

ESSEX PROPERTY TRUST INC  
Form S-3ASR  
March 30, 2007

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As filed with the Securities and Exchange Commission on March 30, 2007

Registration No. 333-\_\_\_\_\_

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, DC 20549**

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**FORM S-3  
REGISTRATION STATEMENT  
UNDER  
THE SECURITIES ACT OF 1933, AS AMENDED**

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**ESSEX PROPERTY TRUST, INC.**  
(Exact Name of Registrant as Specified in its Charter)

**001-13106**  
(Commission File Number)

**Maryland**  
(State or Other Jurisdiction of Incorporation)

**77-0369576**  
(I.R.S. Employer Identification No.)

**925 East Meadow Drive, Palo Alto, California 94303**  
**(650) 494-3700**  
(Address, including zip code, and telephone, including area code, or registrar's principal executive offices)

**Keith R. Guericke**  
**President and Chief Executive Officer**  
**925 East Meadow Drive**  
**Palo Alto, California 94303**  
**(650) 494-3700**  
(Name, address, including zip code, and telephone number, including area code, of agent for service)

**ESSEX PORTFOLIO, L.P.**  
(Exact Name of Registrant as Specified in its Charter)

**333-44467-01**  
(Commission File Number)

**California**  
(State or Other Jurisdiction of Incorporation)

**77-0369575**  
(I.R.S. Employer Identification No.)

**925 East Meadow Drive, Palo Alto, California 94303**  
**(650) 494-3700**  
(Address, including zip code, and telephone, including area code, or registrar's principal executive offices)

**Keith R. Guericke**  
**President and Chief Executive Officer**  
**925 East Meadow Drive**  
**Palo Alto, California 94303**  
**(650) 494-3700**

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

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With copies to:  
**Stephen J. Schrader**  
**Baker & McKenzie LLP**  
**Two Embarcadero Center, 11<sup>th</sup> Floor**  
**San Francisco, California 94111-3802**  
**(415) 576-3000**

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**Approximate date of commencement of proposed sale to the public:** From time to time after the effective date of this Registration Statement.

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

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

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

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act of 1933, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

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

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

**CALCULATION OF REGISTRATION FEE**

Title of securities to be registered	Amount to be registered / Proposed maximum offering price per share / Proposed maximum aggregate offering price	Amount of registration fee
Essex Property Trust, Inc. Common Stock Preferred Stock Depository Shares <sup>(2)</sup> Warrants or Other Rights Stock Purchase Contracts Units <sup>(3)</sup> Guarantees of the Debt Securities <sup>(4)</sup>	(1)	\$ 0(1)
Essex Portfolio, L.P. Debt Securities	(1)	\$ 0(1)
<b>TOTAL</b>	(1)	\$ 0(1)

(1) An unspecified indeterminate aggregate initial offering price or number of the securities of each identified class is being registered as may from time to time be issued at unspecified indeterminate prices. Separate consideration may or may not be received for registered securities that are issuable on exercise, conversion or exchange of other securities or that are issued in units or represented by depository shares. In accordance with Rules 456(b) and 457(r), Essex Property Trust, Inc. is deferring payment of all of the registration fee, except for \$6,077.00 that has

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already been paid with respect to \$20,600,000 aggregate initial offering price of securities that were previously registered pursuant to Registration Statement No. 333-108336, which was filed on August 28, 2003, and were not sold thereunder. In accordance with Rules 456(b) and 457(r), Essex Portfolio, L.P. is deferring payment of all the registration fee, except for \$73,750 that has already been paid with respect to \$250,000,000 maximum aggregate offering price of securities that were previously registered pursuant to Registration Statement No. 333-108336, which was filed on August 28, 2003, and were not sold thereunder. Pursuant to Rule 457(p) under the Securities Act, such unutilized filing fees may be applied to the filing fee payable pursuant to this Registration Statement.

- (2) Each depositary share will be issued under a deposit agreement, will represent an interest in a fractional share or multiple shares of preferred stock and will be evidenced by a depositary receipt.
- (3) Each unit will be issued under a unit agreement and will represent an interest in two or more other securities, which may or may not be separable from one another.
- (4) Debt Securities issued by Essex Portfolio, L.P. may be accompanied by Guarantees to be issued by Essex Property Trust, Inc. None of the proceeds will be received by Essex Property Trust, Inc. for the Guarantees. Pursuant to Rule 457(n), no separate registration fee is payable in respect of the registration of the guarantees.

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**PROSPECTUS**

**ESSEX PROPERTY TRUST, INC.**

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

**and**

**ESSEX PORTFOLIO, L.P.**

**DEBT SECURITIES**

Essex Property Trust, Inc., a Maryland corporation (“Essex” or the “Company”), may from time to time offer: (i) common stock; (ii) preferred stock; (iii) preferred stock represented by depositary shares; (iv) warrants and other rights to purchase common stock; (v) stock purchase contracts; and (vi) units representing an interest in two or more other securities; and

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

The securities listed above (collectively, the “Offered Securities”) may be offered, separately or together, in separate series, in amounts, at prices and on terms to be set forth in one or more prospectus supplements to this prospectus (each a “Prospectus Supplement”); provided that Essex will unconditionally guarantee the payment of principal and a premium, if any, and interest on the debt securities, to the extent and on the terms described herein and in any accompanying Prospectus Supplement to this prospectus. Under this Registration Statement, Essex can issue equity securities and debt guarantees, but not debt securities, and the Operating Partnership can issue only debt securities.

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

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

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

Essex's common stock is traded on the New York Stock Exchange under the symbol "ESS."

**You should consider the risks discussed in "Risk Factors" beginning on page 6 of the prospectus before you invest in our securities.**

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**NEITHER THE SECURITIES AND EXCHANGE COMMISSION NOR ANY STATE SECURITIES COMMISSION HAS APPROVED OF THESE SECURITIES OR DETERMINED THAT THIS PROSPECTUS IS TRUTHFUL OR COMPLETE. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.**

The date of this prospectus is March 30, 2007

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

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**WHERE YOU CAN FIND MORE INFORMATION**

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

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

**INCORPORATION OF CERTAIN DOCUMENTS BY REFERENCE**

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

- The Operating Partnership’s Annual Report on Form 10-K for the year ended December 31, 2006;
- Essex’s Annual Report on Form 10-K for the year ended December 31, 2006;
- Essex’s Current Report on Form 8-K filed on February 7, 2007;

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

The Rights Agreement dated as of November 11, 1998, between Essex Property Trust, Inc. and BankBoston, N.A., as Rights Agent, including all exhibits thereto, attached as Exhibit 1 to the Company’s Form 8-A, filed November 12, 1998; and the amendments to the Rights Agreement dated December 13, 2000 and February 28, 2002 included as exhibits 4.2 and 4.3 to the Annual Report on Form 10-K of Essex Property Trust, Inc. and for the year ended December 31, 2005; and

All documents filed by us with the SEC pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”) (other than current reports furnished under Item 9 of Form 8-K) after the date of this prospectus and prior to the termination of the offering.

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

Unless we indicate otherwise or unless the context requires otherwise, all references in this prospectus to “Essex” mean Essex Property Trust, Inc. and all references to the “Operating Partnership” mean Essex Portfolio, L.P. Unless we



indicate otherwise or unless the context requires otherwise, all references in this prospectus to “we,” “us,” or “our” mean Essex and its subsidiaries, including the Operating Partnership and its subsidiaries. When we refer to Essex’s “Charter,” we mean Essex’s articles of incorporation, as amended and supplemented from time to time.

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**FORWARD-LOOKING STATEMENTS**

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

- The timing of completion of current development and redevelopment projects and the stabilization dates of such projects;
  - The total projected costs and rental rates of development and redevelopment projects;
- The adequacy of future cash flows to meet operating requirements and to provide for dividend payments in accordance with real estate investment trust (“REIT”) requirements;
  - The amount of capital expenditures and non-revenue generating capital expenditures;
  - Future acquisitions and anticipated development projects in 2007 and thereafter;
  - The anticipated performance of second Essex Apartment Value Fund (“Fund II”);
    - The anticipated performance of existing properties; and
- The anticipated results from various geographic regions and our investment focus in such regions.

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

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**ESSEX AND THE OPERATING PARTNERSHIP**

Essex Property Trust, Inc. (“Essex” or the “Company”) is a self-administered and self-managed equity real estate investment trust (“REIT”) engaged in the ownership, acquisition, development and management of apartment communities. As of December 31, 2006, the Company operated and had ownership interests in 130 apartment communities (totaling 27,553 units), two recreational vehicle parks (comprising 338 spaces), three office buildings (aggregating to approximately 166,340 square feet), and one manufactured housing community (containing 157 sites) (collectively, the “Properties”). The Properties are located in Southern California (Los Angeles, Ventura, Orange, Riverside and San Diego counties), Northern California (the San Francisco Bay Area), Seattle, Washington and other regions (Portland, Oregon metropolitan area, Houston, Texas).

Essex was incorporated in the state of Maryland in March 1994. On June 13, 1994, Essex commenced operations with the completion of an initial public offering (“the Offering”) in which Essex issued 6,275,000 shares of common stock at \$19.50 per share.

Essex Portfolio, L.P. (the “Operating Partnership”) was formed in March 1994 and commenced operations on June 13, 1994, when Essex, the general partner of the Operating Partnership, completed its Offering.

Essex conducts substantially all of its activities through the Operating Partnership. Essex currently owns an approximate 90.4% general partnership interest and members of Essex’s Board of Directors, senior management and certain outside investors own limited partnership interests of approximately 9.6% in the Operating Partnership. As the sole general partner of the Operating Partnership, Essex has control over the management of the Operating Partnership and over each of the properties.

**USE OF PROCEEDS**

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

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**RISK FACTORS**

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

**We depend on our key personnel**

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

**Debt financing**

At December 31, 2006, we had approximately \$1.41 billion of indebtedness (including \$186.3 million of variable rate indebtedness, of which \$182.8 million is subject to interest rate protection agreements). We are subject to the risks normally associated with debt financing, including the following:

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

**Uncertainty of our ability to refinance balloon payments**

As of December 31, 2006, we had approximately \$1.41 billion of mortgage debt, exchangeable bonds and line of credit borrowings, most of which are subject to balloon payments. We do not expect to have sufficient cash flows from operations to make all of these balloon payments. These mortgages, bonds and lines of credit borrowings have the following scheduled principal and balloon payments:

2007--\$69.1  
million;  
2008--\$179.5  
million;  
2009--\$117.6  
million;  
2010--\$156.9  
million;  
2011--\$155.5  
million;  
Thereafter--\$733.0  
million.

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

**Debt financing on properties may result in insufficient cash flow**

Where possible, we intend to continue to use leverage to increase the rate of return on our investments and to provide for additional investments that we could not otherwise make. There is a risk that the cash flow from the properties will be insufficient to meet both debt payment obligations and the distribution requirements of the real estate investment trust provisions of the Internal Revenue Code. We may obtain additional debt financing in the future through mortgages on some or all of the properties. These mortgages may be recourse, non-recourse, or cross-collateralized.

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As of December 31, 2006, Essex had 69 of its 116 consolidated apartment communities encumbered by debt. Of the 69 properties, 53 are secured by deeds of trust relating solely to those properties. With respect to the remaining 19 properties, there are 4 cross-collateralized mortgages secured by 8 properties, 6 properties, 3 properties and 2 properties, respectively. The holders of this indebtedness will have a claim against these properties and, to the extent indebtedness is cross-collateralized, lenders may seek to foreclose upon properties which are not the primary collateral for their loan. This may accelerate other indebtedness secured by properties. Foreclosure of properties would reduce our income and asset value.

**Risk of rising interest rates**

Current interest rates are at historic lows and could potentially increase rapidly, which could result in higher interest expense on our variable rate indebtedness. Prolonged interest rate increases could negatively impact our ability to make acquisitions and develop properties at economic returns on investment and our ability to refinance existing borrowings at acceptable rates.

As of December 31, 2006, we had approximately \$186.3 million of long-term variable rate indebtedness bearing interest at floating rates tied to the rate of short-term tax-exempt revenue bonds (which mature at various dates from 2020 through 2034), and \$93.0 million of variable rate indebtedness under our lines of credit, bearing interest at the Freddie Mac Reference Rate plus from 0.55% to 0.59%.

Approximately \$182.8 million of the long-term indebtedness is subject to interest rate cap protection agreements, which may reduce the risks associated with fluctuations in interest rates. The remaining \$3.5 million of long-term variable rate indebtedness was not subject to any interest rate cap protection agreements as of December 31, 2006. An increase in interest rates may have an adverse effect on our net income and results of operations.

**Risk of losses on interest rate hedging arrangements**

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

**Bond compliance requirements may limit income from certain properties**

At December 31, 2006, we had approximately \$186.3 million of variable rate tax-exempt financing relating to the Inglenook Court Apartments, Wandering Creek Apartments, Treetops Apartments, Huntington Breakers Apartments, Camarillo Oaks Apartments, Fountain Park, Anchor Village and Parker Ranch Apartments. This tax-exempt financing subjects these properties to certain deed restrictions and restrictive covenants. We expect to engage in tax-exempt financings in the future. In addition, the Internal Revenue Code and rules and regulations thereunder impose various restrictions, conditions and requirements excluding interest on qualified bond obligations from gross income for federal income tax purposes. The Internal Revenue Code also requires that at least 20% of apartment units be made available to residents with gross incomes that do not exceed a specified percentage, generally 50%, of the median income for the applicable family size as determined by the Housing and Urban Development Department of the federal government. In addition to federal requirements, certain state and local authorities may impose additional rental restrictions. These restrictions may limit income from the tax-exempt financed properties if we are required to lower rental rates to attract residents who satisfy the median income test. If Essex does not reserve the required

number of apartment homes for residents satisfying these income requirements, the tax-exempt status of the bonds may be terminated, the obligations under the bond documents may be accelerated and we may be subject to additional contractual liability.

**Adverse effect to property income and value due to general real estate investment risks**

Real property investments are subject to a variety of risks. The yields available from equity investments in real estate depend on the amount of income generated and expenses incurred. If the properties do not generate sufficient income to meet operating expenses, including debt service and capital expenditures, cash flow and the ability to make distributions to stockholders will be adversely affected. The performance of the economy in each of the areas in which the properties are located affects occupancy, market rental rates and expenses. Consequently, the income from the properties and their underlying values may be impacted. The financial results of major local employers may have an impact on the cash flow and value of certain of the properties as well.

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Income from the properties may be further adversely affected by, among other things, the following factors:

- the general economic climate;
- local economic conditions in which the properties are located, such as oversupply of housing or a reduction in demand for rental housing;
- the attractiveness of the properties to tenants;
- competition from other available space; and
- Essex's ability to provide for adequate maintenance and insurance.

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