

CBL & ASSOCIATES PROPERTIES INC  
Form DEF 14A  
August 21, 2009  
UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

**SCHEDULE 14A**

**PROXY STATEMENT PURSUANT TO SECTION 14(a) OF THE  
SECURITIES EXCHANGE ACT OF 1934**

Filed by the Registrant  X

Filed by a Party other than the Registrant  o

Check the appropriate box:

- o Preliminary Proxy Statement
- o Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))
- X Definitive Proxy Statement
- o Definitive Additional Materials
- o Soliciting Material Under § 240.14a-12

**CBL & ASSOCIATES PROPERTIES, INC.**

(Name of Registrant as Specified in Its Charter)

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

- X No fee required.
- o Fee computed on table below per Exchange Act Rules 14(a)-6(i)(1) and 0-11.

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- 1) Title of each class of securities to which transaction applies:
  
- 2) Aggregate number of securities to which transaction applies:
  
- 3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11  
(Set forth the amount on which the filing fee is calculated and state how it was determined):
  
- 4) Proposed maximum aggregate value of transaction:
  
- 5) Total fee paid:
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- 1) Amount Previously Paid:
  
- 2) Form, Schedule or Registration Statement No.:
  
- 3) Filing Party:
  
- 4) Date Filed:

August 21, 2009

Dear Stockholder:

You are cordially invited to attend a special meeting of stockholders of CBL & Associates Properties, Inc., which will be held at the Company's Corporate Office at CBL Center, 2030 Hamilton Place Boulevard, Chattanooga, Tennessee, on Monday, September 21, 2009 at 4:00 p.m. (EDT).

Your Board of Directors has unanimously approved, and recommended to the stockholders for your approval, an amendment to our Amended and Restated Certificate of Incorporation to increase the number of authorized shares of the Company's Common Stock, par value \$.01 per share, from 180,000,000 to 1,000,000,000 shares. The purpose of this amendment is to maximize the Company's flexibility to take future actions with respect to its capital structure in response to changing economic and capital market conditions.

**YOUR VOTE IS VERY IMPORTANT.** Please sign and return your proxy card in the enclosed envelope, or vote your shares by telephone or via the Internet, to ensure that your shares will be represented and voted at the meeting even if you cannot attend. Even if you plan to attend the meeting, you are urged to sign and return the enclosed proxy card, or to vote your shares by telephone or via the Internet in accordance with the instructions on the enclosed proxy card.

I look forward to personally meeting all stockholders who are able to attend.

Sincerely,

Chairman of the Board and  
Chief Executive Officer

**CBL & ASSOCIATES PROPERTIES, INC.**

**NOTICE OF A SPECIAL MEETING OF STOCKHOLDERS**

**SEPTEMBER 21, 2009**

NOTICE IS HEREBY GIVEN that a Special Meeting of the Stockholders of CBL & Associates Properties, Inc., a Delaware corporation (the "Company"), will be held at the Company's Corporate Office at CBL Center, 2030 Hamilton Place Boulevard, Chattanooga, Tennessee, on Monday, September 21, 2009 at 4:00 p.m. (EDT) for the following purposes:

1. To act upon a proposal to approve an amendment to the Company's Amended and Restated Certificate of Incorporation to increase the number of authorized shares of the Company's Common Stock, par value \$.01 per share, from 180,000,000 to 1,000,000,000 shares; and
2. To consider and act upon any other matters which may properly come before the meeting or any adjournment thereof.

In accordance with the provisions of the Company's Bylaws, the Board of Directors has fixed the close of business on August 10, 2009, as the record date for the determination of the stockholders entitled to notice of, and to vote at, the Special Meeting.

Your attention is directed to the accompanying Proxy Statement.

Whether or not you plan to attend the meeting, we urge you to submit your Proxy. To submit your Proxy by mail, please sign, date and promptly return the enclosed Proxy in order to ensure representation of your shares. An addressed envelope for which no postage is required if mailed in the United States is enclosed for that purpose. Alternatively, you may use the toll-free telephone number indicated on the enclosed Proxy to vote by telephone or visit the website indicated on the enclosed Proxy to vote via the Internet. This will not prevent you from voting your shares at the meeting if you desire to do so, as your Proxy is revocable at your option.

**YOUR BOARD OF DIRECTORS UNANIMOUSLY RECOMMENDS THAT YOU VOTE FOR APPROVAL OF THE PROPOSAL DESCRIBED ABOVE.**

By Order of the Board of Directors

President and Secretary

Chattanooga, Tennessee

August 21, 2009

**PROXY STATEMENT**

**CBL & ASSOCIATES PROPERTIES, INC.**

**2030 Hamilton Place Blvd.**

**Suite 500**

**CBL Center**

**Chattanooga, Tennessee 37421**

**SPECIAL MEETING OF STOCKHOLDERS**

**September 21, 2009**

**PROXIES**

The enclosed proxy is solicited by and on behalf of the Board of Directors of CBL & Associates Properties, Inc., a Delaware corporation (the "Company" or "CBL"), for use at a special meeting of stockholders of the Company (the "Special Meeting") to be held at the Company's Corporate Office at CBL Center, 2030 Hamilton Place Boulevard, Chattanooga, Tennessee, on Monday, September 21, 2009, at 4:00 p.m. (EDT) and at any and all postponements or adjournments thereof. Any proxy given may be revoked at any time before it is voted by filing with the Secretary of the Company either an instrument revoking it or a duly executed proxy bearing a later date. All expenses of the solicitation of proxies for the Special Meeting, including the cost of mailing, will be borne by the Company. In addition to solicitation by mail, officers and regular employees of the Company may solicit proxies from stockholders by telephone, telegram or personal interview but will not receive additional compensation for such services. In addition, the Company has engaged the investor relations firm Georgeson Inc. to assist in the preparation and delivery of the proxies to the Company's stockholders and in the solicitation of proxies. The Company expects to pay to Georgeson Inc. a fee for proxy solicitation services totaling approximately \$11,000. The Company also intends to request persons holding stock in their name or custody, or in the name of nominees, to send proxy materials to their principals and request authority for the execution of the proxies. The Company will reimburse such persons for the associated expense.

The Company anticipates mailing proxy materials for the Special Meeting on or about August 21, 2009, to stockholders of record as of August 10, 2009. To obtain directions to be able to attend the meeting and vote in person, you may contact our Vice President – Corporate Communications and Investor Relations either by mail at our corporate office address listed above, or by e-mail to [Katie\\_Reinsmidt@cblproperties.com](mailto:Katie_Reinsmidt@cblproperties.com).

**Important Notice Regarding the Availability of Proxy Materials for the Special Meeting of Stockholders to Be Held on September 21, 2009:**

The Company's Notice of Meeting and Proxy Statement for the Special Meeting is also available at [http://www.cblproperties.com/cbl.nsf/inv\\_fin\\_rep](http://www.cblproperties.com/cbl.nsf/inv_fin_rep).

## **VOTING SECURITIES**

### **Record Date and Shares Entitled to Vote**

Only stockholders of record at the close of business on August 10, 2009 are entitled to vote on the matters to be presented at the Special Meeting or any meeting resulting from an adjournment or postponement of the Special Meeting. The number of shares of the Company's common stock, par value \$.01 per share ("Common Stock"), outstanding on such date and entitled to vote was 137,859,925 shares.

### **Quorum Requirements**

The presence in person or by proxy of holders of record of a majority of the outstanding shares of Common Stock is required for a quorum to transact business at the Special Meeting with respect to approval of the



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amendment to the Amended and Restated Certificate of Incorporation by the holders of Common Stock, but if a quorum should not be present, the Special Meeting may be adjourned from time to time until a quorum is obtained.

### **Votes Necessary to Approve the Proposals**

The approval of the proposed amendment to the Company's Certificate of Incorporation will require the affirmative vote of the holders of a majority of the Company's issued and outstanding shares of Common Stock, voting as a class. Each share of Common Stock is entitled to one vote with respect to those matters upon which such share is to be voted. Dissenters' rights are not applicable.

### **Voting Procedures**

A proxy card is being mailed to each holder of shares of the Company's Common Stock for voting with respect to each stockholder's shares of Common Stock. Stockholders holding shares of Common Stock should complete, sign and return the proxy card to the Company. Alternatively, stockholders may use the toll-free telephone number indicated on the enclosed proxy card to vote by telephone or visit the website indicated on the enclosed proxy card to vote via the Internet. If you are a stockholder of record as of the record date and attend the Special Meeting, you may vote in person. If your shares of Common Stock are held in street name and you wish to vote in person at the meeting, you will need to obtain a "legal proxy" from the broker, bank or other nominee that holds your shares of Common Stock of record.

We believe that approval of the proposed amendment to the Company's Certificate of Incorporation is considered a routine item under the NYSE Rules, which means that such matter may be voted on by brokers in the absence of specific instructions by our stockholders and, therefore, we believe that there should be no broker non-votes with respect to such matter. Abstentions will be counted as present at the Special Meeting for the purpose of determining whether or not a quorum exists. Abstentions (and broker non-votes, if any) will have the same effect as a vote against the proposal to amend the Company's Certificate of Incorporation.

Unless contrary instructions are indicated on the accompanying proxy, the shares represented thereby will be voted **FOR** the proposal to amend the Company's Certificate of Incorporation.

### **Operation of the Company's Business; Certain Aspects of the Company's Capital Structure**

The Company operates through its two wholly-owned subsidiaries, CBL Holdings I, Inc., a Delaware corporation ("CBL Holdings I"), and CBL Holdings II, Inc., a Delaware corporation ("CBL Holdings II"). Through the referenced subsidiaries, the Company currently holds a 1.1% sole general partner interest and a 71.6% limited partner interest in CBL & Associates Limited Partnership, a Delaware limited partnership (the "Operating Partnership"). The Company conducts substantially all of its business through the Operating Partnership. The Company conducts its property management and development activities through CBL & Associates Management, Inc. (the "Management Company"), which, in order to comply with certain technical requirements of the Internal Revenue Code of 1986, as amended, applicable to real estate investment trusts ("REITs"), is a taxable REIT subsidiary of the Operating Partnership.

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On May 9, 2005, the Company's stockholders approved an increase in the authorized shares of Common Stock under the Certificate of Incorporation to 180,000,000 shares from 95,000,000 shares. On May 10, 2005, the Board of Directors approved a two-for-one stock split of the Company's Common Stock, which was effected in the form of a stock dividend on June 15, 2005 (the "6/15/05 Stock Split"). The common units and special common units ("SCUs") of limited partnership interest in the Operating Partnership were also split on a two-for-one basis so that they continue to be exchangeable on a one-for-one basis into shares of the Company's Common Stock. All references in this Proxy Statement to shares of our Common Stock, options to acquire such stock, and ownership interests in the Operating Partnership, have been adjusted to reflect the 6/15/05 Stock Split.

### **Operating Partnership Agreement; CBL Rights**

The Company, through subsidiaries, serves as the sole general partner of the Operating Partnership and owned, as of August 10, 2009, 137,859,925 common partnership units, representing a 1.1% interest as the sole general partner and a 71.6% interest as a limited partner for an aggregate 72.6% interest in the Operating Partnership. As of August 10, 2009, the Company's predecessor entity, CBL & Associates, Inc. and its affiliates ("CBL's Predecessor") owned 15,729,378 common partnership units, representing an 8.3% limited partner interest in the Operating Partnership and CBL's Predecessor also owned 3,179,169 shares of the Company's Common Stock, for a combined total interest of 10.0% in the Operating Partnership. Certain executive and senior officers also own common partnership units.

Pursuant to the Third Amended and Restated Partnership Agreement of the Operating Partnership as amended to date (the "Operating Partnership Agreement"), the limited partners possess CBL Rights, consisting of the rights to exchange all or a portion of their common units or SCUs (as applicable) in the Operating Partnership for shares of Common Stock or their cash equivalent, at the Company's election. The CBL Rights may be exercised at any time and from time to time to the extent that, upon exercise of the CBL Rights, the exercising party shall not beneficially or constructively own shares of Common Stock in excess of the applicable share ownership limits set forth in the Company's Certificate of Incorporation. The Company, however, may not pay in shares of Common Stock to the extent that this would result in a limited partner beneficially or constructively owning in the aggregate more than its applicable ownership limit or otherwise jeopardize, in the opinion of counsel to the Company, the Company's qualification as a REIT for tax purposes.

The number of shares of Common Stock received by the limited partners of the Operating Partnership upon exercise of CBL Rights will be based upon the equivalent number of partnership units owned by the limited partners on a one-for-one basis and the amount of cash received by the limited partners upon such exercise, if the Company elects to pay cash, will be based upon the trading price of the shares of Common Stock at the time of exercise.

CBL Rights will expire in November 2043 if not exercised prior to that date.

### **Certain Terms of the Jacobs Acquisition**

In connection with the Company's acquisition of a portfolio of properties from Jacobs Realty Investors Limited Partnership, a Delaware limited partnership ("JRI") and certain of its affiliates and partners (collectively referred to herein as the "Jacobs Group" and the acquisition is referred to herein as the "Jacobs Acquisition"), and pursuant to a voting and standstill agreement (the "Voting/Standstill Agreement"), the Company agreed to expand its Board of Directors from seven to nine members and to nominate two designees of JRI as members of the Board. Gary L. Bryenton and Kathleen M. Nelson currently serve in these two positions on the Board. Under the Voting/Standstill Agreement, JRI will continue to be entitled to nominate two Board members until JRI, together with certain members of the family of Richard E. Jacobs and David H. Jacobs and certain trusts for the benefit of the families of Richard E. Jacobs and David H. Jacobs (collectively, the "Jacobs Persons"), as a group, beneficially own fewer than an aggregate of 13.55 million SCUs in the Operating Partnership (or common units, if certain redemption or exchange provisions under the Operating Partnership Agreement have been triggered) and shares of Common Stock, following which JRI will be entitled to nominate only one Board member. JRI will no longer be entitled to nominate any Board members if the Jacobs Persons, as a group, beneficially own fewer than an aggregate of 6.67 million SCUs (or common units, if applicable) and shares of Common Stock. Pursuant to the Voting/Standstill Agreement, CBL's Predecessor and certain of the Company's executive officers have agreed to vote their shares in favor of JRI's designees until January 31, 2013. The Jacobs Persons have agreed to a 12-year standstill period, ending January 31, 2013, during which they will not seek to acquire control of the Company and will not participate in a group which seeks to acquire such control. The Jacobs Persons also agreed until January 31, 2013, to vote their shares in favor of the election of the Board's nominees to the Board of Directors who are running unopposed and uncontested. Neither Gary L. Bryenton nor Kathleen M. Nelson are parties to the Voting/Standstill Agreement, nor is either of them a party to any agreement which obligates them to vote with management of the Company on any matter.



## SECURITY OWNERSHIP OF CERTAIN BENEFICIAL

## OWNERS AND MANAGEMENT

The following table sets forth information available to the Company as of August 10, 2009 (except as noted for certain holders, where the latest information available to the Company is as of an earlier date), with respect to the ownership of Common Stock by (i) each person known to the Company to be the beneficial owner of more than 5% of the outstanding Common Stock, (ii) each director of the Company, (iii) each Named Executive Officer of the Company, as defined below, and (iv) all directors and executive officers as a group. Except as otherwise indicated, each person named below has sole investment and voting power with respect to the securities shown. Except as otherwise indicated, the address of each beneficial owner of more than 5% of the outstanding Common Stock is the Company's address.

	Number of	Rule 13d-3	Fully-Diluted
	<u>Shares(1)</u>	<u>Percentage(1)</u>	<u>Percentage(2)</u>
FMR LLC (3)(6)	8,517,761	6.18%	4.49%
82 Devonshire Street			
Boston, MA 02109			
T. Rowe Price Associates, Inc. (4)(6)	5,491,320	3.98%	2.89%
100 E. Pratt Street			
Baltimore, MD 21202			
The Vanguard Group, Inc (5)(6).	4,893,393	3.55%	2.58%
100 Vanguard Blvd.			
Malvern, PA 19355			
Affiliates of Jacobs Realty Investors Limited Partnership (7)	22,913,538	16.62%	12.07%
25425 Center Ridge Road			
Cleveland, OH 44145-4122			
CBL & Associates, Inc. ("CBL's Predecessor") (8)	18,908,547	13.72%	9.96%
Charles B. Lebovitz (9)	20,772,424	13.42%	10.94%
John N. Foy (10)	1,328,244	*	*
Stephen D. Lebovitz (11)	1,054,286	*	*
Ronald L. Fullam (12)	75,556	*	*
Eric P. Snyder (13)	115,193	*	*
R. Stephen Tingle (14)	65,954	*	*
Kathleen M. Nelson (15)	1,000	*	*
Leo Fields (16)	147,518	*	*
Claude M. Ballard (17)	127,707	*	*
Winston W. Walker (18)	120,480	*	*
Matthew S. Dominski (19)	3,373	*	*
Gary L. Bryenton (20)	7,411	*	*
All executive officers and directors (22 persons) as a group (21)	25,744,244	16.41%	13.54%

\* Less than 1%



- (1) The Company conducts all of its business activities through the Operating Partnership. Pursuant to the Operating Partnership Agreement, each of the partners of the Operating Partnership, which include, among others, CBL's Predecessor and certain of the executive officers named in this Proxy Statement, has the right, pursuant to the exercise of their CBL Rights as described above, to exchange all or a portion of its common units or special common units (as applicable) in the Operating Partnership for shares of Common Stock or their cash equivalent, at the Company's election. Under the terms of Rule 13d-3 promulgated under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), shares of Common Stock that may be acquired within 60 days are deemed outstanding for purposes of computing the percentage of Common Stock owned by a stockholder. Therefore, for purposes of Rule 13d-3 of the Exchange Act, percentage ownership of the Common Stock is computed based on the sum of (i) 137,859,925 shares of Common Stock actually outstanding as of August 10, 2009, (ii) as described in the accompanying footnotes, each individual's or entity's share of 51,948,692 shares of Common Stock that may be acquired upon exercise of CBL Rights by the individual or entity whose percentage of share ownership is being computed (but not taking account of the exercise of CBL Rights by any other person or entity) and (iii) as described in the accompanying footnotes, each individual's share of 309,709 shares of Common Stock that may be acquired within 60 days of August 10, 2009 upon the exercise of outstanding options by the individual whose percentage of share ownership is being computed (but not taking into account the exercise of such outstanding options by any other person). Amounts shown were determined without regard to applicable ownership limits contained in the Company's Certificate of Incorporation.
- (2) The Fully-Diluted Percentage calculation is based on (i) 137,859,925 shares of Common Stock outstanding and (ii) assumes the full exercise of all CBL Rights for shares of Common Stock by all holders of common units and SCUs of the Operating Partnership (in each case, without regard to applicable ownership limits), for an aggregate of 189,808,617 shares of Common Stock. The Fully-Diluted Percentage calculation does not include 309,709 shares of Common Stock subject to outstanding stock options other than, with respect to each person whose fully-diluted percentage is being computed, shares which may be acquired within 60 days of August 10, 2009 upon the exercise of outstanding options.
- (3) In a Schedule 13G/A filed on May 11, 2009 by FMR LLC ("FMR") and one of its affiliates, FMR reported that as of May 8, 2009, it beneficially owned 8,517,761 shares of Common Stock, or 6.18% of the total shares outstanding as of August 10, 2009. FMR reported that it possesses sole voting power with respect to 438,752 shares of Common Stock and sole dispositive power with respect to 8,517,761 shares of Common Stock.
- (4) In a Schedule 13G/A filed on February 12, 2009 by T. Rowe Price Associates, Inc. ("TRP") and one of its affiliated companies, TRP reported, as of December 31, 2008, aggregate beneficial ownership of 5,491,320 shares of Common Stock, or 3.98% of the total shares outstanding as of August 10, 2009. TRP and its affiliate reported that, of the 5,491,320 shares of Common Stock beneficially owned, they possessed sole voting power with respect to 5,486,820 shares of Common Stock and sole dispositive power with respect to 5,491,320 shares of Common Stock, as follows: TRP (sole voting power over 1,041,400 shares and sole dispositive power over 5,491,320 shares); T. Rowe Price Real Estate Fund, Inc. (sole voting power over 4,445,420 shares and sole dispositive power over 0 shares).
- (5) In a Schedule 13G filed on February 13, 2009 by The Vanguard Group, Inc. ("Vanguard"), Vanguard reported that as of December 31, 2008, it beneficially owned 4,893,393 shares of Common Stock, or 3.55% of the total shares outstanding as of August 10, 2009. Vanguard reported that of the 4,893,393 shares of Common Stock beneficially owned, it possesses sole voting power with respect to 27,559 shares of Common Stock and sole dispositive power with respect of 4,893,393 shares of Common Stock.
- (6) None of the Schedule 13G or Schedule 13G/A filings referenced in notes (3), (4) and (5) above have been further amended since the closing of our recent public offering of additional shares of the Company's Common Stock on June 15, 2009, nor have any new Schedules 13G been filed concerning our Common Stock since such date. However, based on information provided to the Company by the underwriters concerning the final share allocations in the offering, and assuming no other changes to the information previously reported to the Company on the filed Schedules 13G and pursuant to such allocations, we believe that the number of shares held by each beneficial owner of more than 5% of the outstanding Common Stock

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(other than Affiliates of Jacobs Realty Investors Limited Partnership, CBL & Associates, Inc. and Charles B. Lebovitz), as well as the Rule 13d-3 Percentage and Fully-Diluted Percentage computed as described above for each of such holders, currently would be as follows:

	Number of <u>Shares</u>	Rule 13d-3 <u>Percentage</u>	Fully-Diluted <u>Percentage</u>
FMR LLC	17,017,761	12.34%	8.97%
T. Rowe Price Associates, Inc.	13,641,320	9.90%	7.19%
The Vanguard Group, Inc .	8,143,393	5.91%	4.29%
Cohen & Steers Capital Management, Inc .	7,500,000	5.44%	3.95%

280 Park Avenue, 10th Floor

New York, NY 10017

- (7) Includes 22,913,538 shares of Common Stock that may be acquired by the Jacobs Group on exercise of CBL Rights with respect to SCUs owned by the Jacobs Group. The Jacobs Group received the above-referenced SCUs as part of the Jacobs Acquisition. See “Voting Securities – Certain Terms of the Jacobs Acquisition.”
- (8) Includes (i) 3,179,169 shares of Common Stock owned directly (410,000 of which are pledged to First Tennessee Bank as security for a line of credit extended to CBL’s Predecessor), (ii) 15,520,703 shares of Common Stock that may be acquired upon the exercise of CBL Rights and (iii) 208,675 shares of Common Stock that may be acquired by four entities controlled by CBL’s Predecessor (CBL Employees Partnership/Conway, Foothills Plaza Partnership, Girvin Road Partnership and Warehouse Partnership) upon the exercise of CBL Rights.
- (9) Includes (i) 551,558 shares of unrestricted Common Stock owned directly, (ii) 16,000 shares of restricted Common Stock that Mr. Lebovitz received under the Stock Incentive Plan, (iii) 12,383 shares owned by Mr. Lebovitz’ wife and 38,515 shares held in trusts for the benefit of his grandchildren (of which Mr. Lebovitz disclaims beneficial ownership), all as to which Mr. Lebovitz may be deemed to share voting and investment power, (iv) 756,350 shares of Common Stock that may be acquired by Mr. Lebovitz upon the exercise of CBL Rights, (v) 18,908,547 shares of Common Stock beneficially owned by CBL’s Predecessor as described in Note (7) above, which Mr. Lebovitz may be deemed to beneficially own by virtue of his control of CBL’s Predecessor, and (vi) 489,071 shares of Common Stock that