

ASSOCIATED ESTATES REALTY CORP
Form DEF 14A
April 02, 2010

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549
SCHEDULE 14A**

Proxy Statement Pursuant to Section 14(a) of the Securities
Exchange Act of 1934

Filed by the Registrant

Filed by a Party other than the Registrant

Check the appropriate box:

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

ASSOCIATED ESTATES REALTY CORPORATION

(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):

No fee required.

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(3) Filing Party:

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ASSOCIATED ESTATES REALTY CORPORATION

NOTICE OF ANNUAL MEETING OF SHAREHOLDERS

To our Shareholders:

The 2010 annual meeting of shareholders of Associated Estates Realty Corporation will be held at the Renaissance Cleveland Hotel, 24 Public Square, Cleveland, Ohio 44113, on Wednesday, May 5, 2010, at 10:00 a.m., local time, for the following purposes:

1. To elect seven directors, each to hold office for a one-year term and until his successor has been duly elected and qualified;
2. To approve an amendment to our Second Amended and Restated Articles of Incorporation to increase the number of authorized common shares from 41,000,000 to 91,000,000, which results in an increase in the total number of authorized shares from 50,000,000 to 100,000,000;
3. To ratify the appointment of PricewaterhouseCoopers LLP as the Company's independent registered public accounting firm for the Company's fiscal year ending December 31, 2010; and
4. To transact all other business that properly comes before the meeting.

Only shareholders of record at the close of business on March 15, 2010, are entitled to receive notice of and to vote at the meeting or any postponement or adjournment thereof. Shareholders are urged to complete, date and sign the enclosed proxy card and return it in the enclosed envelope. The principal address of Associated Estates Realty Corporation is 1 AEC Parkway, Richmond Heights, Ohio 44143.

By order of the Board of Directors
Martin A. Fishman
Secretary

Dated: April 2, 2010

YOUR VOTE IS IMPORTANT, PLEASE SIGN, DATE AND RETURN YOUR PROXY CARD.

**IMPORTANT NOTICE REGARDING THE AVAILABILITY OF PROXY MATERIALS
FOR THE SHAREHOLDER MEETING TO BE HELD ON MAY 5, 2010.**

The Proxy Statement, Annual Report to Shareholders and Proxy Card are available at <http://ir.AssociatedEstates.com/annual-proxy.cfm>

You can help us make a difference by eliminating paper proxy mailings. With your consent, we will provide all future proxy materials electronically. Instructions for consenting to electronic delivery can be found on your proxy card. Your consent to receive shareholder materials electronically will remain in effect until canceled.

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ASSOCIATED ESTATES REALTY CORPORATION

1 AEC Parkway

Richmond Heights, Ohio 44143

PROXY STATEMENT

Our Board of Directors is sending you this proxy statement to ask for your vote as a shareholder of Associated Estates Realty Corporation (the Company) on certain matters to be voted on at the upcoming annual meeting of shareholders, which will be held at the Renaissance Cleveland Hotel, 24 Public Square, Cleveland, Ohio 44113, on Wednesday, May 5, 2010, at 10:00 a.m., local time. We are mailing this proxy statement and the accompanying notice and proxy, along with our Annual Report to Shareholders, on or about April 2, 2010.

ABOUT THE MEETING

What Is the Purpose of the Annual Meeting of Shareholders?

At the Company's annual meeting of shareholders, shareholders will vote upon matters outlined in the accompanying notice of meeting, including the election of seven directors, an amendment to our Articles of Incorporation to increase the number of authorized common shares and total authorized shares and a proposal to ratify the appointment of PricewaterhouseCoopers LLP as the Company's independent registered public accounting firm for the Company's fiscal year ending December 31, 2010. We are not aware of any other matter that will be presented for your vote at the meeting.

When and Where Is the Meeting?

The meeting will be held at the Renaissance Cleveland Hotel, 24 Public Square, Cleveland, Ohio 44113, on Wednesday, May 5, 2010, at 10:00 a.m., local time. Parking is available at the Renaissance Cleveland Hotel.

Who Is Entitled to Vote?

Only shareholders of record at the close of business on the record date, March 15, 2010, are entitled to receive notice of and to vote the common shares that they held on the record date at the meeting, or any postponement or adjournment of the meeting. Each outstanding common share entitles such shareholder to cast one vote on each matter to be voted on. As of the record date, the Company had outstanding 22,349,302 common shares.

Who Can Attend the Meeting?

Only shareholders as of the record date, or their duly appointed proxies, may attend the meeting. Please note that if you hold your shares in street name (that is, through a broker or other nominee), your name does not appear in the Company's records and you will need to bring a copy of your brokerage statement reflecting your ownership of common shares as of the record date.

Can My Broker Vote My Shares Without My Instructions?

Whether your bank, broker or other nominee holding your shares may vote without your instruction depends on the matter being voted upon. When brokers do not receive voting instructions from a customer, they are permitted to, and generally do, exercise discretionary voting authority with respect to the customer's shares on routine matters being voted on at a meeting. If there are non-routine matters also being voted upon at the same meeting, the broker is not permitted to exercise discretionary voting authority on such matters, and the shares voted by the broker in its discretion on routine matters are considered broker non-votes with respect to the non-routine matters.

Beginning this year, the election of directors is a non-routine matter, and accordingly brokers may not exercise discretionary voting authority for the election of directors, so your instruction to your broker on how you want your shares voted is very important. The Company has been advised that the proposal to approve an amendment to our Second Amended and Restated Articles of Incorporation to increase the number of authorized common shares and total authorized shares and the proposal to ratify the appointment of PricewaterhouseCoopers, LLP as the Company's independent registered public accounting firm are considered routine matters.

What Constitutes a Quorum?

A quorum for the transaction of business at the meeting requires the presence, either in person or by proxy, of the holders of a majority of the common shares outstanding on the record date. Proxies received by the Company but marked as abstentions, votes withheld and broker non-votes will be included in the calculation of the number of shares considered to be present at the meeting for purposes of establishing a quorum.

What Vote Is Required to Approve each Proposal Assuming that a Quorum Is Present at the Meeting?

Proposal One: Election of Directors. The seven director nominees who receive the greatest number of affirmative votes will be elected directors. Votes withheld and broker non-votes will not count for or against any nominee for director.

Proposal Two: Approval of an Amendment to our Second Amended and Restated Articles of Incorporation to increase the number of authorized common shares from 41,000,000 to 91,000,000, which results in an increase in the total number of authorized shares from 50,000,000 to 100,000,000. The proposal to approve the amendment to our Articles of Incorporation to increase the number of authorized common shares from 41,000,000 to 91,000,000 and the total number of authorized shares from 50,000,000 to 100,000,000 requires the affirmative vote of the holders of a majority of our outstanding common shares. If you abstain from voting on this proposal, it will have the same effect as a vote against this proposal. If your shares are held in a brokerage account and you do not provide voting instructions, your broker has the discretion to vote your shares on this proposal.

Proposal Three: Ratification of the Appointment of PricewaterhouseCoopers LLP as the Company's Independent Registered Public Accounting Firm. The Audit Committee plans to reappoint PricewaterhouseCoopers LLP as the Company's independent registered public accounting firm to audit our financial statements for the Company's fiscal year 2010. Although ratification is not required, the Board of Directors is submitting this appointment to our shareholders for ratification as a matter of good corporate practice. See page 30 under Proposal Three for additional information. A majority of the votes of shares present in person or by proxy and entitled to vote is required for the approval of this proposal. If you abstain from voting on this proposal, it will have the same effect as a vote against this proposal. If your shares are held in a brokerage account and you do not provide voting instructions, your broker has the discretion to vote your shares on this proposal.

How Do I Vote?

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If your shares are registered in your name, then you are a registered holder and you may vote in person at the meeting or by proxy. If you decide to vote by proxy, you may do so in any one of the following three ways:

By Telephone: You may call the toll-free number printed on your proxy card. Follow the simple instructions and use the personalized control number printed on your proxy card to vote your shares. You will be able to confirm that your vote has been properly recorded. Telephone voting is available 24 hours a day. If you vote by telephone, you do not need to return your proxy card.

Over the Internet: You may visit the web site printed on your proxy card. Follow the simple instructions and use the personalized control number printed on your proxy card to vote your shares. You will be able to confirm that your vote has been properly recorded. Internet voting is available 24 hours a day. If you vote over the Internet, you do not need to return your proxy card.

By Mail: You may mark, sign and date the enclosed proxy card and return it in the enclosed postage-paid envelope.

If you own shares beneficially through a bank, broker or otherwise, the institution that holds your shares will enclose voting instructions when sending our proxy statement to you.

If you hold shares through the AERC 401(k) Savings Plan and Trust, you will receive voting instructions from that plan's administrator, which may have a different deadline for determining the manner in which such shares will be voted.

Each proxy that is received timely, properly signed and not subsequently revoked will be voted at the meeting in accordance with the directions of the shareholder. If a proxy is properly signed but incomplete or if you do not provide instructions, the proxy will be voted: 1) **FOR** the election of each nominee as set forth under Proposal One: Election of Directors to serve as a director of the Company; 2) **FOR** the proposal to approve the amendment to our Articles of Incorporation to increase the number of authorized common shares from 41,000,000 to 91,000,000, which results in an increase in the total number of authorized shares from 50,000,000 to 100,000,000; 3) **FOR** the ratification of the appointment of the Company's independent registered public accounting firm; and 4) pursuant to the discretion of the appointed proxies for any other action properly brought before the meeting or any postponement or adjournment thereof.

Can I Revoke My Proxy?

You may revoke or change your vote at any time before your proxy has been exercised by filing a written notice of revocation or a duly executed proxy bearing a later date with the Company at the Company's principal address indicated on the attached Notice of Annual Meeting of Shareholders, or by giving notice of revocation to the Company in open meeting. However, your presence at the annual meeting of shareholders alone will not be sufficient to revoke your previously granted proxy.

How Will the Proxy Solicitation Be Conducted?

This solicitation of proxies is made by and on behalf of the Board of Directors. We have hired Georgeson, Inc. to help us send out the proxy materials and assist with the process. The cost of the solicitation of your proxy, which will be approximately \$13,000, will be borne by the Company. In addition to solicitation of proxies by mail and electronically, officers and regular employees of the Company may solicit proxies in person, by telephone or facsimile. These officers and employees will not receive any additional compensation for their participation in the solicitation.

Can I Receive the Proxy Materials Electronically?

Yes. The Company is pleased to offer shareholders the choice to receive all future proxy statements, proxy cards and annual reports electronically over the Internet. Choosing electronic delivery will save the Company the costs of printing and mailing these materials. If you are a shareholder of record and would like to receive these materials electronically in the future, you can consent to electronic delivery by following the instructions on your proxy card.

PROPOSAL ONE: ELECTION OF DIRECTORS

At the annual meeting of shareholders, unless you specify otherwise, the common shares represented by your proxy will be voted to re-elect Messrs. Adams, Delaney, Friedman, Gibbons, Milstein, Schoff and Schwarz. Each director elected will serve until the next annual meeting of shareholders and until his successor is elected and qualified.

If for any reason any of the nominees is not a candidate at the time of the election (which is not expected), the common shares represented by your proxy will be voted for the election of a substitute nominee designated by the Board of Directors as recommended by the Nominating and Corporate Governance Committee.

The following table contains information with respect to each nominee:

Nominees for Election at the Annual Meeting of Shareholders

| Name | Age | Principal Occupation | Director Since |
|---------------------|------------|--|-----------------------|
| Albert T. Adams | 59 | Partner, Baker & Hostetler LLP | 1996 |
| James M. Delaney | 75 | Consultant, AON Risk Services | 1999 |
| Jeffrey I. Friedman | 58 | Chairman of the Board, President and Chief Executive Officer of the Company | 1993 |
| Michael E. Gibbons | 57 | Senior Managing Director and Principal, Brown Gibbons Lang & Company L.P. | 2004 |
| Mark L. Milstein | 47 | Project Manager, J. Holden Construction | 1993 |
| James A. Schoff | 64 | Special Advisor to the Chairman of Developers Diversified Realty Corporation | 2006 |
| Richard T. Schwarz | 58 | Limited Partner, Edgewater Capital Partners | 1994 |

Business Experience of Directors

Albert T. Adams has been a partner of the law firm of Baker & Hostetler LLP in Cleveland, Ohio, since 1984, and has been associated with the firm since 1977.

James M. Delaney has served as a consultant to AON Risk Services, a risk management firm, since 1997. Mr. Delaney served as office managing partner of Deloitte & Touche, Cleveland, Ohio, from 1989 until his retirement in June 1997, having joined its predecessor firm in 1958.

Jeffrey I. Friedman has been Chairman of the Board and Chief Executive Officer of the Company since its organization in July 1993, and served as the Company's President from the Company's organization to February 2000 and again since December 2002. In 1974, Mr. Friedman joined the Company's predecessor, Associated Estates Corporation, an owner and manager of multifamily residential apartment communities. Mr. Friedman is the brother-in-law of Mark L. Milstein.

Michael E. Gibbons has been the Senior Managing Director and Principal of Brown Gibbons Lang & Company L.P., a Cleveland-based investment banking firm, since its inception in 1989. Mr. Gibbons also currently serves on the Board of Directors of Preformed Line Products, an international designer and manufacturer of overhead and underground network products and systems.

Mark L. Milstein has been a project manager for J. Holden Construction, a construction company, since 1999. Mr. Milstein was President of Adam Construction Company, a general contractor, from 1993 to 1999 and a Senior Project Manager for Adam Construction Company from 1988 to 1993. Mr. Milstein is the brother-in-law of Jeffrey I. Friedman.

James A. Schoff has served as Special Advisor to the Chairman of Developers Diversified Realty Corporation (DDR), a shopping center real estate investment trust, since 2004. Mr. Schoff also served as Executive Vice President and Chief Operating Officer of DDR from 1993 to 1998, Vice Chairman and Chief Investment Officer of DDR from 1998 to 2002, and Senior Investment Officer of DDR from 2002 to 2003.

Richard T. Schwarz has been a limited partner of Edgewater Capital Partners, a private equity investment firm, and a member of its board of operating advisors since July 2003. In 1998, he co-founded Sycamore Partners LLC, a Cleveland-based investment and advisory firm focused on investing in businesses in northeast Ohio. Prior to forming Sycamore, he was Director and President of Laurel Industries, Inc., a privately held chemical manufacturer and a subsidiary of Occidental Petroleum Corporation. Mr. Schwarz is currently Chairman of the Board of Directors of Nine Sigma, Inc., a privately held technology company.

The Board of Directors recommends that shareholders vote FOR the nominees for election set forth above.

Board Meetings and Attendance

The Board of Directors held four meetings in 2009. In 2009, each member of the Board of Directors attended all of the meetings of the Board of Directors and the committees of which he was a member. The Company has a policy requiring director attendance at all Board of Directors meetings, absent unusual circumstances. The Company expects its directors to attend the annual meeting of shareholders (which is usually held the same day as a meeting of the Board of Directors). Michael E. Gibbons was out of the country and unable to attend the 2009 annual shareholders meeting, however Mr. Gibbons participated telephonically in the meeting of the Board of Directors held that same day. All of the Company's other directors attended the 2009 annual shareholders meeting.

DIRECTOR COMPENSATION

Employees of the Company who are also directors are not paid any director fees. Compensation for non-employee directors includes the following:

An annual retainer fee of \$45,000, paid in quarterly installments;

An additional annual retainer fee of \$7,500, paid in quarterly installments, to the respective Chairs of the Executive Compensation, Finance and Planning and Nominating and Corporate Governance Committees;

An additional annual retainer fee of \$15,000, paid in quarterly installments, to the Chair of the Audit Committee; and

An additional annual retainer of \$7,500, paid in quarterly installments, to the lead director.

Non-employee directors are eligible for restricted share grants and stock option grants, which may be awarded from time to time by the Board of Directors. During 2009, each non-employee director received a grant of 7,962 restricted shares issued on May 6, 2009. The closing price of the Company's common shares on the date of that grant was \$6.28. The Company maintains a non-qualified deferred compensation plan for directors (the Directors' Deferred Compensation Plan). Each non-employee director has the opportunity to elect to defer fees earned in cash and/or equity awards into an account. The amount of fees and equity awards are converted to share units. These units are valued based on the Company's share price and accrue dividend equivalents. Distributions from each participant's

account are made in accordance with the instructions set forth by the participant at the time he elects to defer his compensation. Because the value of a director's account balance is determined by reference to the Company's share price and because dividend equivalents received are equal to the dividend declared on the Company's common shares, there are no above-market earnings on deferred compensation account balances. Effective on January 1, 2010, the Directors' Deferred Compensation Plan was amended to provide that distributions from the plan commencing after December 31, 2010 will be settled by issuance of the Company's common shares. Distributions with a commencement date of December 31, 2010 or prior, will be settled in cash.

The following table sets forth the compensation paid to the Company's non-employee directors during fiscal year 2009:

| Name | Fees Earned or Paid in Cash \$(1) | Stock Awards \$(2) | Total (\$) |
|-------------|--|-----------------------------------|-----------------------|
|-------------|--|-----------------------------------|-----------------------|