend to continue to operate so as to qualify as a REIT under the Internal Revenue Code. Although we believe that we are organized and operate in such a manner, no assurance can be given that we currently qualify and in the future will continue to qualify as a REIT. Such qualification involves the application of highly technical and complex Internal Revenue Code provisions for which there are only limited judicial or administrative interpretations. The determination of various factual matters and circumstances not entirely within our control may affect our ability to qualify. In addition, no assurance can be given that legislation, new regulations, administrative interpretations or court decisions will not significantly change the tax laws with respect to qualification or its corresponding federal income tax consequences. We have received an opinion from our counsel, Willkie Farr & Gallagher, that we have been organized and operated in conformity with the requirements to qualify as a REIT and that our proposed method of operation will enable us to continue to meet such requirements. Such legal opinion, however, is not binding on the Internal Revenue Service. See Federal Income Tax Considerations.

If in any taxable year we were to fail to qualify as a REIT, we would not be allowed a deduction for distributions to stockholders in computing our taxable income and we would be subject to federal income tax on our taxable income at regular corporate rates. Unless entitled to relief under certain statutory provisions, we also would be disqualified from treatment as a REIT for the four taxable years following the year during which

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qualification was lost. As a result, the funds available for distribution to our stockholders would be reduced for each of the years involved. We currently intend to operate in a manner designed to qualify as a REIT. However, it is possible that future economic, market, legal, tax or other considerations may cause our Board of Directors, with the consent of a majority of our stockholders, to revoke the REIT election. See Federal Income Tax Considerations.

Federal Tax Consequences: Limits on Ownership Necessary to Maintain REIT Qualification

To maintain our status as a REIT under the Internal Revenue Code, not more than 50% in value of our outstanding capital stock may be owned, directly or indirectly, by five or fewer individuals (as defined in the Internal Revenue Code to include certain entities) during the last half of a taxable year. Our certificate of incorporation generally prohibits ownership of more than 6% of the outstanding shares of our capital stock by any single stockholder determined by vote, value or number of shares (other than Charles Lebovitz, David Jacobs, Richard Jacobs and their affiliates under the Internal Revenue Code s attribution rules).

Federal Tax Consequences: Effect of Distribution Requirements

To maintain our status as a REIT under the Internal Revenue Code, we generally will be required each year to distribute to our stockholders at least 90% of our taxable income after certain adjustments. However, to the extent that we do not distribute all of our net capital gain or distribute at least 90% but less than 100% of our REIT taxable income, as adjusted, we will be subject to tax on the undistributed amount at ordinary and capital gains corporate tax rates, as the case may be. In addition, we will be subject to a 4% nondeductible excise tax on the amount, if any, by which certain distributions paid by us during each calendar year are less than the sum of 85% of our ordinary income for such calendar year, 95% of our capital gain net income for the calendar year and any amount of such income that was not distributed in prior years. In the case of property acquisitions, including our initial formation, where individual properties are contributed to our operating partnership for operating partnership units, we have assumed the tax basis and depreciation schedules of the entities contributing properties. The relatively low tax basis of such contributed properties may have the effect of increasing the cash amounts we are required to distribute as dividends, thereby potentially limiting the amount of cash we might otherwise have been able to retain for use in growing our business. This low tax basis may also have the effect of reducing or eliminating the portion of distributions made by us that are treated as a non-taxable return of capital.

Environmental Matters

Under various federal, state and local laws, ordinances and regulations, a current or previous owner or operator of real estate may be liable for the costs of removal or remediation of petroleum, certain hazardous or toxic substances on, under or in such real estate. Such laws typically impose such liability without regard to whether the owner or operator knew of, or was responsible for, the presence of such substances. The costs of remediation or removal of such substances may be substantial. The presence of such substances, or the failure to promptly remediate such substances, may adversely affect the owner s or operator s ability to lease or sell such real estate or to borrow using such real estate as collateral. Persons who arrange for the disposal or treatment of hazardous or toxic substances may also be liable for the costs of removal or remediation of such substances at the disposal or treatment facility, regardless of whether such facility is owned or operated by such person. Certain laws also impose requirements on conditions and activities that may affect the environment or the impact of the environment on human health. Failure to comply with such requirements could result in the imposition of monetary penalties (in addition to the costs to achieve compliance) and potential liabilities to third parties. Among other things, certain laws require abatement or removal of friable and certain non-friable asbestos-containing materials in the event of demolition or certain renovations or remodeling. Certain laws regarding asbestos-containing materials require building owners and lessees, among other things, to notify and train certain employees working in areas known or presumed to contain asbestos-containing materials. Certain laws also impose liability for release of asbestos-containing materials into the air and third parties may seek recovery from owners or operators of real properties for personal injury or property damage associated with asbestos-containing materials. In connection with the ownership and operation of properties, we may be potentially liable for all or a portion of

such costs or claims.

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All of our properties (but not properties for which we hold an option to purchase but do not yet own) have been subject to Phase I environmental assessments or updates of existing Phase I environmental assessments within approximately the last nine years. Such assessments generally consisted of a visual inspection of the properties, review of federal and state environmental databases and certain information regarding historic uses of the property and adjacent areas and the preparation and issuance of written reports. Some of the properties contain, or contained, underground storage tanks used for storing petroleum products or wastes typically associated with automobile service or other operations conducted at the properties. Certain properties contain, or contained, dry-cleaning establishments utilizing solvents. Where believed to be warranted, samplings of building materials or subsurface investigations were undertaken. At certain properties, where warranted by the conditions, we have developed and implemented an operations and maintenance program that establishes operating procedures with respect to asbestos-containing materials. The costs associated with the development and implementation of such programs were not material.

We believe that our properties are in compliance in all material respects with all federal, state and local ordinances and regulations regarding the handling, discharge and emission of hazardous or toxic substances. We have not been notified by any governmental authority, and are not otherwise aware, of any material noncompliance, liability or claim relating to hazardous or toxic substances in connection with any of our present or former properties. We have not recorded in our financial statements any material liability in connection with environmental matters. Nevertheless, it is possible that the environmental assessments available to us do not reveal all potential environmental liabilities. It is also possible that subsequent investigations will identify material contamination, that adverse environmental conditions have arisen subsequent to the performance of the environmental assessments, or that there are material environmental liabilities of which management is unaware. Moreover, no assurances can be given that (i) future laws, ordinances or regulations will not impose any material environmental liability or (ii) the current environmental condition of the properties has not been or will not be affected by tenants and occupants of the properties, by the condition of properties in the vicinity of the properties or by third parties unrelated to us, the operating partnership or the relevant property s partnership. The existence of any such environmental liability could have an adverse effect on our results of operations, cash flow and the funds available to us to pay dividends.

Recent Events and Tenant Bankruptcies May Adversely Affect the Retail Climate

A significant portion of our earnings are derived from tenant occupancy and retail sales during the holiday season. The deterioration recently experienced in the national economy and the events related to the ongoing war against terrorism have negatively affected the retail climate. In addition, a number of local, regional and national retailers have closed locations or filed for bankruptcy within the last two years. We are unable to determine what effect these developments may have on our future earnings.

Our Insurance Coverage May Change in the Future and Not Include Coverage for Acts of Terrorism

The property and liability insurance policies on our properties currently do not exclude loss resulting from acts of terrorism, whether foreign or domestic. The cost of property and liability insurance policies that do not exclude coverage for acts of terrorism has risen significantly post-September 11, 2001. As a result, many companies within our industry are agreeing to exclude this coverage from their policies where possible. We are unable at this time to predict whether we will continue our policy coverage as currently structured when our policies are up for renewal on December 31, 2003.

USE OF PROCEEDS

Unless otherwise described in the applicable prospectus supplement, we intend to use the net proceeds from the sale of the offered securities for general purposes, which may include the acquisition of malls or community shopping centers as suitable opportunities arise, the expansion and improvement of certain properties in our portfolio, payment of development and construction costs for new centers and the repayment of certain indebtedness outstanding at such time.

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DESCRIPTION OF CAPITAL STOCK

Under our amended and restated certificate of incorporation, we have authority to issue 110,000,000 shares of all classes of capital stock, consisting of 95,000,000 shares of common stock and 15,000,000 shares of preferred stock. As of March 10, 2003, we had 29,869,905 shares of common stock outstanding, 2,675,000 shares of our 9.0% Series A cumulative redeemable preferred stock outstanding and 2,000,000 shares of our 8.75% Series B cumulative redeemable preferred stock outstanding. Our common stock is listed on the New York Stock Exchange under the symbol CBL. Our 9.0% Series A cumulative redeemable preferred stock is listed on the New York Stock Exchange under the symbol CBLprA. Our 8.75% Series B cumulative redeemable preferred stock is listed on the New York Stock Exchange under the symbol CBLprB.

Pursuant to rights granted to us and the other limited partners in the partnership agreement of the operating partnership, each of the limited partners may, subject to certain conditions, exchange its limited partnership interests in the operating partnership for shares of common stock. Assuming the exchange of all limited partnership interests in the operating partnership for common stock, at December 31, 2002, there would be approximately 55.5 million shares of common stock outstanding.

Description of Preferred Stock

General

The following summary description of the preferred stock sets forth certain general terms and provisions of the preferred stock to which any prospectus supplement may relate. The statements below describing the preferred stock do not purport to be complete and are in all respects subject to and qualified in their entirety by reference to the applicable provisions of our certificate of incorporation, bylaws and any applicable certificate of designations and may be modified, supplemented or varied in the prospectus supplement.

Terms

Subject to the limitations prescribed by our certificate of incorporation, our Board of Directors is authorized to fix the number of shares constituting each series of preferred stock and to fix the designations, powers, preferences and rights of each series and the qualifications, limitations and restrictions, all without any further vote or action by our stockholders. In particular, the Board of Directors may determine the number of shares of each series, the dividend rate, if any, the date, if any, on which dividends will accumulate, the dates, if any, on which dividends will be payable, the redemption rights, if any, of such series, any sinking fund provisions, liquidation rights and preferences, and any conversion rights and voting rights. The preferred stock will, when issued, be fully paid and non-assessable and, unless otherwise provided in the preferred stock designations, will have no preemptive rights. Under Delaware law, holders of preferred stock generally are not responsible for our debts or obligations.

The rights, preferences, privileges and restrictions of each series of preferred stock will be fixed by the articles supplementary relating to the series. A prospectus supplement, relating to each series, will specify the terms of the preferred stock, including: (i) the title and stated value; (ii) the number of shares offered, the liquidation preference per share and the offering price; (iii) the dividend rate(s), period(s) and/or payment date(s) or method(s) of calculation applicable; (iv) the date from which dividends will accumulate, if applicable; (v) the procedures for any

auction and remarketing, if any; (vi) the provision for a sinking fund, if any; (vii) the provision for redemption, if applicable; (viii) any listing on any securities exchange; (ix) the terms and conditions, if applicable, upon which such preferred stock will be convertible into common stock, including the conversion price (or manner of calculation thereof); (x) any other specific terms, preferences, rights, limitations or restrictions; (xi) a discussion of applicable federal income tax considerations; (xii) the relative ranking and preferences as to dividend rights and rights upon liquidation, dissolution or winding up of our affairs; (xiii) any

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limitations on issuance of any series of preferred stock ranking senior to or on a parity with such series of preferred stock as to dividend rights and rights upon liquidation, dissolution or winding up of our affairs; and (xiv) any limitations on direct or beneficial ownership and restrictions on transfer, in each case as may be appropriate to preserve our status as a REIT.

Rank

Unless otherwise specified in any prospectus supplement, the preferred stock will, with respect to dividend rights and rights upon our liquidation, dissolution or winding up, rank (i) senior to all classes or series of common stock and to all other equity securities ranking junior, (ii) on a parity with all equity securities issued by us, the terms of which specifically provide that such equity securities rank on a parity with the preferred stock, and (iii) junior to all equity securities issued by us, the terms of which specifically provide that such equity securities rank senior to the preferred stock. The term equity securities does not include convertible debt securities.

Dividends

Holders of preferred stock of each series will be entitled to receive, when, as and if declared by our Board of Directors, out of our assets legally available for payment, cash dividends at rates and on dates as will be set forth in the applicable prospectus supplement. Each dividend will be payable to holders of record as they appear on our share transfer books on record dates that will be fixed by our Board of Directors.

Dividends on any series of preferred stock may be cumulative or noncumulative, 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 our Board of Directors fails to declare a dividend payable on a dividend payment date on any series of preferred stock for which dividends are noncumulative, then the holders of this series of preferred stock will have no right to receive a dividend in respect of the dividend period ending on that dividend payment date, and we will have no obligation to pay the dividend accrued for that period, whether or not dividends on that series are declared payable on any future dividend payment date.

If preferred stock of any series is outstanding, we will not declare or pay or set apart for payment any dividends on our preferred stock of any other series ranking, as to dividends, on a parity with or junior to the preferred stock of such series for any period unless (i) if such series of preferred stock has a cumulative dividend, we have declared and paid or are contemporaneously declaring and paying full cumulative dividends or we have declared and set apart or are contemporaneously declaring and setting apart a sum sufficient for such payment on the preferred stock of such series for all past dividend periods and the then current dividend period or (ii) if such series of preferred stock does not have a cumulative dividend, we have declared and paid or are contemporaneously declaring and paying full dividends for the then current dividend period or we have declared and set apart or are contemporaneously declaring and setting apart a sum sufficient for such payment on the preferred stock of such series. When we do not pay dividends in full (or we do not set apart a sum sufficient for such full payment) 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 such series, we will declare all dividends upon preferred stock of such series and any other series of preferred stock ranking on a parity as to dividends with such preferred stock *pro rata* so that the amount of dividends we declare per share of such series of preferred stock and such other series of preferred stock will in all cases bear to each other the same ratio that accrued dividends per share on the shares of preferred stock of such series (which will not include any accumulation in respect of unpaid dividends for prior dividend periods if such preferred stock does not have a cumulative dividend) and such other series of preferred stock bear to each other. No interest, or sum of money in lieu of interest, will be payable in respect of any dividend payment or payments on preferred stock of such series which may be in arrears.

Except as provided in the immediately preceding paragraph, unless (i) if such series of preferred stock has a cumulative dividend, we have declared and paid or are contemporaneously declaring and paying full cumulative

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dividends or we have declared and set apart or are contemporaneously declaring and setting apart a sum sufficient for such payment on the preferred stock of such series for all past dividend periods and the then current dividend period and (ii) if such series of preferred stock does not have a cumulative dividend, we have declared and paid or are contemporaneously declaring and paying full dividends for the then current dividend period or we have declared and set apart or are contemporaneously declaring and setting apart a sum sufficient for such payment on the preferred stock of such series for the then current dividend period, we will not declare or pay or set aside for payment any dividends (other than in common stock or other capital stock ranking junior to the preferred stock of such series as to dividends and upon liquidation) or declare or make any other distribution upon the common stock, or any other of our capital stock ranking junior to or on a parity with the preferred stock of such series as to dividends or upon liquidation, nor will we redeem, purchase or otherwise acquire for any consideration (or pay any moneys or to make any moneys available for a sinking fund for the redemption of such shares) any common stock, or any other of our capital stock ranking junior to or on a parity with the preferred stock of such series as to dividends or upon liquidation (except by conversion into or exchange for our capital stock ranking junior to the preferred stock of such series as to dividends and upon liquidation).

Any dividend payment made on shares of a series of preferred stock will first be credited against the earliest accrued but unpaid dividend due with respect to shares of such series which remains payable.

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 that prospectus supplement.

We will specify, in the prospectus supplement relating to a series of preferred stock that is subject to mandatory redemption, the number of preferred stock that we will redeem 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 accrued and unpaid dividends (which will not, if those shares of preferred stock do 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 (i) if such series of preferred stock has a cumulative dividend, we have declared and paid or are contemporaneously declaring and paying full cumulative dividends or we have declared and set apart or are contemporaneously declaring and setting apart a sum sufficient for such payment on the preferred stock of such series for all past dividend periods and the then current dividend period and (ii) if such series of preferred stock does not have a cumulative dividend, we have declared and paid or are contemporaneously declaring and paying full dividends for the then current dividend period or we have declared and set apart or are contemporaneously declaring and setting apart a sum sufficient for such payment on the preferred stock of such series for the then current dividend period, we will not redeem any shares of any series of preferred stock unless we simultaneously redeem all outstanding shares of preferred stock of such series; *provided, however,* that the foregoing will not prevent the purchase or acquisition of shares of preferred stock of such series to preserve our REIT status or pursuant to a purchase or exchange offer made on the same terms to holders of all outstanding shares of preferred stock of such series, and, unless (x) if such series of preferred stock has a cumulative dividend, we have declared and paid or are contemporaneously declaring and paying full cumulative dividends or we have declared and set apart or are contemporaneously declaring and setting apart a sum sufficient for such payment on the preferred stock of such series for all past dividend periods and the then current dividend period and (y) if such series of preferred stock does not have a cumulative dividend, we have declared and paid or are contemporaneously declaring and paying full dividends for the then current dividend period or we have declared and set apart or are contemporaneously declaring and setting apart a sum sufficient for such payment on the preferred stock of such series for the then current dividend period, we will not purchase or otherwise acquire directly or indirectly any shares of preferred stock of such series (except by conversion into

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or exchange for our capital stock ranking junior to the preferred stock of such series as to dividends and upon liquidation); *provided, further,* that the foregoing will not prevent the purchase or acquisition of shares of preferred stock of such series to preserve our REIT status or pursuant to a purchase or exchange offer made on the same terms to holders of all outstanding shares of preferred stock of such series.

If we redeem fewer than all of the outstanding shares of preferred stock of any series, we will determine the number of shares of preferred stock to be redeemed and we may redeem those shares *pro rata* from the holders of record of those shares in proportion to the number of such shares held by those holders (with adjustments to avoid redemption of fractional shares) or any other equitable method that we determine will not result in the issuance of any shares-in-trust (as defined in our certificate of incorporation).

We will mail notice of redemption 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 will state: (i) the redemption date; (ii) the number of shares and series of the preferred stock to be redeemed; (iii) the redemption price; (iv) the place or places where certificates for such preferred stock are to be surrendered for payment of the redemption price; (v) that dividends on the shares to be redeemed will cease to accrue on that redemption date; and (vi) the date upon which the holder s conversion rights, if any, as to those shares will terminate. If we redeem fewer than all outstanding shares of the preferred stock of any series, we will also specify, in the notice mailed to each holder, the number of shares of preferred stock to be redeemed. If we have given notice of redemption of any shares of preferred stock and if we have set aside the funds necessary for such redemption in trust for the benefit of the holders of any shares of preferred stock so called for redemption, then from and after the redemption date dividends will cease to accrue on those shares of preferred stock, and all rights of the holders of those shares 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 will be made to the holders of any shares of common stock, any shares-in-trust or any other class or series of our capital stock ranking junior to the preferred stock in the distribution of assets upon our liquidation, dissolution or winding up, the holders of shares of each series of preferred stock will be entitled to receive out of our assets legally available for distribution to stockholders liquidating distributions in the amount of the liquidation preference per share (set forth in the applicable prospectus supplement), plus an amount equal to all accrued and unpaid dividends (which will not include any accumulation in respect of unpaid dividends for prior dividend periods if those shares of preferred stock do not have a cumulative dividend). After payment of the full amount of the liquidating distributions to which they are entitled, the holders of shares of preferred stock will have no right or claim to any of our remaining assets. In the event that, upon any such voluntary or involuntary liquidation, dissolution or winding up, our available assets are insufficient to pay the amount of the liquidating distributions on all outstanding shares of preferred stock and the corresponding amounts payable on all shares of other classes or series of our capital stock ranking on a parity with such shares of preferred stock in the distribution of assets upon such liquidation, dissolution or winding up, then the holders of those shares of preferred stock and all other such classes or series of capital stock will share ratably in any such distribution of assets in proportion to the full liquidating distributions to which they would otherwise be respectively entitled. If liquidating distributions will have been made in full to all holders of preferred stock, our remaining assets will be distributed among the holders of any other classes or series of capital stock ranking junior to the preferred stock upon liquidation, dissolution or winding up, according to their respective rights and preferences and in each case according to their respective number of shares. For such purposes, our consolidation or merger with or into any other corporation, trust or entity, or the sale, lease or conveyance of all or substantially all of our property or business, will not be deemed to constitute our liquidation, dissolution or winding up.

Voting Rights

Holders of shares of preferred stock will not have any voting rights, except as set forth below or as otherwise from time to time required by law or as indicated in the applicable prospectus supplement.

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Whenever dividends on any shares of preferred stock will be in arrears for six consecutive quarterly periods, the holders of those shares of 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 at the next annual meeting of stockholders and at each subsequent meeting until (i) if that series of preferred stock has a cumulative dividend, we have fully paid or declared and set aside a sum sufficient for the payment of all dividends accumulated on that series of preferred stock for the past dividend periods and the then current dividend period or (ii) if that series of preferred stock does not have a cumulative dividend, we have fully paid or declared and set aside a sum sufficient for the payment of four consecutive quarterly dividends. In such case, our 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 preferred stock remain outstanding, we will not, without the affirmative vote or consent of the holders of two-thirds of the shares of each series of preferred stock outstanding at the time, given in person or by proxy, either in writing or at a meeting (such series voting separately as a class), (i) authorize or create, or increase the authorized or issued amount of, any class or series of capital stock ranking prior to that series of preferred stock with respect to the payment of dividends or the distribution of assets upon, liquidation, dissolution or winding up or reclassify any of our authorized capital stock into any such shares, or create, authorize or issue any obligation or security convertible into or evidencing the right to purchase any such shares or (ii) amend, alter or repeal the provisions of our certificate of incorporation or preferred stock designation for that 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 that series of preferred stock or the holders thereof; *provided, however,* with respect to the occurrence of any of the events set forth in (ii) above, so long as the 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 such event will not be deemed to materially and adversely affect such rights, preferences, privileges or voting power of holders of preferred stock, and *provided, further,* that (A) any increase in amount of the authorized preferred stock or the creation or issuance of any other series of preferred stock or (B) any increase in the number of authorized shares of that series or any other series of preferred stock in each case ranking on a parity with or junior to the preferred stock of that series with respect to the payment of dividends or the distribution of assets upon liquidation, dissolution or winding up, will not be deemed to materially and adversely affect such 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 such vote would otherwise be required will be effected, all outstanding shares of such series of preferred stock are redeemed or called for redemption and we deposit sufficient funds in trust to effect such redemption.

Conversion Rights

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