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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

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**Form S-3**  
**REGISTRATION STATEMENT**  
*UNDER*  
*THE SECURITIES ACT OF 1933*

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**WHEELER REAL ESTATE INVESTMENT TRUST, INC.**  
(Exact Name of Registrant as Specified in its Charter)

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

**45-2681082**  
(I.R.S. Employer  
Identification Number)

**Riversedge North**  
**2529 Virginia Beach Blvd., Suite 200**  
**Virginia Beach, Virginia 23452**  
**(757) 627-9088**  
(Address, Including Zip Code, and Telephone Number, Including Area Code, of Registrant's Principal Executive Offices)

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**CT Corporation System**  
**111 Eighth Avenue**  
**New York, New York 10011**  
**(800) 624-0909**  
(Name, Address, Including Zip Code, and Telephone Number, Including Area Code, of Agent for Service)

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*With copies to:*  
**Bradley A. Haneberg, Esq.**  
**Matt B. Chmiel, Esq.**  
**Haneberg, PLC**  
**310 Granite Avenue**  
**Richmond, Virginia 23226**  
**(804) 814-2209**

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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.

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, as amended, or the Securities Act, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box. ☒

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

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

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

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

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

Large accelerated filer ☐

Accelerated filer ☐

Non-accelerated filer ☐ (Do not check if a smaller reporting company)

Smaller reporting company ☒

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**CALCULATION OF REGISTRATION FEE**

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<b>Title of Each Class of Securities to be Registered</b>	<b>Amount To Be Registered (1)</b>	<b>Proposed Maximum Offering Price Per Share (2)</b>	<b>Proposed Maximum Aggregate Offering Price (2)</b>	<b>Amount of Registration Fee (3)</b>
Common Stock, par value \$.01 per share	46,500,000	\$2.39	\$111,135,000	\$12,914

- (1) In accordance with Rule 416 promulgated under the Securities Act of 1933, this Registration Statement shall be deemed to cover any additional number of shares of Common Stock to be offered or issued from stock splits, stock dividends or similar transactions.
- (2) Estimated solely for purposes of the registration fee for this offering in accordance with Rule 457(c) of the Securities Act on the basis of the average of the high and low prices of the registrant's Common Stock on the Nasdaq Capital Market on April 21, 2015.
- (3) Calculated pursuant to Rule 457(c) based on the proposed maximum offering price. Paid herewith.

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

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**The information in this prospectus is not complete and may be changed. No person may sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This preliminary prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.**

**SUBJECT TO COMPLETION, DATED APRIL 22, 2015**

**PROSPECTUS**

**46,500,000 Shares**



**Common Stock**

This prospectus relates to the possible resale of up to 46,500,000 shares of common stock, \$0.01 par value per share ("Common Stock"), of Wheeler Real Estate Investment Trust, Inc. that may be offered and sold from time to time by the selling stockholders (the "Selling Stockholders") named in this prospectus. For information on the Selling Stockholders, please see the section entitled "Selling Stockholders" beginning on page 4 of this prospectus.

We are registering the applicable shares of our Common Stock to provide the Selling Stockholders with freely tradable securities. Such shares of our Common Stock will be issued to the Selling Stockholders upon the conversion of our Series C Mandatorily Convertible Cumulative Perpetual Preferred Stock, without par value per share (the "Series C Stock"). We issued the Series C Stock pursuant to the exemption provided by Regulation D under the Securities Act of 1933, as amended (the "Securities Act") on March 19, 2015 (the "Private Placement"). The Series C Stock will not convert into Common Stock unless stockholder approval is obtained for the transaction and the issuance of the Common Stock underlying the Series C Stock. The registration of the shares of our Common Stock covered by this prospectus does not necessarily mean that the Selling Stockholders will sell any shares of our Common Stock.

We will not receive any proceeds from the sale of the shares of Common Stock covered by this prospectus. We will pay the expenses of registering the shares of Common Stock to be sold in this offering under the Securities Act.

Our Common Stock trades on the Nasdaq Capital Market under the symbol "WHLR." On April 21, 2015 the last reported sale price of our Common Stock on the Nasdaq Capital Market was \$2.39 per share.

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**Investing in our Common Stock involves significant risks. See "[Risk Factors](#)" on page 3 of this prospectus.**

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**Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of our securities or passed upon the adequacy or accuracy of this prospectus. Any representation to the contrary is a criminal offense.**

**The date of this prospectus is \_\_\_\_\_, 2015**

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Neither we nor any Selling Stockholder have authorized any dealer, salesperson or other person to give any information or to make any representation other than those 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. This prospectus does not constitute an offer to sell or the solicitation of an offer to buy any securities other than the registered securities to which it relates, nor does this prospectus constitute an offer to sell or the solicitation of an offer to buy securities in any jurisdiction to any person to whom it is unlawful to make such offer or solicitation in such jurisdiction. You should not assume that the information contained in this prospectus is accurate on any date subsequent to the date set forth on its front cover or that any information we have incorporated by reference is correct on any date subsequent to the date of the document incorporated by reference, even though this prospectus is delivered or securities are sold on a later date.

## CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS

This prospectus contains forward-looking statements, including discussion and analysis of our financial condition, anticipated capital expenditures required to complete projects, amounts of anticipated cash distributions to our stockholders in the future and other matters. These forward-looking statements are not historical facts but are the intent, belief or current expectations of our management based on its knowledge and understanding of our business and industry. Forward-looking statements are typically identified by the use of terms such as “may,” “will,” “should,” “potential,” “predicts,” “anticipates,” “expects,” “intends,” “plans,” “believes,” “seeks,” “estimates,” or the negative of such terms and variations of these words and similar expressions. These statements are not guarantees of future performance and are subject to risks, uncertainties and other factors, some of which are beyond our control, are difficult to predict and could cause actual results to differ materially from those expressed or forecasted in the forward-looking statements.

Forward-looking statements that were true at the time made may ultimately prove to be incorrect or false. You are cautioned to not place undue reliance on forward-looking statements, which reflect our management’s view only as of the date of this prospectus. We undertake no obligation to update or revise forward-looking statements to reflect changed assumptions, the occurrence of unanticipated events or changes to future operating results, except as required by applicable law. Factors that could cause actual results to differ materially from any forward-looking statements made in this prospectus include, among others:

- use of proceeds of any offering;
- our business and investment strategy;
- our projected operating results;
- actions and initiatives of the U.S. government and changes to U.S. government policies and the execution and impact of these actions, initiatives and policies;
- the state of the U.S. economy generally or in specific geographic areas;
- economic trends and economic recoveries;
- our ability to obtain and maintain financing arrangements;
- financing and advance rates for our target assets;
- our expected leverage;
- availability of investment opportunities in real estate-related investments;
- changes in the values of our assets;
- our ability to make distributions to our stockholders in the future;
- our expected investments and investment decisions;
- changes in interest rates and the market value of our target assets;
- our ability to renew leases at amounts and terms comparable to existing lease agreements;
- our ability to consummate the acquisition of real estate investment properties and the terms upon which we are able to consummate such acquisition;
- our ability to proceed with potential development opportunities for us and third-parties;
- effects of hedging instruments on our target assets;
- our expected financing terms for the acquisition of real estate investment properties;
- the degree to which our hedging strategies may or may not protect us from interest rate volatility;
- impact of and changes in governmental regulations, tax law and rates, accounting guidance and similar matters;
- our ability to maintain our qualification as a real estate investment trust, or REIT, under the Internal Revenue Code of 1986, as amended, or the Code;
- our ability to maintain our exemption from registration under the Investment Company Act of 1940, as amended;
- availability of qualified personnel and management team;
- the ability of our operating partnership and each of our other partnerships and limited liability companies to be classified as partnerships or disregarded entities for federal income tax purposes;

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- our ability to amend our charter to increase or decrease the aggregate number of authorized shares of stock, to authorize us to issue additional authorized but unissued shares of our preferred stock and to classify or reclassify unissued shares of our preferred stock;
- our understanding of our competition; and
- market trends in our industry, interest rates, real estate values or the general economy.

The forward-looking statements are based on our beliefs, assumptions and expectations of our future performance, taking into account all information currently available to us. You should not place undue reliance on these forward-looking statements. These beliefs, assumptions and expectations can change as a result of many possible events or factors, not all of which are known to us. Some of these factors are described in this prospectus under the section entitled “Wheeler Real Estate Investment Trust, Inc.” and “Management’s Discussion and Analysis of Financial Condition and Results of Operations” as included in our latest Annual Report on Form 10-K, as filed on March 25, 2015, which is incorporated by reference into this prospectus. If a change occurs, our business, financial condition, liquidity and results of operations may vary materially from those expressed in our forward-looking statements. Any forward-looking statement speaks only as of the date on which it is made. New risks and uncertainties arise over time and it is not possible for us to predict those events or how they may affect us. Except as required by law, we are not obligated to, and do not intend to, update or revise any forward-looking statements, whether as a result of new information, future events or otherwise.

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### **WHEELER REAL ESTATE INVESTMENT TRUST, INC.**

*Unless the context otherwise requires or indicates, references to the “company”, “we”, “our” or “us” refers to Wheeler Real Estate Investment Trust, Inc., a Maryland corporation, together with its consolidated subsidiaries, including Wheeler REIT, L.P., a Virginia limited partnership, of which we are the sole general partner, or the Operating Partnership.*

We are a fully-integrated, self-managed commercial real estate investment company focused on acquiring and managing income-producing retail properties with a primary focus on grocery-anchored centers. Our strategy is to opportunistically acquire and reinvigorate well-located, potentially dominant retail properties in secondary and tertiary markets that generate attractive risk-adjusted returns, with a particular emphasis on grocery-anchored retail centers. We target competitively protected properties in communities that have stable demographics and have historically exhibited favorable trends, such as strong population and income growth. We generally lease our properties to national and regional retailers that offer consumer goods and generate regular consumer traffic. We believe our tenants carry goods that are less impacted by fluctuations in the broader U.S. economy and consumers’ disposable income, generating more predictable property level cash flows.

We have an integrated team of professionals with experience across all stages of the real estate investment, development and re-development cycle. We internally handle, among other duties:

- performing and administering our day-to-day operations;
- determining investment criteria in conjunction with our Board of Directors;
- sourcing, analyzing and executing asset acquisitions, sales and financings;
- performing asset management duties;
- performing property management duties;
- performing leasing duties;
- in-house and third-party development; and
- performing financial and accounting management.

We were organized as a Maryland corporation on June 23, 2011 and elected to be taxed as a REIT under Sections 856 through 860 of the Code beginning with our taxable year ended December 31, 2012. We conduct substantially all of our business through the Operating Partnership, of which we are the sole general partner. We are structured as an UPREIT, which means that we own all of our properties through our Operating Partnership and its subsidiaries. As an UPREIT, we may be able to acquire properties on more attractive terms from sellers who can defer tax obligations by contributing properties to our Operating Partnership in exchange for Operating Partnership units, which will be redeemable for cash or exchangeable for shares of our Common Stock at our election.

Our headquarters is located at Riversedge North, 2529 Virginia Beach Boulevard, Suite 200, Virginia Beach, Virginia 23452. Our telephone number is (757) 627-9088. Our website is located at [www.WHLR.us](http://www.WHLR.us). Our website and the information contained therein or connected thereto do not constitute a part of this prospectus or any amendment or supplement hereto.

### **RISK FACTORS**

Investing in our Common Stock involves significant risks. Before you decide whether to purchase our Common Stock, in addition to the other information set forth or incorporated by reference in this prospectus, you should carefully consider the risk factors in our filings with the Securities and Exchange Commission (“SEC”), pursuant to the Securities Exchange Act of 1934, as amended (the “Exchange Act”), which are incorporated by reference herein.

### **USE OF PROCEEDS**

The Selling Stockholders will receive all of the proceeds from the sale of shares of Common Stock under this prospectus. We will not receive any proceeds from these sales. Each Selling Stockholder will pay his or her proportionate share of underwriting discounts and agent’s commissions and expenses they incur for brokerage, accounting, tax or legal services or any other expenses they incur in disposing of the shares. We will bear all other costs, fees and expenses incurred in effecting the registration of the shares

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covered by this prospectus. These may include, without limitation, all registration and filing fees, Nasdaq Capital Market listing fees, fees and expenses of our counsel and accountants, one counsel for the Selling Stockholders and any blue sky fees and expenses.

### **SELLING STOCKHOLDERS**

The following table provides information regarding the Selling Stockholders and the number of shares of our Common Stock they may offer pursuant to this prospectus. Under the rules of the SEC, beneficial ownership includes shares over which the indicated beneficial owner exercises voting or investment power.

Unless otherwise noted in the footnotes to the table below, we believe that the Selling Stockholders named in the table have sole voting and investment power with respect to all shares beneficially owned. The information regarding shares beneficially owned after the offering assumes the sale of all shares offered by the Selling Stockholders. The percentage ownership data are based on 7,841,176 shares of Common Stock issued and outstanding as of April 21, 2015.

On March 19, 2015, we entered into securities purchase agreements with the Selling Stockholders listed below, pursuant to which, among other things, we sold an aggregate of 93,000 shares of Series C Stock in a private placement to the Selling Stockholders for aggregate cash consideration of \$90,000,000 and the exchange of \$3,000,000 of our 9% convertible notes due December 15, 2018 (collectively, the “Offering”). We sold each share of Series C Stock to the Selling Stockholders at an offering price of \$1,000 per share. The shares of Common Stock for resale by the Selling Stockholders listed below will be issued to the Selling Stockholders upon mandatory conversion of the Series C Stock, which will only occur following stockholder approval of such conversion. Upon conversion, if any, each share of Series C Stock will automatically convert into 500 shares of Common Stock. To the extent our stockholders do not approve of the Offering, the Series C Stock will remain outstanding and will not automatically convert into shares of Common Stock.

We are registering the shares of our Common Stock for resale by the Selling Stockholders listed below. We are registering such shares of our Common Stock covered by this prospectus in connection with certain registration rights that we granted to each of the Selling Stockholders in the Offering pursuant to registration rights agreements entered into with each Selling Stockholder, dated as of March 19, 2015. The Selling Stockholders may from time to time offer for sale all, some or none of the shares of Common Stock shown in the following table.

The Company has a material relationship with Compass Point Research & Trading, LLC, or Compass Point, by virtue of Compass Point acting as a placement agent in connection with the Private Placement and with Burke Hayes, Jr., Thomas Sheedy and Robert Feinstein as employees of Compass Point. In addition, the Company has a material relationship with entities identified in footnotes 49 through 53 in the following table (the “Investment Entities”) by virtue of entering into a Shareholder Rights Agreement, dated March 19, 2015 (the “Shareholder Rights Agreement”), with Westport Capital Partners, LLC, a Connecticut limited liability company (the “Anchor Investor”), as agent on behalf of the Investment Entities managed or advised by the Anchor Investor. The Shareholder Rights Agreement provides the Anchor Investor with, among other rights, certain corporate governance rights, and in some instances rights allowing the Anchor Investor to designate a member or members to the slate of Board nominees proposed by the Board for election by the Company’s stockholders. A copy of the Shareholder Rights Agreement was filed as Exhibit 10.4 to our Current Report on Form 8-K filed on March 20, 2015. Lastly, the Company has a material relationship with MFP Partners, L.P. (“MFP”), by virtue of entering into an agreement with MFP that provides MFP with the right to appoint a single observer to the Company’s Board of Directors for so long as MFP, or any of its affiliates, holds in the aggregate no less than 50% of the number of shares of the Series C Stock or Common Stock issued upon conversion of the Series C Stock purchased by MFP in the Private Placement. A copy of the agreement with MFP was filed as Exhibit 10.5 to our Current Report on Form 8-K filed on March 20, 2015.

Additionally, Thomas Sheedy, Wells Fargo Utility & Telecommunications Fund, Robert Feinstein and Burke Hayes, Jr. are affiliates of broker-dealers. However, they purchased the shares being registered in the ordinary course of business and at the time of purchase, had no agreements or understandings, directly or indirectly, with any person to distribute the shares. Compass Point is a broker-dealer and may be deemed an underwriter under the Securities Act.



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Name	Shares Owned Immediately Prior to the Offering (2)	Shares Being Offered for Resale Under this Prospectus	Immediately Following the Offering (1)	
			Shares Owned	Percentage (3)
Steven Rothstein	150,000	150,000	0	*
Martin & Vera Hirschhorn	150,000	150,000	0	*
Richard C. Feinberg	225,000	225,000	0	*
Allan Rothstein	125,000	125,000	0	*
Fort George Investments LLC (4)	3,000,000	3,000,000	0	*
Verition Multi-Strategy Master Fund Ltd. (5)	1,000,000	1,000,000	0	*
Grey Owl Partners, L.P. (6)	292,155	200,000	92,155	*
Dunham Monthly Distribution Fund (7)	862,900	862,000	900	*
WCM Alternatives: Event-Driven Fund (8)	38,900	38,000	900	*
Ardsley Partners Institutional Fund, L.P. (9)	920,000	920,000	0	*
Ardsley Partners Fund II, L.P.(10)	1,080,000	1,080,000	0	*
Philip J. Hempleman	1,000,000	1,000,000	0	*
Thomas Sheedy	100,000	100,000	0	*
Nirmal Roy	100,000	100,000	0	*
Whatley Fund, L.L.C. (11)	100,000	100,000	0	*
683 Capital Partners, LP (12)	500,000	500,000	0	*
Alan S. Bubes	250,000	250,000	0	*
James Rock Tonkel, Jr.	125,000	125,000	0	*
John A. Virant Trust, U/A dated 12/23/1991 (13)	100,000	100,000	0	*
North Star Partners II, LP (14)	1,000,000	1,000,000	0	*
North Star Partners, LP (15)	2,000,000	2,000,000	0	*
Wells Fargo Advantage Utility & Telecommunications Fund (16)	5,000,000	5,000,000	0	*
David R. Eidelman Trust, dated 7/21/1997 (17)	50,000	50,000	0	*
Forward Real Estate Long/Short Fund (18)	350,000	350,000	0	*
Vicasa Limited Inc. (19)	100,000	100,000	0	*
Orinda Income Opportunities Fund (20)	1,250,000	1,250,000	0	*
Condor Partners, LP (21)	180,000	180,000	0	*
Preferred Yield Plus, LP (22)	120,000	120,000	0	*
Riviera-Enid LP (23)	50,000	50,000	0	*
Robert Feinstein	100,000	100,000	0	*
Richard Horstmann GRAT 2015 (24)	3,550,000	3,550,000	0	*
Harvest 2004 LLC (25)	500,000	500,000	0	*
EJF Financial Services Fund LP (26)	3,125,000	3,125,000	0	*
EJF Income Fund LP (27)	250,000	250,000	0	*
Calm Waters Partnership (28)	2,600,000	2,600,000	0	*
BHCO Master, Ltd. (29)	2,000,000	2,000,000	0	*
Dynasty Invest LTD (30)	38,500	38,500	0	*
The Erk Family Trust (31)	50,500	50,500	0	*
George Rohr	52,000	52,000	0	*
Fidelity Investments Charitable Gift Fund (32)	37,500	37,500	0	*
LDR Preferred Income Fund LLC (33)	2,024,000	2,024,000	0	*
RJM Capital Pension Plan Trust (34)	31,500	31,500	0	*
Michael V. Prentiss Family Trust (35)	34,500	34,500	0	*
Sulam Trust (36)	75,000	75,000	0	*
Dow Retirement Group Trust (37)	256,500	256,500	0	*
Burke F. Hayes, Jr.	100,000	100,000	0	*
SLKW Investments LLC (38)	250,000	250,000	0	*
Weintraub Capital Management, L.P. (39)	100,000	100,000	0	*
Full Value Partners, LP (40)	495,000	495,000	0	*
Opportunity Partners, L.P. (41)	517,000	517,000	0	*
Full Value Special Situations Fund, LP (42)	77,000	77,000	0	*
MCM Opportunity Partners, LP (43)	55,000	55,000	0	*

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Name	Shares Owned Immediately Prior to the Offering (2)	Shares Being Offered for Resale Under this Prospectus	Immediately Following the Offering (1)	
			Shares Owned	Percentage (3)
Calapasas West Partners, LP (44)	165,000	165,000	0	*
Mercury Partners, LP (45)	176,000	176,000	0	*
Steady Gain Partners, LP (46)	275,000	275,000	0	*
US Bank NA CUST FBO Special Opportunities Fund (47)	440,000	440,000	0	*
Compass Point Research & Trading, LLC (48)	250,000	250,000	0	*
WCP Real Estate Fund IV, L.P. (49)(54)	2,925,000	2,925,000	0	*
WCP Real Estate Fund IV (ERISA), L.P. (50)(54)	1,325,000	1,325,000	0	*
NextEra Energy Point Beach, LLC (51)(54)	600,000	600,000	0	*
NextEra Energy Duane Arnold, LLC (52)(54)	400,000	400,000	0	*
KPB Financial Corp. (53)(54)	1,000,000	1,000,000	0	*
MFP Partners, L.P. (55)	2,500,000	2,500,000	0	*

\* Less than one percent of Common Stock outstanding.

(1) Assumes the Selling Stockholders sell all of the Common Stock being offered by this prospectus.

(2) The number shown represents the maximum number of shares of Common Stock issuable upon conversion of the Series C Stock.

(3) Percentage calculated based upon the assumption that the Selling Stockholders sell all of the Common Stock being offered by this prospectus.

(4) Steve Carlino, the Chief Financial Officer of Corbin Capital Partners, L.P., maintains sole voting and investment control over the shares of Common Stock held by Fort George Investments LLC. The address for Fort George Investments is 590 Madison Ave., 31st Floor, New York, New York 10022.

(5) Ted Hagan maintains sole voting and investment control over the shares of Common Stock held by Verition Multi-Strategy Master Fund Ltd.

(6) C. Eric Brugel maintains sole voting and investment control over the shares of Common Stock held by Grey Owl Partners, L.P.

(7) Bruce Rubin, the Chief Compliance Officer and Chief Operating Officer of Westchester Capital Management, LLC, maintains sole voting and investment control over the shares of Common Stock held by Dunham Monthly Distribution Fund.

(8) Bruce Rubin, the Chief Compliance Officer and Chief Operating Officer of Westchester Capital Management, LLC, maintains sole voting and investment control over the shares of Common Stock held by WCM Alternatives: Event-Driven Fund.

(9) Steve Napoli maintains sole voting and investment control over the shares of Common Stock held by Ardsley Partners Institutional Fund, L.P.

(10) Steve Napoli maintains sole voting and investment control over the shares of Common Stock held by Ardsley Partners Fund II, L.P.

(11) Lonnie B. Whatley, III maintains sole voting and investment control over the shares of Common Stock held by Whatley Fund, L.L.C.

(12) Joseph Patt, a member of 683 Capital Management, LLC, maintains sole voting and investment control over the shares of Common Stock held by 683 Capital Partners, LP.

(13) John A. Virant maintains sole voting and investment control over the shares of Common Stock held by John A. Virant Trust, U/A dated 12/13/1991.

(14) Gregory J. Francoeur maintains sole voting and investment control over the shares of Common Stock held by North Star Partners II, LP.

(15) Gregory J. Francoeur maintains sole voting and investment control over the shares of Common Stock held by North Star Partners, LP.

(16) Timothy P. O'Brien maintains sole voting and investment control over the shares of Common Stock held by Wells Fargo Advantage Utility & Telecommunications Fund. Wells Fargo Advantage Utility & Telecommunications Fund is affiliated with Wells Fargo & Company and its subsidiaries, certain of which are FINRA members. The address for Wells Fargo Advantage Utility & Telecommunications Fund is 21 Recreation Park Drive, Suite 110, Hingham, Massachusetts 02043.

(17) David R. Eidelman maintains sole voting and investment control over the shares of Common Stock held by David R. Eidelman Trust, dated 7/21/1997.

(18) Burburn Tolle maintains sole voting and investment control over the shares of Common Stock held by Forward Real Estate Long/Short Fund.

(19) Jeffrey Singer maintains sole voting and investment control over the shares of Common Stock held by Vicasa Limited Inc.

(20) Paul Gray, the Chief Investment Officer of Orinda Asset Management LLC, maintains sole voting and investment control over the shares of Common Stock held by Orinda Income Opportunities Fund.

(21) Paul Gray, the Chief Investment Officer of Orinda Asset Management LLC, maintains sole voting and investment control over the shares of Common Stock held by Condor Partners, LP.

(22) Paul Gray, the Chief Investment Officer of Orinda Asset Management LLC, maintains sole voting and investment control over the shares of Common Stock held by Preferred Yield Plus, LP.

(23) Gary Frohman maintains sole voting and investment control over the shares of Common Stock held by Riviera-Enid LP.

(24) Richard A. Horstmann maintains sole voting and investment control over the shares of Common Stock held by Richard Horstmann GRAT 2015. The address for Richard Horstmann GRAT 2015 is 107 Bonaire Lane, Bonita Springs, Florida 34134.

(25) Richard A. Horstmann maintains sole voting and investment control over the shares of Common Stock held by Harvest 2004 LLC.

(26) Neal J. Wilson, the Chief Operating Officer of EJP Capital LLC, the sole member of EJP Capital LLC, which in turn is the general partner of EJP Financial Services GP LLC, maintains sole voting and investment control over the shares of Common Stock held by EJP Financial Services Fund LP. The address for EJP Financial Services Fund is 2017 Wilson Blvd., Suite 410, Arlington, Virginia 22201.

(27) Neal J. Wilson, the Chief Operating Officer of EJP Capital LLC, the sole member of EJP Capital LLC, which in turn is the general partner of EJP Income GP LLC, maintains sole voting and investment control over the shares of Common Stock held by EJP Income Fund LP.

(28) Richard S. Strong maintains sole voting and investment control over the shares of Common Stock held by Calm Waters Partnership. The address for Calm Waters Partnership is 115 S. 84th Street, Suite 200, Milwaukee, Wisconsin 53214.

(29) William Brown maintains sole voting and investment control over the shares of Common Stock held by BHCO Master, Ltd.

(30) Lawrence D. Raiman maintains sole voting and investment control over the shares of Common Stock held by Dynasty Invest LTD.

(31) Lawrence D. Raiman maintains sole voting and investment control over the shares of Common Stock held by The Erk Family Trust.

(32) Lawrence D. Raiman maintains sole voting and investment control over the shares of Common Stock held by Fidelity Investments Charitable Gift Fund.

(33) Lawrence D. Raiman maintains sole voting and investment control over the shares of Common Stock held by LDR Preferred Income Fund LLC.

(34) Lawrence D. Raiman maintains sole voting and investment control over the shares of Common Stock held by RJM Capital Pension Plan Trust.

(35) Lawrence D. Raiman maintains sole voting and investment control over the shares of Common Stock held by Michael V. Prentiss Family Trust.

(36) Lawrence D. Raiman maintains sole voting and investment control over the shares of Common Stock held by Sulam Trust.

(37) Lawrence D. Raiman maintains sole voting and investment control over the shares of Common Stock held by Dow Retirement Group Trust.

(38) Robert Stetson maintains sole voting and investment control over the shares of Common Stock held by SLKW Investments LLC.

(39) Jerald M. Weintraub maintains sole voting and investment control over the shares of Common Stock held by Weintraub Capital Management, L.P.

(40) Andrew Dakos, the manager of Bulldog Investors, LLC, maintains sole voting and investment control over the shares of Common Stock held by Full Value Partners, LP.

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- (41) Andrew Dakos, the manager of Bulldog Investors, LLC, maintains sole voting and investment control over the shares of Common Stock held by Opportunity Partners, L.P.
- (42) Andrew Dakos, the manager of Bulldog Investors, LLC, maintains sole voting and investment control over the shares of Common Stock held by Full Value Special Situations Fund, LP.
- (43) Andrew Dakos, the manager of Bulldog Investors, LLC, maintains sole voting and investment control over the shares of Common Stock held by MCM Opportunity Partners, LP.
- (44) Andrew Dakos, the manager of Bulldog Investors, LLC, maintains sole voting and investment control over the shares of Common Stock held by Calapasas West Partners, LP.
- (45) Andrew Dakos, the manager of Bulldog Investors, LLC, maintains sole voting and investment control over the shares of Common Stock held by Mercury Partners, LP.
- (46) Andrew Dakos, the manager of Bulldog Investors, LLC, maintains sole voting and investment control over the shares of Common Stock held by Steady Gain Partners, LP.
- (47) Andrew Dakos, the manager of Bulldog Investors, LLC, maintains sole voting and investment control over the shares of Common Stock held by Special Opportunities Fund, Inc.
- (48) Christopher Nealon maintains sole voting and investment control over the shares of Common Stock held by Compass Point Research & Trading, LLC. Compass Point Research & Trading, LLC is a member of FINRA and a registered broker-dealer.
- (49) Russel S. Bernard, Sean F. Armstrong, Wm. Gregory Geiger, Marc Porosoff and Jordan Socaransky maintain voting and investment control over the shares of Commons Stock held by WCP Real Estate Fund IV, L.P., as members of the investment committee of the investment manager of WCP Real Estate Fund IV, L.P.
- (50) Russel S. Bernard, Sean F. Armstrong, Wm. Gregory Geiger, Marc Porosoff and Jordan Socaransky maintain voting and investment control over the shares of Commons Stock held by WCP Real Estate Fund IV(ERISA), L.P., as members of the investment committee of the investment manager of WCP Real Estate Fund IV(ERISA), L.P.
- (51) Russel S. Bernard, Sean F. Armstrong, Wm. Gregory Geiger, Marc Porosoff and Jordan Socaransky maintain voting and investment control over the shares of Commons Stock held by NextEra Energy Point Beach, LLC, as members of the investment committee of the investment manager of NextEra Energy Point Beach, LLC.
- (52) Russel S. Bernard, Sean F. Armstrong, Wm. Gregory Geiger, Marc Porosoff and Jordan Socaransky maintain voting and investment control over the shares of Commons Stock held by NextEra Energy Duane Arnold, LLC as members of the investment committee of the investment manager of NextEra Energy Duane Arnold, LLC.
- (53) Russel S. Bernard, Sean F. Armstrong, Wm. Gregory Geiger, Marc Porosoff and Jordan Socaransky maintain voting and investment control over the shares of Commons Stock held by KPB Financial Corp., as members of the investment committee of the investment manager of KPB Financial Corp.
- (54) WCP Real Estate Fund IV, L.P. ("WCP IV") directly holds 2,925,000 shares of Common Stock, WCP Real Estate Fund IV (ERISA), L.P. ("WCP IV (ERISA)") directly holds 1,325,000 shares of Common Stock, NextEra Energy Point Beach, LLC Non-Qualified Decommissioning Trust for the Point Beach Nuclear Plant Units ("Point Beach Trust") directly holds 600,000 shares of Common Stock, NextEra Energy Duane Arnold, LLC Non-Qualified Decommissioning Trust for the Duane Arnold Energy Center Nuclear Power Plant ("Duane Arnold Trust") directly holds 400,000 shares of Common Stock, and KPB Financial Corp. Non-Qualified Decommissioning Trust for the Turkey Point and St. Lucie Nuclear Plants ("KPB Trust", together with WCP IV, WCP IV (ERISA) Point Beach Trust, and Duane Arnold Trust, the "Funds") directly holds 1,000,000 shares of Common Stock. Westport Capital Partners LLC ("WCP") serves as investment manager of each of WCP IV, WCP IV (ERISA), Point Beach Trust, Duane Arnold Trust and KPB Trust. Messrs. Russel S. Bernard, Sean F. Armstrong, Wm. Gregory Geiger, Marc Porosoff and Jordan Socaransky are the members of the investment committee of WCP and may be deemed to share beneficial ownership over the shares that may be deemed to be beneficially owned by WCP. Each of such persons listed in this footnote (other than WCP) disclaims beneficial ownership over these shares. The address for each of the persons listed in this footnote is c/o Westport Capital Partners LLC, 40 Danbury Road, Wilton, CT 06897.
- (55) MFP Investors LLC is the general partner of MFP Partners, L.P. and makes all investment decisions on behalf of MFP Partners, L.P. Michael F. Price is the managing member of MFP Investors LLC and therefore shares voting and investment power. The address for MFP Partners is 667 Madison Ave., 25<sup>th</sup> Floor, New York, New York 10065.

## DESCRIPTION OF SECURITIES

*Although the following summary describes the material terms of our stock, it is not a complete description of the Maryland General Corporation Law ("MGCL") or our charter and bylaws, copies of which are filed as exhibits to our most recently filed Annual Report on Form 10-K, filed on March 25, 2015 and are available from us upon request.*

### General

Our charter, as amended, provides that we may issue a maximum of 75,000,000 shares of Common Stock, and 5,000,000 shares of preferred stock, without par value per share. Our charter authorizes our Board of Directors, with the approval of a majority of the entire Board of Directors and without any action by our stockholders, to amend our charter to increase or decrease the aggregate number of authorized shares of stock or the number of authorized shares of any class or series of our stock and classify any unissued shares of preferred stock. As of April 21, 2015, 7,841,196 shares of our Common Stock, 1,809 shares of our Series A Preferred Stock, 1,595,900 shares of our Series B Preferred Stock, 93,000 shares of our Series C Preferred Stock were issued and outstanding. Immediately following this offering, 54,341,196 shares of Common Stock, 1,809 shares of our Series A Preferred Stock, 1,595,900 shares of our Series B Preferred Stock and no shares of Series C Preferred Stock will be issued and outstanding. Under Maryland law, stockholders generally are not personally liable for our debts or obligations solely as a result of their status as stockholders.

As of April 21, 2015, there were outstanding (i) 2,635,025 warrants that are exercisable for 2,635,025 shares of our Common Stock and (ii) 3,517,562 units of our Operating Partnership, with each unit exchangeable for one share of our Common Stock, or, at our option, the cash value of one share of our Common Stock. Other than those described in the previous sentence, there are no outstanding warrants or rights of any other kind in respect of our Common Stock.

### Common Stock

Subject to the preferential rights of any other class or series of stock and to the provisions of our charter regarding the restrictions on ownership and transfer of our stock, holders of shares of our Common Stock are entitled to receive dividends and other distributions on such shares if, as and when authorized by our Board of Directors out of assets legally available therefore and declared by us and to share ratably in the assets of our company legally available for distribution to our stockholders in the event of our liquidation, dissolution or winding up after payment or establishment of reserves for all known debts and liabilities of our company.

Unless full cumulative dividends equal to the full amount of all accumulated, accrued and unpaid dividends on the Series A and Series B have been, or are concurrently therewith, declared and paid or declared and set apart for payment for all past dividend periods, no dividends shall be declared and paid or declared and set apart for payment and no other distribution of cash or other property may be declared and made, directly or indirectly, by us with respect to any shares of Common Stock.

Subject to the provisions of our charter regarding the restrictions on ownership and transfer of our stock and except as may otherwise be specified in the terms of any class or series of our Common Stock, each outstanding share of our Common Stock entitles the holder to one vote on all matters submitted to a vote of stockholders, including the election of directors, and, except as provided with respect to any other class or series of stock, the holders of shares of Common Stock will possess the exclusive voting power. There is no cumulative voting in the election of our directors. Directors are elected by a plurality of all of the votes cast in the election of directors.

Holders of shares of our Common Stock have no preference, conversion, exchange, sinking fund or redemption rights and have no preemptive rights to subscribe for any securities of our company. Our charter provides that our stockholders generally have no appraisal rights unless our Board of Directors determines prospectively that appraisal rights will apply to one or more transactions in which holders of our Common Stock would otherwise be entitled to exercise appraisal rights. Subject to the provisions of our charter regarding the restrictions on ownership and transfer of our stock, holders of our Common Stock will have equal dividend, liquidation and other rights.

Under the MGCL, a Maryland corporation generally cannot dissolve, amend its charter, merge, consolidate, sell all or substantially all of its assets or engage in a statutory share exchange unless declared advisable by its Board of Directors and approved by the affirmative vote of stockholders entitled to cast at least two-thirds of all of the votes entitled to be cast on the matter unless a lesser percentage (but not less than a majority of all of the votes entitled to be cast on the matter) is set forth in the corporation's charter. Our charter provides for approval of any of these matters by the affirmative vote of stockholders entitled to cast a majority of the votes entitled to be cast on such matters, except that the affirmative vote of stockholders entitled to cast at least two-thirds of the votes entitled to be cast generally in the election of directors is required to remove a director and the affirmative vote of stockholders entitled to cast at least

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two-thirds of the votes entitled to be cast on such matter is required to amend the provisions of our charter relating to the removal of directors or specifying that our stockholders may act without a meeting only by unanimous consent, or to amend the vote required to amend such provisions.

Maryland law also permits a Maryland corporation to transfer all or substantially all of its assets without the approval of the stockholders of the corporation to an entity if all of the equity interests of the entity are owned, directly or indirectly, by the corporation. Because our operating assets may be held by our Operating Partnership or its subsidiaries, these subsidiaries may be able to merge or transfer all or substantially all of their assets without the approval of our stockholders.

Our charter authorizes our Board of Directors to reclassify any unissued shares of our Common Stock into other classes or series of stock, to establish the designation and number of shares of each class or series and to set, subject to the provisions of our charter relating to the restrictions on ownership and transfer of our stock, the preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications or terms or conditions of redemption of each such class or series.

On April 21, 2015, the closing price of our Common Stock reported on the Nasdaq Stock Market was \$2.39 per share.

### **Preferred Stock**

Our charter authorizes our Board of Directors, without stockholder approval, to designate and issue one or more classes or series of preferred stock and to set or change the voting, conversion or other rights, preferences, restrictions, limitations as to dividends or other distributions and qualifications or terms or conditions of redemption of each class of shares so issued. If any preferred stock is offered, the terms and conditions of such preferred stock, including any convertible preferred stock, will be set forth in articles supplementary and described in a registration statement registering the issuance of such preferred stock, if such preferred stock is registered. Because our Board of Directors has the power to establish the preferences and rights of each class or series of preferred stock, it may afford the holders of any series or class of preferred stock preferences, powers, and rights senior to the rights of holders of Common Stock or other preferred stock. If we ever create and issue additional preferred stock with a distribution preference over Common Stock or preferred stock, payment of any distribution preferences of new outstanding preferred stock would reduce the amount of funds available for the payment of distributions on the Common Stock and junior preferred stock. Further, holders of preferred stock are normally entitled to receive a preference payment if we liquidate, dissolve, or wind up before any payment is made to the common stockholders, likely reducing the amount common stockholders would otherwise receive upon such an occurrence. In addition, under certain circumstances, the issuance of additional preferred stock may delay, prevent, render more difficult or tend to discourage the following:

- a merger, tender offer, or proxy contest;
- the assumption of control by a holder of a large block of our securities; or
- the removal of incumbent management.

Also, our Board of Directors, without stockholder approval, may issue additional preferred stock with voting and conversion rights that could adversely affect the holders of Common Stock or preferred stock.

### **Series A Preferred Stock**

Our Board of Directors designated a series of preferred stock with the rights set forth herein consisting of 4,500 shares designated as Series A Preferred Stock by adopting Articles Supplementary. Our Board of Directors may, without the approval of holders of the Series A Preferred Stock, or any other capital stock, designate additional series of authorized preferred stock ranking senior to or on parity with the Series A Preferred Stock or designate additional shares of the Series A Preferred Stock and authorize the issuance of such shares.

*Rank.* The Series A Preferred Stock, with respect to rights to the payment of dividends and the distribution of assets upon the liquidation, dissolution or winding up of us, ranks:

- senior to all classes or series of Common Stock and any other class or series of stock of us terms of which specifically provide that the holders of the Series A Preferred Stock are entitled to receive dividends or amounts distributable upon the liquidation, dissolution or winding up of us in preference or priority to the holders of shares of such class or series;

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- *pari passu* with our Series B Preferred Stock and all equity securities issued by us with terms specifically providing that those equity securities rank *pari passu* with the Series A Preferred Stock with respect to rights to the payment of dividends and the distribution of assets upon our liquidation, dissolution or winding up;
- junior to any class or series of stock of us the terms of which specifically provide that the holders of such class or series are entitled to receive dividends or amounts distributable upon the liquidation, dissolution or winding up of us in preference or priority to the holders of the Series A Preferred Stock; and
- effectively junior to all of our existing and future indebtedness (including indebtedness convertible to our Common Stock or Preferred Stock) and to the indebtedness of our existing subsidiary and any future subsidiaries.

*Dividends.* Subject to the preferential rights of holders of any class or series of senior stock, holders of Series A Preferred Stock shall be entitled to receive, when and as authorized by the Board of Directors and declared by us, out of funds legally available for the payment of dividends, cash dividends at the rate of 9% per annum.

*Liquidation Preference.* Upon any voluntary or involuntary liquidation, dissolution or winding-up of our affairs, before any distribution or payment shall be made to holders of our Common Stock or any other class or series of capital stock ranking junior to our shares of Series A Preferred Stock, the holders of shares of Series A Preferred Stock will be entitled to be paid out of our assets legally available for distribution to our stockholders, after payment or provision for our debts and other liabilities, a liquidation preference equal to \$1,000 per share, plus an amount equal to any accrued and unpaid dividends (whether or not declared) to and including the date of payment.

After payment of the full amount of the liquidating distributions to which they are entitled, the holders of our shares of Series A Preferred Stock will have no right or claim to any of our remaining assets. Our consolidation or merger with or into any other corporation, trust or other entity, the consolidation or merger of any other corporation, trust or entity with or into us, the sale or transfer of any or all our assets or business, or a statutory share exchange will not be deemed to constitute a liquidation, dissolution or winding-up of our affairs.

*Redemption.* The Series A Preferred Stock is redeemable by us, in whole or from time to time, in part, for cash at a redemption price of \$1,030 per share, plus all accumulated, accrued and unpaid dividends, if any, to and including the date fixed for redemption. If fewer than all of the outstanding shares of Series A Preferred Stock are to be redeemed, we shall select those shares to be redeemed pro rata. Subject to applicable law and the limitation on purchases when dividends on the Series A Preferred Stock are in arrears, we may, at any time and from time to time, purchase any shares of Series A Preferred Stock in the open market, by tender or by private agreement. Any shares of Series A Preferred Stock that shall at any time have been redeemed or otherwise acquired by us shall, after such redemption or acquisition, have the status of authorized but unissued Preferred Shares, without designation as to series until such shares are once more classified and designated as part of a particular class or Series by the Board of Directors.

*Voting Rights.* The holders of shares of Series A Preferred Stock shall have no voting rights.

### **Series B Preferred Stock**

Our Board of Directors designated a series of preferred stock with the rights set forth herein consisting of 3,000,000 shares designated as Series B Preferred Stock by adopting Articles of Amendment and Restatement. Our Board of Directors may, without the approval of holders of the Series B Preferred Stock, or any other capital stock, designate additional series of authorized preferred stock ranking senior to or on parity with the Series B Preferred Stock or designate additional shares of the Series B Preferred Stock and authorize the issuance of such shares. The shares of the Series B Preferred Stock are listed on the Nasdaq Stock Market under the symbol "WHLRP."

*Maturity.* The Series B Preferred Stock has no stated maturity and is not subject to any sinking fund or mandatory redemption. Shares of the Series B Preferred Stock will remain outstanding indefinitely unless they become convertible and are converted as described below under "*Voluntary Conversion*" and "*Mandatory Conversion*."

*Ranking.* The Series B Preferred Stock ranks, with respect to rights to the payment of dividends and the distribution of assets upon our liquidation, dissolution or winding up:

- senior to all classes or series of our Common Stock and to all other equity securities issued by us other than equity securities referred to in the next two clauses below;



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- *pari passu* with our Series A Preferred Stock and all equity securities issued by us with terms specifically providing that those equity securities rank *pari passu* with the Series B Preferred Stock with respect to rights to the payment of dividends and the distribution of assets upon our liquidation, dissolution or winding up;
- junior to all equity securities issued by us with terms specifically providing that those equity securities rank senior to the Series B Preferred Stock with respect to rights to the payment of dividends and the distribution of assets upon our liquidation, dissolution or winding up; and
- effectively junior to all of our existing and future indebtedness (including indebtedness convertible to our Common Stock or preferred stock) and to the indebtedness of our existing subsidiary and any future subsidiaries.

*Dividends.* Subject to the preferential rights of holders of any class or series of senior stock, holders of Series B Preferred Stock shall be entitled to receive, when and as authorized by the Board of Directors and declared by our company, out of funds legally available for the payment of dividends, cash dividends at the rate of 9.0% per annum. The dividends on each share of Series B Preferred Stock shall accrue and shall be cumulative from the first date on which such share of Series B Preferred Stock is issued and shall be payable quarterly in arrears on or before the fifteenth day of each January, April, July and October of each year.

*Voluntary Conversion.* The Series B Preferred Stock is convertible, in whole or in part, at any time, at the option of the holders thereof, into authorized but previously unissued Common Stock at a conversion price of \$5.00 per share of Common Stock, subject to adjustment as described below. Fractional shares of Common Stock will not be issued upon conversion but, in lieu thereof, we will pay a cash adjustment based on the closing price of the Common Stock on the trading day immediately preceding the conversion date.

*Conversion Price Adjustments.* The conversion price is subject to adjustment upon certain events, including (i) the payment of dividends (and other distributions) payable in Common Stock on any class or series of capital stock, (ii) the issuance to all holders of Common Stock of certain rights or warrants entitling them to subscribe for or purchase Common Stock at a price per share less than the fair market value (as defined in the terms of the Series B Preferred Stock) per share of Common Stock, (iii) subdivisions, combinations and reclassifications of Common Stock and (iv) distributions to all holders of Common Stock of any shares of stock (excluding Common Stock) or evidence of our indebtedness or assets (including securities, but excluding those dividends, rights, warrants and distributions referred to in clause (i), (ii) or (iii) above and dividends and distributions paid in cash). In addition to the foregoing adjustments, we will be permitted to make such reduction in the conversion price as our Board of Directors considers to be advisable in order that any event treated for federal income tax purposes as a dividend of shares or share rights will not be taxable to the holders of our Common Stock or, if that is not possible, to diminish any income taxes that are otherwise payable because of such event.

*Liquidation Preference.* Upon any voluntary or involuntary liquidation, dissolution or winding-up of our affairs, before any distribution or payment shall be made to holders of our Common Stock or any other class or series of capital stock ranking junior to our shares of Series B Preferred Stock, the holders of shares of Series B Preferred Stock are entitled to be paid out of our assets legally available for distribution to our stockholders, after payment or provision for our debts and other liabilities, a liquidation preference equal to the \$25.00 per share, plus an amount equal to any accrued and unpaid dividends (whether or not declared) to and including the date of payment.

After payment of the full amount of the liquidating distributions to which they are entitled, the holders of our shares of Series B Preferred Stock will have no right or claim to any of our remaining assets. Our consolidation or merger with or into any other corporation, trust or other entity, the consolidation or merger of any other corporation, trust or entity with or into us, the sale or transfer of any or all our assets or business, or a statutory share exchange will not be deemed to constitute a liquidation, dissolution or winding-up of our affairs.

In determining whether a distribution (other than upon voluntary or involuntary liquidation), by dividend, redemption or other acquisition of shares of our stock or otherwise, is permitted under the MGCL, amounts that would be needed, if we were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of holders of the Series B Preferred Stock will not be added to our total liabilities.

*Voting Rights.* Holders of the Series B Preferred Stock do not have voting rights, except as required by law.

*No Preemptive Rights.* No holder of Series B Preferred Stock is entitled to any preemptive rights to subscribe for or acquire any unissued preferred stock (whether now or hereafter authorized) or our securities convertible into or carrying a right to subscribe to or acquire our capital stock.

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*Redemption.* The Series B Preferred Stock has no redemption rights.

### **Power to Increase or Decrease Authorized Shares of Common Stock and Issue Additional Shares of Common and Preferred Stock**

We believe that the power of our Board of Directors to amend our charter to increase or decrease the aggregate number of authorized shares of stock, to authorize us to issue additional authorized but unissued shares of our Common Stock or preferred stock and to classify or reclassify unissued shares of our Common Stock or preferred stock and thereafter to authorize us to issue such classified or reclassified shares of stock will provide us with increased flexibility in structuring possible future financings and acquisitions and in meeting other needs that might arise. The additional classes or series, as well as the additional authorized shares of Common Stock, will be available for issuance without further action by our stockholders, unless such action is required by applicable law or the rules of any stock exchange or automated quotation system on which our securities may be listed or traded. Although our Board of Directors does not currently intend to do so, it could authorize us to issue a class or series of stock that could, depending upon the terms of the particular class or series, delay, defer or prevent a transaction or a change of control of our company that might involve a premium price for holders of our Common Stock or that our common stockholders otherwise believe to be in their best interests.

### **Restrictions on Ownership and Transfer**

In order for us to qualify as a REIT under the Code, our stock must be beneficially owned by 100 or more persons during at least 335 days of a taxable year of 12 months (other than the first year for which an election to be a REIT has been made) or during a proportionate part of a shorter taxable year. Also, not more than 50% of the value of the outstanding shares of stock (after taking into account options to acquire shares of stock) may be owned, directly, indirectly or through application of attribution rules by five or fewer individuals (as defined in the Code to include certain entities such as private foundations) at any time during the last half of a taxable year (other than the first year for which an election to be a REIT has been made).

Due to limitations on the concentration of ownership of REIT stock imposed by the Code, our charter generally prohibits any person from beneficially or constructively owning more than 9.8% in value or number of shares, whichever is more restrictive, of the aggregate of the outstanding shares of our Common Stock or more than 9.8% in value of the aggregate outstanding shares of all classes and series of our stock (the "Ownership Limits") that are intended to assist us in complying with these requirements and continuing to qualify as a REIT. The relevant sections of our charter provide that, subject to the exceptions described below, no person or entity may actually or beneficially own, or be deemed to own by virtue of the applicable constructive ownership provisions of the Code, more than 9.8% (in value or in number of shares, whichever is more restrictive) of the aggregate of the outstanding shares of our Common Stock, or 9.8% in value of the aggregate of the outstanding shares of all classes and series of our stock, in each case excluding any shares of our Common Stock that are not treated as outstanding for federal income tax purposes. A person or entity that would have acquired beneficial or constructive ownership of our stock but for the application of the Ownership Limits or any of the other restrictions on ownership and transfer of our stock discussed below is referred to as a "prohibited owner."

The constructive ownership rules under the Code are complex and may cause stock owned actually or constructively by a group of related individuals and/or entities to be owned constructively by one individual or entity. As a result, the acquisition of less than 9.8% of our Common Stock (or the acquisition of an interest in an entity that owns, beneficially or constructively, our Common Stock) by an individual or entity, could, nevertheless cause that individual or entity, or another individual or entity, to own constructively in excess of 9.8% of our outstanding Common Stock and thereby violate the applicable ownership limit.

Our Board of Directors, in its sole and absolute discretion, prospectively or retroactively, may exempt a person from either or both of the Ownership Limits if doing so would not result in us being "closely held" within the meaning of Section 856(h) of the Code (without regard to whether the ownership interest is held during the last half of a taxable year) or otherwise failing to qualify as a REIT and our Board of Directors determines that:

- such waiver will not cause or allow five or fewer individuals to actually or beneficially own more than 49% in value of the aggregate of the outstanding shares of all classes and series of our stock; and
- subject to certain exceptions, the person does not and will not own, beneficially or constructively, an interest in a tenant of ours (or a tenant of any entity owned in whole or in part by us) that would cause us to constructively own more than a 9.8% interest (as set forth in Section 856(d)(2)(B) of the Code) in such tenant.



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As a condition of the exception, our Board of Directors may require an opinion of counsel or Internal Revenue Service, or IRS, ruling, in either case in form and substance satisfactory to our Board of Directors, in its sole and absolute discretion, in order to determine or ensure our status as a REIT and such representations and undertakings from the person requesting the exception as are reasonably necessary to make the determinations above. Our Board of Directors may impose such conditions or restrictions as it deems appropriate in connection with such an exception.

In connection with a waiver of an Ownership Limit or at any other time, our Board of Directors may, in its sole and absolute discretion, increase or decrease one or both of the Ownership Limits for one or more persons, except that a decreased ownership limit will not be effective for any person whose actual, beneficial or constructive ownership of our stock exceeds the decreased ownership limit at the time of the decrease until the person's actual, beneficial or constructive ownership of our stock equals or falls below the decreased ownership limit, although any further acquisition of our stock will violate the decreased Ownership Limit. Our Board of Directors may not increase or decrease any Ownership Limit if, among other limitations, the new ownership limit would allow five or fewer persons to actually or beneficially own more than 49% in value of our outstanding stock or could otherwise cause us to fail to qualify as a REIT.

Our charter further prohibits:

- any person from beneficially or constructively owning shares of our stock that could result in us being "closely held" under Section 856(h) of the Code (without regard to whether the ownership interest is held during the last half of a taxable year) or otherwise cause us to fail to qualify as a REIT (including, but not limited to, actual, beneficial or constructive ownership of shares of our stock that could result in us constructively owning an interest in a tenant that is described in Section 856(d)(2)(B) of the Code, if the income we derive from such tenant taking into account our other income that would not qualify under the gross income requirements of Section 856(c) of the Code, would cause us to fail to satisfy any the gross income requirements imposed on REITs); and
- any person from transferring shares of our stock if such transfer would result in shares of our stock being beneficially owned by fewer than 100 persons (determined without reference to any rules of attribution).

Any person who acquires or attempts or intends to acquire actual, beneficial or constructive ownership of shares of our stock that will or may violate the Ownership Limits or any of the other restrictions on ownership and transfer of our stock described above must give written notice immediately to us or, in the case of a proposed or attempted transaction, provide us at least 15 days prior written notice, and provide us with such other information as we may request in order to determine the effect of such transfer on our status as a REIT.

The Ownership Limits and other restrictions on ownership and transfer of our stock described above will not apply if our Board of Directors determines that it is no longer in our best interests to attempt to qualify, or to continue to qualify, as a REIT or that compliance is no longer required in order for us to qualify as a REIT.

Pursuant to our charter, if any purported transfer of our stock or any other event would otherwise result in any person violating the Ownership Limits or such other limit established by our Board of Directors, or could result in us being "closely held" within the meaning of Section 856(h) of the Code (without regard to whether the ownership interest is held during the last half of a taxable year) or otherwise failing to qualify as a REIT, then that number of shares causing the violation (rounded up to the nearest whole share) will be automatically transferred to, and held by, a trust for the exclusive benefit of one or more charitable organizations selected by us. The prohibited owner will have no rights in shares of our stock held by the trustee. The automatic transfer will be effective as of the close of business on the business day prior to the date of the violative transfer or other event that results in the transfer to the trust. Any dividend or other distribution paid to the prohibited owner, prior to our discovery that the shares had been automatically transferred to a trust as described above, must be repaid to the trustee upon demand. If the transfer to the trust as described above is not automatically effective, for any reason, to prevent violation of the applicable restriction on ownership and transfer of our stock, then that transfer of the number of shares that otherwise would cause any person to violate the above restrictions will be void. If any transfer of our stock would result in shares of our stock being beneficially owned by fewer than 100 persons (determined without reference to any rules of attribution), then any such purported transfer will be void and of no force or effect and the intended transferee will acquire no rights in the shares.

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Shares of our stock transferred to the trustee are deemed offered for sale to us, or our designee, at a price per share equal to the lesser of (1) the price per share in the transaction that resulted in the transfer of the shares to the trust (or, in the event of a gift, devise or other such transaction, the last reported sale price on the Nasdaq Stock Market on the day of the transfer or other event that resulted in the transfer of such shares to the trust) and the last reported sale price on the Nasdaq Stock Market on the date we accept, or our designee accepts, such offer. We must reduce the amount payable to the prohibited owner by the amount of dividends and distributions paid to the prohibited owner and owed by the prohibited owner to the trustee and pay the amount of such reduction to the trustee for the benefit of the charitable beneficiary. We have the right to accept such offer until the trustee has sold the shares of our stock held in the trust. Upon a sale to us, the interest of the charitable beneficiary in the shares sold terminates and the trustee must distribute the net proceeds of the sale to the prohibited owner and any dividends or other distributions held by the trustee with respect to such stock will be paid to the charitable beneficiary.

If we do not buy the shares, the trustee must, within 20 days of receiving notice from us of the transfer of shares to the trust, sell the shares to a person or persons designated by the trustee who could own the shares, without violating the Ownership Limits or other restrictions on ownership and transfer of our stock. Upon such sale, the trustee must distribute to the prohibited owner an amount equal to the lesser of (1) the price paid by the prohibited owner for the shares (or, if the prohibited owner did not give value in connection with the transfer or other event that resulted in the transfer to the trust (e.g., a gift, devise or other such transaction), the last reported sale price on the Nasdaq Stock Market on the day of the transfer or other event that resulted in the transfer of such shares to the trust) and (2) the sales proceeds (net of commissions and other expenses of sale) received by the trustee for the shares. The trustee will reduce the amount payable to the prohibited owner by the amount of dividends and other distributions paid to the prohibited owner and owed by the prohibited owner to the trustee. Any net sales proceeds in excess of the amount payable to the prohibited owner will be immediately paid to the charitable beneficiary, together with any dividends or other distributions thereon. In addition, if prior to discovery by us that shares of our stock have been transferred to the trustee, such shares of stock are sold by a prohibited owner, then such shares shall be deemed to have been sold on behalf of the trust and, to the extent that the prohibited owner received an amount for or in respect of such shares that exceeds the amount that such prohibited owner was entitled to receive, such excess amount shall be paid to the trustee upon demand.

The trustee will be designated by us and will be unaffiliated with us and with any prohibited owner. Prior to the sale of any shares by the trust, the trustee will receive, in trust for the charitable beneficiary, all dividends and other distributions paid by us with respect to such shares, and may exercise all voting rights with respect to such shares for the exclusive benefit of the charitable beneficiary.

Subject to Maryland law, effective as of the date that the shares have been transferred to the trust, the trustee may, at the trustee's sole discretion:

- rescind as void any vote cast by a prohibited owner prior to our discovery that the shares have been transferred to the trust; and
- recast the vote in accordance with the desires of the trustee acting for the benefit of the beneficiary of the trust.

However, if we have already taken irreversible corporate action, then the trustee may not rescind and recast the vote.

If our Board of Directors or a committee thereof determines in good faith that a proposed transfer or other event has taken place that violates the restrictions on ownership and transfer of our stock set forth in our charter, our Board of Directors or such committee may take such action as it deems advisable in its sole discretion to refuse to give effect to or to prevent such transfer, including, but not limited to, causing us to redeem shares of stock, refusing to give effect to the transfer on our books or instituting proceedings to enjoin the transfer.

Every owner of 5% or more (or such lower percentage as required by the Code or the U.S. Treasury regulations promulgated thereunder) of the outstanding shares of our stock, within 30 days after the end of each taxable year, must give written notice to us stating the name and address of such owner, the number of shares of each class and series of our stock that the owner beneficially owns and a description of the manner in which the shares are held. Each such owner also must provide us with any additional information that we request in order to determine the effect, if any, of the person's actual or beneficial ownership on our status as a REIT and to ensure compliance with the Ownership Limits. In addition, any person that is an actual owner, beneficial owner or constructive owner of shares of our stock and any person (including the stockholder of record) who is holding shares of our stock for an actual owner, beneficial owner or constructive owner must, on request, disclose to us such information as we may request in good faith in order to determine our status as a REIT and comply with requirements of any taxing authority or governmental authority or to determine such compliance.

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Any certificates representing shares of our stock will bear a legend referring to the restrictions on ownership and transfer of our stock described above.

These restrictions on ownership and transfer could delay, defer or prevent a transaction or a change of control of our company that might involve a premium price for our Common Stock that our stockholders believe to be in their best interest.

### **Business Combinations**

Under the MGCL, certain “business combinations” (including a merger, consolidation, share exchange or, in certain circumstances specified under the statute, an asset transfer or issuance or reclassification of equity securities) between a Maryland corporation and any interested stockholder, or an affiliate of such an interested stockholder, are prohibited for five years after the most recent date on which the interested stockholder becomes an interested stockholder. Maryland law defines an interested stockholder as:

- any person who beneficially owns, directly or indirectly, 10% or more of the voting power of the corporation’s outstanding voting stock; or
- an affiliate or associate of the corporation who, at any time within the two-year period prior to the date in question, was the beneficial owner of 10% or more of the voting power of the then outstanding voting stock of the corporation. A person is not an interested stockholder under the statute if the Board of Directors approved in advance the transaction by which the person otherwise would have become an interested stockholder. In approving a transaction, however, a Board of Directors may provide that its approval is subject to compliance, at or after the time of the approval, with any terms and conditions determined by it.

A person is not an interested stockholder under the statute if the Board of Directors approved in advance the transaction by which the person otherwise would have become an interested stockholder. In approving a transaction, however, a Board of Directors may provide that its approval is subject to compliance, at or after the time of the approval, with any terms and conditions determined by it.

After such five-year period, any such business combination must be recommended by the Board of Directors of the corporation and approved by the affirmative vote of at least:

- 80% of the votes entitled to be cast by holders of outstanding shares of voting stock of the corporation; and
- two-thirds of the votes entitled to be cast by holders of voting stock of the corporation other than shares held by the interested stockholder with whom (or with whose affiliate) the business combination is to be effected or held by an affiliate or associate of the interested stockholder.

These supermajority approval requirements do not apply if, among other conditions, the corporation’s common stockholders receive a minimum price (as defined in the MGCL) for their shares and the consideration is received in cash or in the same form as previously paid by the interested stockholder for its shares.

These provisions of the MGCL do not apply, however, to business combinations that are approved or exempted by a corporation’s Board of Directors prior to the time that the interested stockholder becomes an interested stockholder. Our Board of Directors has, by board resolution, elected to opt out of the business combination provisions of the MGCL. However, we cannot assure you that our Board of Directors will not opt to be subject to such business combination provisions in the future. Notwithstanding the foregoing, an alteration or repeal of this resolution will not have any effect on any business combinations that have been consummated or upon any agreements existing at the time of such modification or repeal.

### **Control Share Acquisitions**

The MGCL provides that holders of “control shares” of a Maryland corporation acquired in a “control share acquisition” have no voting rights with respect to any control shares except to the extent approved by the affirmative vote of at least two-thirds of the votes entitled to be cast in the election of directors, generally, excluding shares of stock in a corporation in respect of which any of the following persons is entitled to exercise or direct the exercise of the voting power of such shares in the election of directors:

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(1) the person who made or proposes to make a control share acquisition, (2) an officer of the corporation or (3) an employee of the corporation who is also a director of the corporation. “Control shares” are voting shares of stock that, if aggregated with all other such shares of stock previously acquired by the acquirer or in respect of which the acquirer is able to exercise or direct the exercise of voting power (except solely by virtue of a revocable proxy), would entitle the acquirer to exercise voting power in electing directors within one of the following ranges of voting power:

- one-tenth or more but less than one-third;
- one-third or more but less than a majority; or
- a majority or more of all voting power.

Control shares do not include shares that the acquiring person is then entitled to vote as a result of having previously obtained stockholder approval. A “control share acquisition” means the acquisition, directly or indirectly, of ownership of, or the power to direct the exercise of voting power with respect to, issued and outstanding control shares, subject to certain exceptions.

A person who has made or proposes to make a control share acquisition, upon satisfaction of certain conditions (including an undertaking to pay expenses and making an “acquiring person statement” as described in the MGCL), may compel the corporation to call a special meeting of stockholders to be held within 50 days of demand to consider the voting rights of the control shares. If no request for a special meeting is made, the corporation may itself present the question at any stockholders meeting.

If voting rights of control shares are not approved at the meeting or if the acquiring person does not deliver an “acquiring person statement” as required by the statute, then, subject to certain conditions and limitations, the corporation may redeem any or all of the control shares (except those for which voting rights have previously been approved) for fair value determined, without regard to the absence of voting rights for the control shares, as of the date of the last control share acquisition by the acquirer or of any meeting of stockholders at which the voting rights of such shares are considered and not approved. If voting rights for control shares are approved at a stockholders meeting and the acquirer becomes entitled to vote a majority of the shares entitled to vote, all other stockholders may exercise appraisal rights. The fair value of the shares as determined for purposes of such appraisal rights may not be less than the highest price per share paid by the acquirer in the control share acquisition.

The control share acquisition statute does not apply to: (1) shares acquired in a merger, consolidation or share exchange if the corporation is a party to the transaction or (2) acquisitions approved or exempted by the charter or bylaws of the corporation.

Our bylaws contain a provision exempting from the control share acquisition statute any and all acquisitions by any person of shares of our stock. We cannot provide you any assurance, however, that our Board of Directors will not amend or eliminate this provision at any time in the future.

## **Subtitle 8**

Subtitle 8 of Title 3 of the MGCL permits a Maryland corporation with a class of equity securities registered under the Exchange Act and at least three independent directors to elect to be subject, by provision in its charter or bylaws or a resolution of its Board of Directors and notwithstanding any contrary provision in the charter or bylaws, to any or all of the following five provisions:

- a classified board;
- a two-thirds vote requirement for removing a director;
- a requirement that the number of directors be fixed only by vote of the directors;
- a requirement that a vacancy on the board be filled only by the remaining directors and for the remainder of the full term of the class of directors in which the vacancy occurred; or
- a majority requirement for the calling of a special meeting of stockholders.

Our charter provides that, at such time as we become eligible to make a Subtitle 8 election and except as may be provided by our Board of Directors in setting the terms of any class or series of stock, we elect to be subject to the provisions of Subtitle 8 relating to the filling of vacancies on our Board of Directors. Through provisions in our charter and bylaws unrelated to Subtitle 8, we currently (1) require a two-thirds vote for the removal of any director from the board, which removal will be allowed only for

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cause, (2) vest in the board the exclusive power to fix the number of directorships, subject to limitations set forth in our charter and bylaws and (3) require, unless called by the chairman of our Board of Directors, our president, our chief executive officer or our Board of Directors, the request of stockholders entitled to cast not less than a majority of all votes entitled to be cast on a matter at such meeting to call a special meeting to consider and vote on any matter that may properly be considered at a meeting of stockholders. We have not elected to create a classified board. In the future, our Board of Directors may elect, without stockholder approval, to create a classified board or elect to be subject to one or more of the other provisions of Subtitle 8.

### **Transfer Agent and Registrar**

The transfer agent and registrar for our (a) shares of Common Stock, (b) Series A Preferred Stock, (c) Series B Preferred Stock, and (d) Series C Stock is Computershare Trust Company, N.A. 250 Royall Street, Canton, Massachusetts 02021

## **MATERIAL U.S. FEDERAL INCOME TAX CONSIDERATIONS**

The following is a general summary of certain material U.S. federal income tax considerations regarding our company. For purposes of this discussion, references to “we,” “our” and “us” mean only Wheeler Real Estate Investment Trust, Inc., and do not include any of its subsidiaries, except as otherwise indicated. This summary is for general information only and is not tax advice. The information in this summary is based on:

- the Code;
- current, temporary and proposed Treasury Regulations promulgated under the Code;
- the legislative history of the Code;
- administrative interpretations and practices of the Internal Revenue Service, or the IRS; and
- court decisions

in each case, as of the date of this prospectus. In addition, the administrative interpretations and practices of the IRS include its practices and policies as expressed in private letter rulings that are not binding on the IRS except with respect to the particular taxpayers who requested and received those rulings. The sections of the Code and the corresponding Treasury Regulations that relate to qualification and taxation as a REIT are highly technical and complex. The following discussion sets forth certain material aspects of the sections of the Code that govern the federal income tax treatment of a REIT and its stockholders. Future legislation, Treasury Regulations, administrative interpretations and practices and/or court decisions may adversely affect the tax considerations contained in this discussion. Any such change could apply retroactively to transactions preceding the date of the change. We have not requested and do not intend to request a ruling from the IRS that we qualify as a REIT, and the statements in this prospectus are not binding on the IRS or any court. Thus, we can provide no assurance that the tax considerations contained in this discussion will not be challenged by the IRS or will be sustained by a court if challenged by the IRS. This summary does not discuss any state, local or non-U.S. tax consequences associated with the purchase, ownership, or disposition of the Common Stock or our election to be taxed as a REIT.

The following summary describes the principal federal income tax consequences to you of purchasing, owning and disposing of the Common Stock. Unless otherwise expressly noted below in “—Taxation of Tax-Exempt Stockholders” and “—Taxation of Non-U.S. Stockholders,” this discussion addresses only holders of the Common Stock who are U.S. Stockholders (as defined below). This summary assumes you hold shares of the Common Stock as a “capital asset” (generally, property held for investment within the meaning of Section 1221 of the Code). It does not address all the tax consequences that may be relevant to you in light of your particular circumstances. In addition, this discussion does not address the tax consequences relevant to persons who receive special treatment under the federal income tax law, except where specifically noted. Holders receiving special treatment include, without limitation:

- financial institutions, banks and thrifts;
- insurance companies;
- tax-exempt organizations;
- “S” corporations;
- traders in securities that elect to mark to market;
- partnerships, pass-through entities and persons holding our stock through a partnership or other pass-through entity;
- stockholders subject to the alternative minimum tax;

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- regulated investment companies and REITs;
- foreign governments and international organizations;
- broker-dealers or dealers in securities or currencies;
- U.S. expatriates;
- persons holding our stock as part of a hedge, straddle, conversion, integrated or other risk reduction or constructive sale transaction; or
- U.S. Stockholders (as defined below) whose functional currency is not the U.S. dollar.

If you are considering purchasing the Common Stock, you should consult your tax advisors concerning the application of federal income tax laws to your particular situation as well as any consequences of the purchase, ownership and disposition of the Common Stock arising under the laws of any state, local or non-U.S. taxing jurisdiction.

When we use the term “U.S. Stockholder,” we mean a beneficial owner of shares of the Common Stock who, for federal income tax purposes, is:

- an individual who is a citizen or resident of the United States;
- a corporation, including an entity treated as a corporation for federal income tax purposes, created or organized in or under the laws of the United States or of any state thereof or in the District of Columbia;
- an estate the income of which is subject to federal income taxation regardless of its source; or
- a trust that (1) is subject to the primary supervision of a U.S. court and the control of one or more U.S. persons or (2) has a valid election in effect under applicable Treasury Regulations to be treated as a U.S. person.

If a partnership or other entity treated as a partnership for federal income tax purposes holds shares of the Common Stock, the tax treatment of a partner generally will depend on the status of the partner and on the activities of the partnership. Partners of partnerships holding shares of the Common Stock are encouraged to consult their tax advisors.

You are urged to consult your tax advisors regarding the tax consequences to you of:

- the purchase, ownership or disposition of the Common Stock, including the federal, state, local, non- U.S. and other tax consequences;
- our election to be taxed as a REIT for federal income tax purposes; and
- potential changes in applicable tax laws.

## **Taxation of Our Company**

### ***General***

We elected to be taxed as a REIT under Sections 856 through 860 of the Code commencing with our taxable year ended December 31, 2012. We believe that we have been organized and have operated in a manner that has allowed us to qualify for taxation as a REIT under the Code commencing with our taxable year ended December 31, 2012, and we intend to continue to operate in a manner that will allow us to qualify in the future. Williams Mullen has acted as our special tax counsel and will render an opinion to the affect that, commencing with our taxable year ended December 31, 2012, we have been organized and have operated in conformity with the requirements for qualification as a REIT under the Code, and our current and proposed operations will enable us to continue to meet the requirements for qualification and taxation as a REIT under the Code for our taxable year ending December 31, 2015 and thereafter. However, qualification and taxation as a REIT depend upon our ability to meet the various qualification tests imposed under the Code, including through actual annual operating results, asset composition, distribution levels and diversity of stock ownership. Accordingly, no assurance can be given that we have been organized or will be able to operate in a manner so as to qualify or remain qualified as a REIT. See “—Failure to Qualify.”

Provided we continue to qualify for taxation as a REIT, we generally will not be required to pay federal corporate income taxes on our REIT taxable income that is currently distributed to our stockholders. This treatment substantially eliminates the “double taxation” that ordinarily results from investment in a “C” corporation. A “C” corporation is a corporation that generally is required to pay tax at the corporate level. Double taxation means taxation once at the corporate level when income is earned and once again at the stockholder level when the income is distributed. We will, however, be required to pay federal income tax as follows:



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- First, we will be required to pay tax at regular corporate rates on any undistributed REIT taxable income, including undistributed net capital gains.
- Second, we may be required to pay the “alternative minimum tax” on our items of tax preference under some circumstances.
- Third, if we have (1) net income from the sale or other disposition of “foreclosure property” held primarily for sale to customers in the ordinary course of business or (2) other nonqualifying income from foreclosure property, we will be required to pay tax at the highest corporate rate on this income. To the extent that income from foreclosure property is otherwise qualifying income for purposes of the 75% gross income test, this tax is not applicable. Subject to certain other requirements, foreclosure property generally is defined as property we acquired through foreclosure or after a default on a loan secured by the property or a lease of the property and with respect to which we make a foreclosure property election.
- Fourth, we will be required to pay a 100% tax on any net income from prohibited transactions. Prohibited transactions are, in general, sales or other taxable dispositions of property, other than foreclosure property, held primarily for sale to customers in the ordinary course of business.
- Fifth, if we fail to satisfy the 75% or 95% gross income tests, as described below, but have otherwise maintained our qualification as a REIT because certain other requirements are met, we will be required to pay a tax equal to (1) the greater of the amount by which we fail to satisfy the 75% or 95% gross income test, multiplied by (2) a fraction intended to reflect our profitability.
- Sixth, if we fail to satisfy any of the asset tests (other than a de minimis failure of the 5% asset test, the 10% value test, or the 10% vote test), as described below, due to reasonable cause and not due to willful neglect, and we nonetheless maintain our REIT qualification because of specified cure provisions, we will be required to pay a tax equal to the greater of \$50,000 or the highest corporate tax rate multiplied by the net income generated by the nonqualifying assets that caused us to fail such test.
- Seventh, if we fail to satisfy any provision of the Code that would result in our failure to qualify as a REIT (other than a violation of the gross income tests or certain violations of the asset tests, as described below) and the violation is due to reasonable cause and not due to willful neglect, we may retain our REIT qualification but we will be required to pay a penalty of \$50,000 for each such failure.
- Eighth, we will be required to pay a 4% excise tax to the extent we fail to distribute during each calendar year at least the sum of (1) 85% of our ordinary income for the year, (2) 95% of our capital gain net income for the year, and (3) any undistributed taxable income from prior periods.
- Ninth, if we acquire any asset from a corporation that is or has been a C corporation in a transaction in which our basis in the asset is determined by reference to the C corporation’s basis in the asset, and we subsequently recognize gain on the disposition of the asset during the ten-year period beginning on date on which we acquired the asset, then we will be required to pay tax at the highest regular corporate tax rate on this gain to the extent of the excess of (1) the fair market value of the asset over (2) our adjusted basis in the asset, in each case determined as of the date on which we acquired the asset. The results described in this paragraph with respect to the recognition of gain assume that the C corporation will refrain from making an election to receive different treatment under applicable Treasury Regulations on its tax return for the year in which we acquire the asset from the C corporation.
- Tenth, any subsidiaries that are C corporations, including our Taxable REIT Subsidiaries (“TRSs”), such as Wheeler Real Estate LLC (“Wheeler Real Estate”), Wheeler Interests LLC (“Wheeler Interests”) and Wheeler Development LLC (“Wheeler Development”), generally will be required to pay federal corporate income tax on their earnings.
- Eleventh, we will be required to pay a 100% tax on any “redetermined rents,” “redetermined deductions” or “excess interest.” See “—Penalty Tax.” In general, redetermined rents are rents from real property that are overstated as a result of services furnished to any of our tenants by a TRS of ours. Redetermined deductions and excess interest generally represent amounts that are deducted by a TRS of ours for amounts paid to us that are in excess of the amounts that would have been deducted based on arm’s length negotiations.

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- Twelfth, we may elect to retain and pay income tax on our net capital gain. In that case, a stockholder would include its proportionate share of our undistributed net capital gain (to the extent we make a timely designation of such gain to the stockholder) in its income, would be deemed to have paid the tax that we paid on such gain, and would be allowed a credit for its proportionate share of the tax deemed to have been paid, and an adjustment would be made to increase the basis of the stockholder in the Common Stock.

*Requirements for Qualification as a REIT.* The Code defines a REIT as a corporation, trust or association:

- (1) that is managed by one or more trustees or directors;
- (2) that issues transferable shares or transferable certificates to evidence its beneficial ownership;
- (3) that would be taxable as a domestic corporation, but for Sections 856 through 860 of the Code;
- (4) that is not a financial institution or an insurance company within the meaning of certain provisions of the Code;
- (5) that is beneficially owned by 100 or more persons;
- (6) not more than 50% in value of the outstanding stock of which is owned, directly or indirectly, by five or fewer individuals, including certain specified entities, during the last half of each taxable year;
- (7) that meets other tests, described below, regarding the nature of its income and assets and the amount of its distributions; and
- (8) that makes an election to be taxable as a REIT for the current taxable year, or has made this election for a previous year, which election has not been revoked or terminated and satisfied all relevant filing and other administrative requirements established by the IRS that must be met to maintain qualification as a REIT.

The Code provides that conditions (1) to (4), inclusive, must be met during the entire taxable year and that condition (5) must be met during at least 335 days of a taxable year of 12 months, or during a proportionate part of a taxable year of less than 12 months. Conditions (5) and (6) do not apply until after the first taxable year for which an election is made to be taxed as a REIT. For purposes of condition (6), the term “individual” includes a supplemental unemployment compensation benefit plan, a private foundation or a portion of a trust permanently set aside or used exclusively for charitable purposes, but generally does not include a qualified pension plan or profit sharing trust.

To monitor compliance with the stock ownership requirements, we generally are required to maintain records regarding the actual ownership of our stock. To do so, we must demand written statements each year from the record holders of significant percentages of our stock pursuant to which the record holders must disclose the actual owners of the stock (i.e., the persons required to include our dividends in their gross income). We must maintain a list of those persons failing or refusing to comply with this demand as a part of our records. We could be subject to monetary penalties if we fail to comply with these record-keeping requirements. If you fail or refuse to comply with the demands, you will be required by Treasury Regulations to submit a statement with your tax return disclosing your actual ownership of our stock and other information.

We believe that we have been organized, have operated and have issued sufficient shares of Common Stock and preferred stock with sufficient diversity of ownership to allow us to satisfy conditions (1) through (7) inclusive, during the relevant time periods. In addition, our charter provides for restrictions regarding ownership and transfer of our shares that are intended to assist us in continuing to satisfy the share ownership requirements described in (5) and (6) above. A description of the share ownership and transfer restrictions relating to our stock is contained in the discussion in this prospectus under the heading “Description of Securities—Restrictions on Ownership and Transfer.” These restrictions, however, may not ensure that we will, in all cases, be able to satisfy the share ownership requirements described in (5) and (6) above. If we fail to satisfy these share ownership requirements, except as provided in the next sentence, our status as a REIT will terminate. If, however, we comply with the rules contained in applicable Treasury Regulations that require us to ascertain the actual ownership of our shares and we do not know, or would not have known through the exercise of reasonable diligence, that we failed to meet the requirement described in condition (6) above, we will be treated as having met this requirement. See “—Failure to Qualify.”

In addition, we may not maintain our status as a REIT unless our taxable year is the calendar year. We have used and will continue to use a calendar taxable year.

*Ownership of Interests in Partnerships, Limited Liability Companies and Qualified REIT Subsidiaries.* In the case of a REIT that is a partner in a partnership or a member in a limited liability company treated as a partnership for federal income tax purposes, Treasury Regulations provide that the REIT will be deemed to own its proportionate share of the assets of the partnership or limited liability company, as the case may be, based on its interest in partnership capital, subject to special rules relating to the



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10% value test described below. Also, the REIT will be deemed to be entitled to its proportionate share of the income of that entity. The assets and gross income of the partnership or limited liability company retain the same character in the hands of the REIT for purposes of Section 856 of the Code, including satisfying the gross income tests and the asset tests. Thus, our pro rata share of the assets and items of income of our Operating Partnership, including our Operating Partnership's share of these items of any partnership or limited liability company treated as a partnership or disregarded entity for federal income tax purposes in which it owns an interest, is treated as our assets and items of income for purposes of applying the requirements described in this discussion, including the gross income and asset tests described below. A brief summary of the rules governing the federal income taxation of partnerships and limited liability companies is set forth below in "—Tax Aspects of Our Operating Partnership, the Subsidiary Partnerships and the Limited Liability Companies."

We control our Operating Partnership and its subsidiary partnerships and subsidiary limited liability companies and intend to continue to operate them in a manner consistent with the requirements for our qualification as a REIT. If we become a limited partner or non-managing member in any partnership or limited liability company and such entity takes or expects to take actions that could jeopardize our status as a REIT or require us to pay tax, we may be forced to dispose of our interest in such entity. In addition, it is possible that a partnership or limited liability company could take an action which could cause us to fail a gross income or asset test, and that we would not become aware of such action in time to dispose of our interest in the partnership or limited liability company or take other corrective action on a timely basis. In that case, we could fail to qualify as a REIT unless we were entitled to relief, as described below.

We may from time to time own and operate certain properties through subsidiaries that we intend to be treated as "qualified REIT subsidiaries" under the Code. A corporation will qualify as our qualified REIT subsidiary if we own 100% of the corporation's outstanding stock and do not elect with the subsidiary to treat it as a TRS, as described below. A qualified REIT subsidiary is not treated as a separate corporation, and all assets, liabilities and items of income, gain, loss, deduction and credit of a qualified REIT subsidiary are treated as assets, liabilities and items of income, gain, loss, deduction and credit of the parent REIT for all purposes under the Code, including all REIT qualification tests. Thus, in applying the federal tax requirements described in this discussion, any qualified REIT subsidiaries we own are ignored, and all assets, liabilities and items of income, gain, loss, deduction and credit of such corporations are treated as our assets, liabilities and items of income, gain, loss, deduction and credit. A qualified REIT subsidiary is not subject to federal income tax, and our ownership of the stock of a qualified REIT subsidiary will not violate the restrictions on ownership of securities, as described below under "—Asset Tests."

*Ownership of Interests in TRSs.* We have three TRSs, Wheeler Real Estate, Wheeler Interests and Wheeler Development. Wheeler Real Estate is a real estate leasing, management and administration firm. Wheeler Interests is an acquisition and asset management firm. Wheeler Development is a development company that specializes in ground-up development, redevelopment of mature centers, phase two developments for existing centers and build-to-suit projects for selecting tenants. We may acquire securities in additional TRSs in the future. A TRS is a corporation other than a REIT in which a REIT directly or indirectly holds stock, and that has made a joint election with such REIT to be treated as a TRS. If a TRS owns more than 35% of the total voting power or value of the outstanding securities of another corporation, such other corporation will also be treated as a TRS. Other than some activities relating to lodging and health care facilities as more fully described below under "—Income Tests," a TRS may generally engage in any business, including the provision of customary or noncustomary services to tenants of its parent REIT. A TRS is subject to federal, state and local income tax as a regular C corporation. In addition, a TRS may be prevented from deducting interest on debt funded directly or indirectly by its parent REIT if certain tests regarding the TRS's debt to equity ratio and interest expense are not satisfied. A REIT's ownership of securities of a TRS is not subject to the 5% asset test, the 10% value test, or the 10% vote test as described below. See "—Asset Tests."

### ***Income Tests***

We must satisfy two gross income requirements annually to maintain our qualification as a REIT. First, in each taxable year we must derive directly or indirectly at least 75% of our gross income (excluding cancellation of indebtedness income and gross income from prohibited transactions, certain hedging transactions, and certain foreign currency gains) from investments relating to real property or mortgages on real property, including "rents from real property" and, in certain circumstances, interest, or certain types of temporary investments. Second, in each taxable year we must derive at least 95% of our gross income (excluding cancellation of indebtedness income and gross income from prohibited transactions, certain hedging transactions, and certain foreign currency gains) from the real property investments described above or dividends, interest and gain from the sale or disposition of stock or securities, or any combination of the foregoing. For these purposes, the term "interest" generally does not include any amount received or accrued, directly or indirectly, if the determination of all or some of the amount depends in any way on the income or profits of any person. However, an amount received or accrued generally will not be excluded from the term "interest" solely by reason of being based on a fixed percentage or percentages of receipts or sales.

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Rents we receive from a tenant will qualify as “rents from real property” for the purpose of satisfying the gross income requirements for a REIT described above only if all of the following conditions are met:

- The amount of rent is not based in any way on the income or profits of any person. However, an amount we receive or accrue generally will not be excluded from the term “rents from real property” solely because it is based on a fixed percentage or percentages of receipts or sales. Although some of our leases provide for payment of rent based in part on a fixed percentage of gross receipts, none of our leases provide for rent that is based on the income or profits of any person;
- Neither we nor an actual or constructive owner of 10% or more of our stock actually or constructively owns 10% or more of the interests in the assets or net profits of a non-corporate tenant, or, if the tenant is a corporation, 10% or more of the voting power or value of all classes of stock of the tenant. Rents we receive from such a tenant that is a TRS of ours, however, will not be excluded from the definition of “rents from real property” as a result of this condition if (1) at least 90% of the space at the property to which the rents relate is leased to third parties, and the rents paid by the taxable REIT subsidiary are substantially comparable to rents paid by our other tenants for comparable space, or (2) the property to which the rents relate is a qualified lodging facility or qualified health care property and such property is operated on behalf of the TRS by a person who is an eligible independent contractor and certain other requirements are met, as described below. Whether rents paid by a TRS are substantially comparable to rents paid by other tenants is determined at the time the lease with the TRS is entered into, extended, and modified, if such modification increases the rents due under such lease. Notwithstanding the foregoing, however, if a lease with a “controlled taxable REIT subsidiary” is modified and such modification results in an increase in the rents payable by such TRS, any such increase will not qualify as “rents from real property.” For purposes of this rule, a “controlled taxable REIT subsidiary” is a TRS in which the parent REIT owns stock possessing more than 50% of the voting power or more than 50% of the total value of the outstanding stock of such TRS;
- Rent attributable to personal property, leased in connection with a lease of real property, is not greater than 15% of the total rent received under the lease. If this condition is not met, then the portion of the rent attributable to personal property will not qualify as “rents from real property.” To the extent that rent attributable to personal property, leased in connection with a lease of real property, exceeds 15% of the total rent received under the lease, we may transfer a portion of such personal property to a taxable REIT subsidiary; and
- We generally must not operate or manage our real property or furnish or render noncustomary services to our tenants, other than through an independent contractor who is adequately compensated and from whom we do not receive revenue. We may own up to 100% of the stock of a TRS that may provide customary and noncustomary services directly to our tenants without tainting the our rental income from the leased property. Any amounts we receive from a TRS with respect to the TRS’s provision of noncustomary services will, however, be nonqualifying income under the 75% gross income test and, except to the extent received through the payment of dividends, the 95% gross income test. We need not provide services through an independent contractor or a TRS, but may instead provide the services directly to our tenants if the services are “usually or customarily rendered” in connection with the rental of space for occupancy only and are not otherwise considered “rendered to the occupant” of the property. In addition, we may provide a minimal amount of services not described in prior sentence to the tenants of a property, other than through an independent contractor or a TRS, as long as our income from the services (valued at not less than 150% of our direct cost of performing such services) does not exceed 1% of our income from the related property. Examples of these services that we may provide directly and that are not described in the prior sentence include the provision of light, heat, or other utilities, trash removal and general maintenance of common areas.

We generally do not intend, and as a general partner of our Operating Partnership, do not intend to permit our Operating Partnership, to take actions we believe will cause us to fail to satisfy the rental conditions described above.

From time to time, we may enter into hedging transactions with respect to one or more of our assets or liabilities. Our hedging activities may include entering into interest rate swaps, caps, and floors, options to purchase these items, and futures and forward contracts. Income from a hedging transaction, including gain from the sale or disposition of such a transaction, that is clearly identified as a hedging transaction as specified in the Code will not constitute gross income and thus will be exempt from the 75% and 95% gross income tests. The term “hedging transaction,” as used above, generally means any transaction we enter into in the normal course of our business primarily to manage risk of (1) interest rate changes or fluctuations with respect to borrowings made or to be made by us to acquire or carry real estate assets, or (2) currency fluctuations with respect to an item of qualifying income under the 75% or 95% gross income test. To the extent that we do not properly identify such transactions as hedges or we hedge with other types of financial instruments, the income from those transactions is not likely to be treated as qualifying income for purposes of the gross income tests. We intend to structure any hedging transactions in a manner that does not jeopardize our status as a REIT.

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To the extent our TRSs pay dividends, we generally will derive our allocable share of such dividend income through our interest in our Operating Partnership. Such dividend income will qualify under the 95%, but not the 75%, gross income test.

We will monitor the amount of the dividend and other income from our TRSs and will take actions intended to keep this income, and any other nonqualifying income, within the limitations of the gross income tests. Although we expect these actions will be sufficient to prevent a violation of the gross income tests, we cannot guarantee that such actions will in all cases prevent such a violation.

If we fail to satisfy one or both of the 75% or 95% gross income tests for any taxable year, we may nevertheless qualify as a REIT for the year if we are entitled to relief under certain provisions of the Code. We generally may make use of the relief provisions if:

- following our identification of the failure to meet the 75% or 95% gross income tests for any taxable year, we file a schedule with the IRS setting forth each item of our gross income for purposes of the 75% or 95% gross income tests for such taxable year in accordance with Treasury Regulations to be issued; and
- our failure to meet these tests was due to reasonable cause and not due to willful neglect.

It is not possible, however, to state whether in all circumstances we would be entitled to the benefit of these relief provisions. For example, if we fail to satisfy the gross income tests because nonqualifying income that we intentionally accrue or receive exceeds the limits on nonqualifying income, the IRS could conclude that our failure to satisfy the tests was not due to reasonable cause. If these relief provisions do not apply to a particular set of circumstances, we will not qualify as a REIT. As discussed above in “—Taxation of Our Company—General,” even if these relief provisions apply, and we retain our status as a REIT, a tax would be imposed with respect to our nonqualifying income. We may not always be able to comply with the gross income tests for REIT qualification despite periodic monitoring of our income.

*Prohibited Transaction Income.* Any gain that we realize on the sale of property held as inventory or otherwise held primarily for sale to customers in the ordinary course of business, including our share of any such gain realized by our Operating Partnership, either directly or through its subsidiary partnerships and limited liability companies, will be treated as income from a prohibited transaction that is subject to a 100% penalty tax, unless certain safe harbor exceptions apply. This prohibited transaction income will be disregarded for purposes of the gross income tests. Under existing law, whether property is held as inventory or primarily for sale to customers in the ordinary course of a trade or business is a question of fact that depends on all the facts and circumstances surrounding the particular transaction. Our Operating Partnership intends to hold its properties for investment with a view to long-term appreciation, to engage in the business of acquiring, developing and owning its properties and to make occasional sales of the properties as are consistent with our Operating Partnership’s investment objectives. We do not intend to enter into any sales that are prohibited transactions. However, the IRS may successfully contend that some or all of the sales made by our Operating Partnership or its subsidiary partnerships or limited liability companies are prohibited transactions. We would be required to pay the 100% penalty tax on our allocable share of the gains resulting from any such sales.

*Penalty Tax.* Any redetermined rents, redetermined deductions or excess interest we generate will be subject to a 100% penalty tax. In general, redetermined rents are rents from real property that are overstated as a result of any services furnished to any of our tenants by a TRS of ours, and redetermined deductions and excess interest represent any amounts that are deducted by a TRS of ours for amounts paid to us that are in excess of the amounts that would have been deducted based on arm’s length negotiations. Rents we receive will not constitute redetermined rents if they qualify for certain safe harbor provisions contained in the Code.

*Asset Tests.* At the close of each calendar quarter of our taxable year, we must also satisfy four tests relating to the nature and diversification of our assets. First, at least 75% of the value of our total assets must be represented by real estate assets, cash, cash items and government securities. For purposes of this test, the term “real estate assets” generally means real property (including interests in real property and interests in mortgages on real property) and shares (or transferable certificates of beneficial interest) in other REITs, as well as any stock or debt instrument attributable to the investment of the proceeds of a stock offering or a public offering of debt with a term of at least five years, but only for the one-year period beginning on the date the REIT receives such proceeds.

Second, not more than 25% of the value of our total assets may be represented by securities (including securities of one or more TRSs), other than those securities includable in the 75% asset test.

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Third, of the investments included in the 25% asset class, and except for investments in other REITs, any qualified REIT subsidiaries and TRSs, the value of any one issuer's securities may not exceed 5% of the value of our total assets (the "5% asset test"), we may not own more than 10% value of the any one issuer's outstanding securities (the "10% value test") and we may not own more 10% of the voting power of any one issuer (the "10% vote test"). Certain types of securities we may own are disregarded as securities solely for purposes of the 10% value test, including, but not limited to, "straight debt," securities issued by a partnership that itself would satisfy the 75% income test if it were a REIT, any loan to an individual or an estate, any obligation to pay rents from real property and any security issued by a REIT. In addition, solely for purposes of the 10% value test, the determination of our interest in the assets of a partnership or limited liability company in which we own an interest will be based on our proportionate interest in any securities issued by the partnership or limited liability company, excluding for this purpose certain securities described in the Code.

Fourth, not more than 25% of the value of our total assets may be represented by the securities of one or more TRS. Our Operating Partnership currently owns three TRSs, and we may acquire securities in other TRSs in the future. So long as each of these companies qualifies as a TRS, we will not be subject to the 5% asset test, the 10% value test, or the 10% vote test with respect to our ownership of their securities. We intend that the aggregate value of our TRSs will not exceed 25% of the aggregate value of our gross assets. We believe that our assets have allowed us to comply with the foregoing asset tests, and we intend to monitor compliance on an ongoing basis. However, independent appraisals have not been obtained to support our conclusions as to the value of our assets. Moreover, values of some assets may not be susceptible to a precise determination, and values are subject to change in the future. Accordingly, there can be no assurance that the IRS will not disagree with our determinations of value. If the IRS were to disagree with our determination of the value of certain of our assets, we would fail one or more of the foregoing asset tests, which could cause us to fail to qualify as a REIT unless we satisfied one of the cure provisions described below.

If we fail to satisfy an asset test because we acquire securities or other property during a quarter, we may cure this failure by disposing of sufficient nonqualifying assets within 30 days after the close of that quarter. We believe that we have maintained and intend to maintain adequate records of the value of our assets to ensure compliance with the asset tests. If we fail to cure any noncompliance with the asset tests within the 30-day cure period, we would cease to qualify as a REIT unless we are eligible for certain relief provisions discussed below.

Certain relief provisions may be available to us if we discover a failure to satisfy the asset tests described above after the 30-day cure period. Under these provisions, we will be deemed to have met the 5% asset test, the 10% value test, and the 10% vote test if the value of our nonqualifying assets (1) does not exceed the lesser of (a) 1% of the total value of our assets at the end of the applicable quarter or (b) \$10,000,000, and (2) we dispose of the nonqualifying assets or otherwise satisfy such tests within (a) six months after the last day of the quarter in which the failure to satisfy the asset tests is discovered or (b) the period of time prescribed by Treasury Regulations to be issued. For violations of any of the asset tests due to reasonable cause and not due to willful neglect and that are, in the case of the 5% asset test, the 10% value test, and the 10% vote test, in excess of the de minimis exception described above, we may avoid disqualification as a REIT after the 30-day cure period by taking steps including (1) the disposition of sufficient nonqualifying assets, or the taking of other actions, which allow us to meet the asset tests within (a) six months after the last day of the quarter in which the failure to satisfy the asset tests is discovered or (b) the period of time prescribed by Treasury Regulations to be issued, (2) paying a tax equal to the greater of (a) \$50,000 or (b) the highest corporate tax rate multiplied by the net income generated by the nonqualifying assets, and (3) disclosing certain information to the IRS.

Although we believe we have satisfied the asset tests described above and plan to take steps to ensure that we satisfy such tests at the close of each calendar quarter, there can be no assurance that we will always be successful, or will not require a reduction in our Operating Partnership's overall interest in an issuer (including in our TRSs). If we fail to cure any noncompliance with the asset tests in a timely manner, and the relief provisions described above are not available, we would cease to qualify as a REIT.

### ***Annual Distribution Requirements***

To maintain our qualification as a REIT, we are required to distribute dividends, other than capital gain dividends, to our stockholders in an amount at least equal to the sum of:

- 90% of our "REIT taxable income"; and
- 90% of our after-tax net income, if any, from foreclosure property; minus
- the excess of the sum of certain items of non-cash income over 5% of our "REIT taxable income."

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For these purposes, our “REIT taxable income” is computed without regard to the dividends paid deduction and our net capital gain. In addition, for purposes of this test, non-cash income means income attributable to leveled stepped rents, original issue discount, cancellation of indebtedness, or a like-kind exchange that is later determined to be taxable.

In addition, if we dispose of any asset we acquired from a corporation which is or has been a C corporation in a transaction in which our basis in the asset is determined by reference to the basis of the asset in the hands of that C corporation, within the ten-year period following our acquisition of such asset, we would be required to distribute at least 90% of the after-tax gain, if any, we recognized on the disposition of the asset, to the extent that gain does not exceed the excess of (a) the fair market value of the asset over (b) our adjusted basis in the asset, in each case, on the date we acquired the asset.

We generally must pay, or be treated as paying, the distributions described above in the taxable year to which they relate. At our election, a distribution will be treated as paid in a taxable year if it is declared before we timely file our tax return for such year and paid on or before the first regular dividend payment after such declaration, provided such payment is made during the 12-month period following the close of such year. These distributions are treated as received by our stockholders in the year in which paid. This is so even though these distributions relate to the prior year for purposes of the 90% distribution requirement.

In order to be taken into account for purposes of our distribution requirement, the amount distributed must not be preferential—i.e., every stockholder of the class of stock to which a distribution is made must be treated the same as every other stockholder of that class, and no class of stock may be treated other than according to its dividend rights as a class. 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 required to pay tax on the undistributed amount at regular corporate tax rates. We believe that we will make timely distributions sufficient to satisfy these annual distribution requirements and to minimize our corporate tax obligations. In this regard, the limited partnership agreement of our Operating Partnership, or the Partnership Agreement, authorizes us, as general partner of our Operating Partnership, to take such steps as may be necessary to cause our Operating Partnership to distribute to its partners an amount sufficient to permit us to meet these distribution requirements and to minimize our corporate tax obligation.

Under some circumstances, we may be able to rectify an inadvertent failure to meet the 90% distribution requirement for a year by paying “deficiency dividends” to our stockholders in a later year, which may be included in our deduction for dividends paid for the earlier year. Thus, we may be able to avoid being taxed on amounts distributed as deficiency dividends, subject to the 4% excise tax described below. However, we will be required to pay interest to the IRS based upon the amount of any deduction claimed for deficiency dividends.

Furthermore, we will be required to pay a 4% excise tax to the extent we fail to distribute during each calendar year at least the sum of 85% of our ordinary income for such year, 95% of our capital gain net income for the year and any undistributed taxable income from prior periods. Any ordinary income and net capital gain on which this excise tax is imposed for any year is treated as an amount distributed during that year for purposes of calculating such tax. For purposes of the 90% distribution requirement and excise tax described above, dividends declared during the last three months of the taxable year, payable to stockholders of record on a specified date during such period and paid during January of the following year, will be treated as paid by us and received by our stockholders on December 31 of the year in which they are declared.

### ***Like-Kind Exchanges***

We may dispose of properties in transactions intended to qualify as like-kind exchanges under the Code. Such like-kind exchanges are intended to result in the deferral of gain for federal income tax purposes. The failure of any such transaction to qualify as a like-kind exchange could require us to pay federal income tax, possibly including the 100% prohibited transaction tax, depending on the facts and circumstances surrounding the particular transaction.

### ***Failure to Qualify***

If we discover a violation of a provision of the Code that would result in our failure to qualify as a REIT, certain specified cure provisions may be available to us. Except with respect to violations of the gross income tests and asset tests (for which the cure provisions are described above), and provided the violation is due to reasonable cause and not due to willful neglect, these cure provisions generally impose a \$50,000 penalty for each violation in lieu of a loss of REIT status. If we fail to satisfy the requirements for taxation as a REIT in any taxable year, and the relief provisions do not apply, we will be required to pay tax, including any applicable alternative minimum tax, on our taxable income at regular corporate rates. Distributions to stockholders in any year in which we fail to qualify as a REIT will not be deductible by us, and we will not be required to distribute any amounts to



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our stockholders. As a result, we anticipate that our failure to qualify as a REIT would reduce the cash available for distribution by us to our stockholders. In addition, if we fail to qualify as a REIT, all distributions to stockholders will be taxable as regular corporate dividends to the extent of our current and accumulated earnings and profits. In such event, corporate distributees may be eligible for the dividends-received deduction. In addition, non-corporate stockholders, including individuals, may be eligible for the preferential tax rates on qualified dividend income. Unless entitled to relief under specific statutory provisions, we will also be ineligible to elect to be treated as a REIT for the four taxable years following the year for which we lost our qualification. It is not possible to state whether in all circumstances we would be entitled to this statutory relief.

### ***Tax Aspects of Our Operating Partnership, the Subsidiary Partnerships and the Limited Liability Companies***

**General.** All of our investments will be held indirectly through our Operating Partnership. In addition, our Operating Partnership may hold certain of its investments indirectly through subsidiary partnerships and limited liability companies which we expect will be treated as partnerships or disregarded entities for federal income tax purposes. In general, entities that are classified as partnerships or disregarded entities for federal income tax purposes are “pass-through” entities that are not required to pay federal income tax. Rather, partners or members of such entities are allocated their shares of the items of income, gain, loss, deduction and credit of the partnership or limited liability company, and are potentially required to pay tax on this income, without regard to whether they receive a distribution from the partnership or limited liability company. We will include in our income our share of these partnership and limited liability company items for purposes of the various gross income tests, the computation of our REIT taxable income, and the REIT distribution requirements. Moreover, for purposes of the asset tests (other than the 10% value test), we will include our pro rata share of assets held by our Operating Partnership, including its share of its subsidiary partnerships and limited liability companies, based on our capital interests in each such entity. See “—Taxation of Our Company.”

**Entity Classification.** Our interests in our Operating Partnership and any subsidiary partnerships and limited liability companies involve special tax considerations, including the possibility that the IRS might challenge the status of these entities as partnerships (or disregarded entities). For example, an entity that would otherwise be classified as a partnership for federal income tax purposes may nonetheless be taxable as a corporation if it is a “publicly traded partnership” and certain other requirements are met. A partnership or limited liability company would be treated as a publicly traded partnership if its interests are traded on an established securities market or are readily tradable on a secondary market or a substantial equivalent thereof, within the meaning of applicable Treasury Regulations. Interests in a partnership are not treated as readily tradable on a secondary market, or the substantial equivalent thereof, if all interests in the partnership were issued in one or more transactions that were not required to be registered under the Securities Act, and the partnership does not have more than 100 partners at any time during the taxable year of the partnership, taking into account certain ownership attribution and anti-avoidance rules (the “100 Partner Safe Harbor”). Our Operating Partnership may not qualify for the 100 Partner Safe Harbor. In the event that the 100 Partner Safe Harbor or certain other safe harbor provisions of applicable Treasury Regulations are not available, our Operating Partnership could be classified as a publicly traded partnership.

If our Operating Partnership does not qualify for the 100 Partner Safe Harbor, interests in our Operating Partnership may nonetheless be viewed as not readily tradable on a secondary market or the substantial equivalent thereof if the sum of the percentage interests in capital or profits of our Operating Partnership transferred during any taxable year of our Operating Partnership does not exceed 2% of the total interests in our Operating Partnership’s capital or profits, subject to certain exceptions. For purpose of this 2% trading restriction, our interests in our Operating Partnership are excluded from the determination of the percentage interests in capital or profits of our Operating Partnership. In addition, this 2% trading restriction does not apply to transfers by a limited partner in one or more transactions during any 30-day period representing in the aggregate more than 2% of the total interests in our Operating Partnership’s capital or profits. We, as general partner of our Operating Partnership, have the authority to take any steps we determine necessary or appropriate to prevent any trading of interests in our Operating Partnership that would cause our Operating Partnership to become a publicly traded partnership, including any steps necessary to ensure compliance with this 2% trading restriction.

We believe our Operating Partnership and each of our other partnerships and limited liability companies will be classified as partnerships or disregarded entities for federal income tax purposes, and we do not anticipate that our Operating Partnership or any subsidiary partnership or limited liability company will be treated as a publicly traded partnership that is taxable as a corporation.

If our Operating Partnership or any of our other partnerships or limited liability companies were to be treated as a publicly traded partnership, it would be taxable as a corporation unless it qualified for the statutory “90% qualifying income exception.” Under that exception, a publicly traded partnership is not subject to corporate-level tax if 90% or more of its gross income consists of dividends, interest, “rents from real property” (as that term is defined for purposes of the rules applicable to REITs, with certain modifications), gain from the sale or other disposition of real property, and certain other types of qualifying income. However, if any such entity did not qualify for this exception or was otherwise taxable as a corporation, it would be required to pay an entity-level tax on its income. In this situation, the character of our assets and items of gross income would change and could prevent us from satisfying the REIT asset tests and possibly the REIT income tests. See “—Taxation of Our Company—Asset Tests” and “—Income Tests.” This, in turn, could prevent us from qualifying as a REIT. See “—Failure to Qualify” for a discussion of the effect of our failure to meet these tests. In addition, a change in the tax status of our Operating Partnership or a subsidiary partnership or limited liability company might be treated as a taxable event. If so, we might incur a tax liability without any related cash payment.

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*Allocations of Income, Gain, Loss and Deduction.* The Partnership Agreement generally provides that allocations of net income to holders of common units generally will be made proportionately to all such holders in respect of such units. Certain limited partners will have the opportunity to guarantee debt of our Operating Partnership, indirectly through an agreement to make capital contributions to our Operating Partnership under limited circumstances. As a result of these guaranties or contribution agreements, and notwithstanding the foregoing discussion of allocations of income and loss of our Operating Partnership to holders of units, such limited partners could under limited circumstances be allocated a disproportionate amount of net loss upon a liquidation of our Operating Partnership, which net loss would have otherwise been allocable to us. If an allocation of partnership income or loss does not comply with the requirements of Section 704(b) of the Code and the Treasury Regulations thereunder, the item subject to the allocation will be reallocated in accordance with the partners' interests in the partnership. This reallocation will be determined by taking into account all of the facts and circumstances relating to the economic arrangement of the partners with respect to such item. Our Operating Partnership's allocations of taxable income and loss are intended to comply with the requirements of Section 704(b) of the Code and the Treasury Regulations thereunder.

*Tax Allocations With Respect to the Properties.* Under Section 704(c) of the Code, income, gain, loss and deduction attributable to appreciated or depreciated property that is contributed to a partnership in exchange for an interest in the partnership, must be allocated in a manner so that the contributing partner is charged with the unrealized gain or benefits from the unrealized loss associated with the property at the time of the contribution. The amount of the unrealized gain or unrealized loss generally is equal to the difference between the fair market value or book value and the adjusted tax basis of the contributed property at the time of contribution, as adjusted from time to time. These allocations are solely for federal income tax purposes and do not affect the book capital accounts or other economic or legal arrangements among the partners.

Our Operating Partnership may, from time to time, acquire interests in property in exchange for interests in our Operating Partnership. In that case, the tax basis of these property interests generally carries over to the Operating Partnership, notwithstanding their different book (i.e., fair market) value (this difference is referred to as a book-tax difference). The Partnership Agreement requires that income and loss allocations with respect to these properties be made in a manner consistent with Section 704(c) of the Code. Treasury Regulations issued under Section 704(c) of the Code provide partnerships with a choice of several methods of accounting for book-tax differences. Depending on the method we choose in connection with any particular contribution, the carryover basis of each of the contributed interests in the properties in the hands of our Operating Partnership (1) could cause us to be allocated lower amounts of depreciation deductions for tax purposes than would be allocated to us if any of the contributed properties were to have a tax basis equal to its respective fair market value at the time of the contribution and (2) could cause us to be allocated taxable gain in the event of a sale of such contributed interests or properties in excess of the economic or book income allocated to us as a result of such sale, with a corresponding benefit to the other partners in our Operating Partnership. An allocation described in clause (2) above might cause us or the other partners to recognize taxable income in excess of cash proceeds in the event of a sale or other disposition of property, which might adversely affect our ability to comply with the REIT distribution requirements. See “—General—Requirements for Qualification as a REIT” and “—Annual Distribution Requirements.”

Any property acquired by our Operating Partnership in a taxable transaction will initially have a tax basis equal to its fair market value, and Section 704(c) of the Code generally will not apply.

## **Federal Income Tax Considerations for U.S. Stockholders of the Common Stock**

*Distributions Generally.* Distributions out of our current or accumulated earnings and profits will be treated as dividends and, other than with respect to capital gain dividends and certain amounts which have previously been subject to corporate level tax discussed below, will be taxable to our taxable U.S. Stockholders as ordinary income when actually or constructively received. See “—Tax Rates” below. For purposes of determining whether a distribution is made out of our current or accumulated earnings and profits, our earnings and profits will be allocated first to our preferred stock dividends and then to our Common Stock dividends. As long as we qualify as a REIT, these distributions will not be eligible for the dividends-received deduction in the case of U.S. stockholders that are corporations or, except to the extent provided in “—Tax Rates” below, the preferential rates on qualified dividend income applicable to non-corporate U.S. stockholders, including individuals.

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To the extent that we make distributions on the Common Stock in excess of our current and accumulated earnings and profits, these distributions will be treated first as a tax-free return of capital to a U.S. Stockholder. This treatment will reduce the U.S. Stockholder's adjusted tax basis in such shares of stock by the amount of the distribution, but not below zero. Distributions in excess of our current and accumulated earnings and profits and in excess of a U.S. Stockholder's adjusted tax basis in its shares will be taxable as capital gain. Such gain will be taxable as long-term capital gain if the shares have been held for more than one year. Dividends we declare in October, November, or December of any year and which are payable to a stockholder of record on a specified date in any of these months will be treated as both paid by us and received by the stockholder on December 31 of that year, provided we actually pay the dividend on or before January 31 of the following year. U.S. stockholders may not include in their own income tax returns any of our net operating losses or capital losses.

Certain stock dividends, including dividends partially paid in our stock and partially paid in cash, will be taxable to the recipient U.S. Stockholder to the same extent as if paid in cash.

*Capital Gain Dividends.* Dividends that we properly designate as capital gain dividends will be taxable to our U.S. Stockholders as a gain from the sale or disposition of a capital asset held for more than one year, to the extent that such gain does not exceed our actual net capital gain for the taxable year. U.S. Stockholders that are corporations may, however, be required to treat up to 20% of certain capital gain dividends as ordinary income.

*Retention of Net Capital Gains.* We may elect to retain, rather than distribute as a capital gain dividend, all or a portion of our net capital gains. If we make this election, we would pay tax on our retained net capital gains. In addition, to the extent we so elect, our earnings and profits (determined for federal income tax purposes) would be adjusted accordingly, and a U.S. Stockholder generally would:

- include its pro rata share of our undistributed net capital gains in computing its long-term capital gains in its return for its taxable year in which the last day of our taxable year falls, subject to certain limitations as to the amount that is includable;
- be deemed to have paid its share of the capital gains tax imposed on us on the designated amounts included in the U.S. Stockholder's income as long-term capital gain;
- receive a credit or refund for the amount of tax deemed paid by it;
- increase the adjusted basis of its stock by the difference between the amount of includable gains and the tax deemed to have been paid by it; and
- in the case of a U.S. Stockholder that is a corporation, appropriately adjust its earnings and profits for the retained capital gains in accordance with Treasury Regulations to be promulgated by the IRS.

*Passive Activity Losses and Investment Interest Limitations.* Distributions we make and gain arising from the sale or exchange by a U.S. Stockholder of our shares will not be treated as passive activity income. As a result, U.S. Stockholders generally will not be able to apply any "passive losses" against this income or gain. A U.S. Stockholder may elect to treat capital gain dividends, capital gains from the disposition of our stock and income designated as qualified dividend income, described in "—Tax Rates" below, as investment income for purposes of computing the investment interest limitation, but in such case, the stockholder will be taxed at ordinary income rates on such amount. Other distributions made by us, to the extent they do not constitute a return of capital, generally will be treated as investment income for purposes of computing the investment interest limitation.

*Dispositions of the Common Stock.* If a U.S. Stockholder sells or disposes of shares of the Common Stock, it will recognize gain or loss for federal income tax purposes in an amount equal to the difference between the amount of cash and the fair market value of any property received on the sale or other disposition and the holder's adjusted basis in the shares. This gain or loss, except as provided below, will be a long-term capital gain or loss if the holder has held such Common Stock for more than one year. However, if a U.S. Stockholder recognizes a loss upon the sale or other disposition of Common Stock that it has held for six months or less, after applying certain holding period rules, the loss recognized will be treated as a long-term capital loss to the extent the U.S. Stockholder received distributions from us which were required to be treated as long-term capital gains.



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**Tax Rates.** The maximum tax rate for non-corporate taxpayers for (1) capital gains, including certain “capital gain dividends,” is 20% (although depending on the characteristics of the assets which produced these gains and on designations which we may make, certain capital gain dividends may be taxed at a 25% rate) and (2) “qualified dividend income” is 20%. However, dividends payable by REITs are not eligible for the 20% tax rate on qualified dividend income, except to the extent that certain holding requirements have been met and the REIT’s dividends are attributable to dividends received from taxable corporations (such as its TRSs) or to income that was subject to tax at the corporate/REIT level (for example, if it distributed taxable income that it retained and paid tax on in the prior taxable year) or to dividends properly designated by the REIT as “capital gain dividends.”

**Medicare Tax on Unearned Income.** Certain U.S. Stockholders that are individuals, estates or trusts will be required to pay an additional 3.8% Medicare tax on, among other things, dividends on and capital gains from the sale or other disposition of the Common Stock. U.S. Stockholders should consult their tax advisors regarding the effect, if any, of this Medicare tax on their ownership and disposition of the Common Stock.

**New Legislation Relating to Foreign Accounts.** Under the Foreign Account Tax Compliance Act, or FATCA, a U.S. withholding tax at a 30% rate generally will be imposed on dividends paid to certain U.S. Stockholders who own our capital stock through foreign accounts or foreign intermediaries if certain disclosure requirements related to U.S. accounts or ownership are not satisfied. In addition, if those disclosure requirements are not satisfied, a U.S. withholding tax at a 30% rate will be imposed, for payments made after December 31, 2016, on proceeds from the sale of our capital stock received by U.S. Stockholders who own our capital stock through foreign accounts or foreign intermediaries. We will not pay any additional amounts in respect of any amounts withheld.

**Information Reporting and Backup Withholding.** We are required to report to our U.S. Stockholders and the IRS the amount of dividends paid during each calendar year, and the amount of any tax withheld. Under the backup withholding rules, a stockholder may be subject to backup withholding with respect to dividends paid unless the holder comes within certain exempt categories and, when required, demonstrates this fact, or provides a taxpayer identification number, certifies as to no loss of exemption from backup withholding, and otherwise complies with applicable requirements of the backup withholding rules. A U.S. Stockholder that does not provide us with its correct taxpayer identification number may also be subject to penalties imposed by the IRS. Backup withholding is not an additional tax. Any amount paid as backup withholding will be creditable against the stockholder’s federal income tax liability, provided the required information is timely furnished to the IRS. In addition, we may be required to withhold a portion of capital gain distributions to any stockholders who fail to certify their non-foreign status. See “—Taxation of Non-U.S. Stockholders.”

### ***Taxation of Tax-Exempt Stockholders***

Tax-exempt entities, including qualified employee pension and profit sharing trusts and individual retirement accounts, generally are exempt from federal income taxation. They are subject, however, to taxation on their unrelated business taxable income (“UBTI”). While many investments in real estate generate UBTI, the IRS has issued a ruling that dividend distributions from a REIT to an exempt employee pension trust do not constitute UBTI. Based on that ruling, dividend income from us and gain arising upon a sale of the Common Stock generally should not be UBTI, to a tax-exempt stockholder, except as described below. This income or gain will be UBTI, however, if a tax-exempt stockholder holds the Common Stock as “debt-financed property” within the meaning of the Code. Generally, “debt-financed property” is property the acquisition or holding of which was financed through a borrowing by the tax-exempt stockholder.

For tax-exempt stockholders that are social clubs, voluntary employee benefit associations, supplemental unemployment benefit trusts, or qualified group legal services plans exempt from federal income taxation under Sections 501(c)(7), (c)(9), (c)(17) or (c)(20) of the Code, respectively, income from an investment in the Common Stock will constitute UBTI unless the organization is able to properly claim a deduction for amounts set aside or placed in reserve for specific purposes so as to offset the income generated by its investment in our shares. These prospective investors should consult their tax advisors concerning these “set aside” and reserve requirements.

Notwithstanding the above, however, a portion of the dividends paid by a “pension-held REIT” may be treated as unrelated business taxable income as to certain trusts that hold more than 10%, by value, of our stock. A REIT will not be a “pension-held REIT” if it is able to satisfy the “not closely held” requirement without relying on the “look-through” exception with respect to certain trusts or if such REIT is not “predominantly held” by “qualified trusts.” As a result of restrictions on ownership and transfer of our stock contained in our charter, we do not expect to be classified as a “pension-held REIT,” and as a result, the tax treatment described above should be inapplicable to our stockholders. However, because our stock will be publicly traded, we cannot guarantee that this will always be the case.

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### ***Taxation of Non-U.S. Stockholders***

The following discussion addresses the rules governing federal income taxation of the purchase, ownership and disposition of the Common Stock by non-U.S. Stockholders. The term “non-U.S. Stockholder” means a beneficial owner of the Common Stock that is not a U.S. Stockholder or partnership (or an entity or arrangement treated as a partnership for federal income tax purposes). These rules are complex, and no attempt is made herein to provide more than a brief summary of such rules. Accordingly, the discussion does not address all aspects of federal income taxation and does not address state, local or non-U.S. tax consequences that may be relevant to a non-U.S. Stockholder in light of its particular circumstances. We urge non-U.S. Stockholders to consult their tax advisors to determine the impact of federal, state, local and non-U.S. income tax laws on the purchase, ownership and disposition of shares of the Common Stock, including any reporting requirements.

*Distributions Generally.* Distributions (including any taxable stock dividends) that are neither attributable to gains from sales or exchanges by us of “United States real property interests” (as defined below) nor designated by us as capital gain dividends (except as described below) will be treated as dividends of ordinary income to the extent that they are made out of our current or accumulated earnings and profits. Such distributions ordinarily will be subject to withholding of federal income tax at a 30% rate or such lower rate as may be specified by an applicable income tax treaty, unless the distributions are treated as effectively connected with the conduct by the non-U.S. Stockholder of a U.S. trade or business. Under certain treaties, however, lower withholding rates generally applicable to dividends do not apply to dividends from a REIT. Certain certification and disclosure requirements must be satisfied to be exempt from withholding under the effectively connected income exemption. Dividends that are treated as effectively connected with a U.S. trade or business will generally not be subject to withholding but will be subject to federal income tax on a net basis at graduated rates, in the same manner as dividends paid to U.S. Stockholders are subject to federal income tax. Any such dividends received by a non-U.S. Stockholder that is a corporation may also be subject to an additional branch profits tax at a 30% rate (applicable after deducting federal income taxes paid on such effectively connected income) or such lower rate as may be specified by an applicable income tax treaty.

Except as otherwise provided below, we expect to withhold federal income tax at the rate of 30% on any distributions made to a non-U.S. Stockholder unless:

- (1) a lower treaty rate applies and the non-U.S. Stockholder files with us an IRS Form W-8BEN or W-8BEN-E evidencing eligibility for that reduced treaty rate; or
- (2) the non-U.S. Stockholder files an IRS Form W-8ECI with us claiming that the distribution is income effectively connected with the non-U.S. stockholder’s trade or business.

Distributions in excess of our current and accumulated earnings and profits will not be taxable to a non-U.S. Stockholder to the extent that such distributions do not exceed the adjusted basis of the stockholder’s Common Stock, but rather will reduce the adjusted basis of such stock. To the extent that such distributions exceed the non-U.S. Stockholder’s adjusted basis in such Common Stock, they will give rise to gain from the sale or exchange of such Common Stock, the tax treatment of which is described below. For withholding purposes, we expect to treat all distributions as made out of our current or accumulated earnings and profits. However, amounts withheld may be refundable if it is subsequently determined that the distribution was, in fact, in excess of our current and accumulated earnings and profits, provided that certain conditions are met.

*Capital Gain Dividends and Distributions Attributable to a Sale or Exchange of U.S. Real Property Interests.* Distributions to a non-U.S. Stockholder that we properly designate as capital gain dividends, other than those arising from the disposition of a “United States real property interest” (as defined below), generally should not be subject to federal income taxation, unless:

- (1) the investment in our stock is treated as effectively connected with the non-U.S. Stockholder’s U.S. trade or business, in which case the non-U.S. Stockholder will be subject to the same treatment as U.S. Stockholders with respect to such gain, except that a non-U.S. Stockholder that is a non-U.S. corporation may also be subject to a branch profits tax of up to 30%, as discussed above; or
- (2) the non-U.S. Stockholder is a nonresident alien individual who is present in the United States for 183 days or more during the taxable year and certain other conditions are met, in which case the nonresident alien individual will be subject to a 30% tax on the individual’s capital gains.

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Pursuant to the Foreign Investment in Real Property Tax Act, or FIRPTA, distributions to a non-U.S. Stockholder that are attributable to gain from sales or exchanges by us of “United States real property interests,” or USRPI, whether or not designated as capital gain dividends, will cause the non-U.S. Stockholder to be treated as recognizing such gain as income effectively connected with a U.S. trade or business. Non-U.S. Stockholders would generally be taxed at the same rates applicable to U.S. Stockholders, subject to any applicable alternative minimum tax. We also will be required to withhold and to remit to the IRS 35% (or 20% to the extent provided in Treasury Regulations) of any distribution to non-U.S. Stockholders that is designated as a capital gain dividend or, if greater, 35% of any distribution to non-U.S. Stockholders that could have been designated as a capital gain dividend. The amount withheld is creditable against the non-U.S. Stockholder’s federal income tax liability. However, any distribution with respect to any class of stock that is “regularly traded” on an established securities market located in the United States is not subject to FIRPTA, and therefore, not subject to the 35% U.S. withholding tax described above, if the non-U.S. Stockholder did not own more than 5% of such class of stock at any time during the one-year period ending on the date of the distribution. Instead, such distributions will generally be treated as ordinary dividend distributions and subject to withholding in the manner described above with respect to ordinary dividends. We believe the Common Stock is “regularly traded” on an established securities market in the United States.

*Retention of Net Capital Gains.* Although the law is not clear on the matter, it appears that amounts designated by us as retained net capital gains in respect of the stock held by stockholders generally should be treated with respect to non-U.S. Stockholders in the same manner as actual distributions of capital gain dividends. Under that approach, the non-U.S. Stockholders would be able to offset as a credit against their federal income tax liability resulting from their proportionate share of the tax paid by us on such retained net capital gains and to receive from the IRS a refund to the extent their proportionate share of such tax paid by us exceeds their actual federal income tax liability. If we were to designate any portion of our net capital gain as retained net capital gain, a non-U.S. Stockholder should consult its tax advisor regarding the taxation of such retained net capital gain.

*Sale of Common Stock.* Gain recognized by a non-U.S. Stockholder upon the sale, exchange or other taxable disposition of the Common Stock generally will not be subject to federal income taxation unless such stock constitutes a USRPI. In general, stock of a domestic corporation that constitutes a “U.S. real property holding corporation,” or USRPHC, will constitute a USRPI. We expect that we will continue to be a USRPHC. The Common Stock will not, however, constitute a USRPI so long as we are a “domestically controlled qualified investment entity.” A “domestically controlled qualified investment entity” includes a REIT in which at all times during a specified testing period less than 50% in value of its stock is held directly or indirectly by non-U.S. Stockholders. We believe, but cannot guarantee, that we are a “domestically controlled qualified investment entity.” Because the Common Stock is publicly traded, no assurance can be given that we will continue to be a “domestically controlled qualified investment entity.”

Notwithstanding the foregoing, gain from the sale, exchange or other taxable disposition of the Common Stock not otherwise subject to FIRPTA will be taxable to a non-U.S. Stockholder if either (a) the investment in the Common Stock is treated as effectively connected with the non-U.S. Stockholder’s U.S. trade or business or (b) the non-U.S. Stockholder is a nonresident alien individual who is present in the United States for 183 days or more during the taxable year and certain other conditions are met. In addition, even if we are a domestically controlled qualified investment entity, upon disposition of the Common Stock (subject to the 5% exception applicable to “regularly traded” stock described below), a non-U.S. Stockholder may be treated as having gain from the sale or other taxable disposition of a USRPI if (1) the non-U.S. Stockholder disposes of the Common Stock within a 30-day period preceding the ex-dividend date of a distribution, any portion of which, but for the disposition, would have been treated as gain from the sale or exchange of a USRPI and (2) acquires, or enters into a contract or option to acquire, or is deemed to acquire, other shares of that stock during the 61-day period beginning with the first day of the 30-day period described in clause (1).

Even if we do not qualify as a “domestically controlled qualified investment entity” at the time a non-U.S. Stockholder sells the Common Stock, gain arising from the sale or other taxable disposition by a non-U.S. Stockholder of the Common Stock would not be subject to federal income taxation under FIRPTA as a sale of a USRPI if:

- the Common Stock is “regularly traded,” as defined by applicable Treasury Regulations, on an established securities market, such as Nasdaq; and
- such non-U.S. Stockholder owned, actually and constructively, 5% or less of the Common Stock throughout the five-year period ending on the date of the sale or exchange.

If gain on the sale, exchange or other taxable disposition of the Common Stock were subject to taxation under FIRPTA, the non-U.S. Stockholder would be subject to regular federal income tax with respect to such gain in the same manner as a taxable U.S. Stockholder (subject to any applicable alternative minimum tax and a special alternative minimum tax in the case of nonresident alien individuals). In addition, if the sale, exchange or other taxable disposition of the Common Stock were subject to taxation under FIRPTA, and if shares of the Common Stock were not “regularly traded” on an established securities market, the purchaser of the Common Stock would generally be required to withhold and remit to the IRS 10% of the purchase price. As noted above, we believe the Common Stock is “regularly traded” on an established securities market.

*Information Reporting and Backup Withholding Tax.* Generally, we must report annually to the IRS the amount of dividends paid to a non-U.S. Stockholder, such holder’s name and address, and the amount of tax withheld, if any. A similar report is sent to the non-U.S. Stockholder. Pursuant to tax treaties or other agreements, the IRS may make its reports available to tax authorities in the non-U.S. Stockholder’s country of residence.

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Payments of dividends or of proceeds from the disposition of stock made to a non-U.S. Stockholder may be subject to information reporting and backup withholding unless such holder establishes an exemption, for example, by properly certifying its non-U.S. status on an IRS Form W-8BEN or IRS Form W-8BEN-E or another appropriate version of IRS Form W-8. Notwithstanding the foregoing, backup withholding and information reporting may apply if either we have or our paying agent has actual knowledge, or reason to know, that a non-U.S. Stockholder is a U.S. person. Backup withholding is not an additional tax. Rather, the federal income tax liability of persons subject to backup withholding will be reduced by the amount of tax withheld. If withholding results in an overpayment of taxes, a refund or credit may be obtained, provided that the required information is timely furnished to the IRS.

*New Legislation Related to Foreign Accounts.* Under FATCA, a U.S. withholding tax at a 30% rate will be imposed on dividends paid on the Common Stock received by certain non-U.S. Stockholders if they held our stock through foreign entities that fail to meet certain disclosure requirements related to U.S. persons that either have accounts with such entities or own equity interests in such entities. In addition, if those disclosure requirements are not satisfied, a U.S. withholding tax at a 30% rate will be imposed on proceeds from the sale of the Common Stock received after December 31, 2016 by certain non-U.S. Stockholders. If payment of withholding taxes is required, non-U.S. Stockholders that are otherwise eligible for an exemption from, or reduction of, U.S. withholding taxes with respect of such dividends and proceeds will be required to seek a refund from the IRS to obtain the benefit or such exemption or reduction. We will not pay any additional amounts in respect of any amounts withheld.

### ***Other Tax Consequences***

State, local and non-U.S. income tax laws may differ substantially from the corresponding federal income tax laws, and this discussion does not purport to describe any aspect of the tax laws of any state, local or non-U.S. jurisdiction. You should consult your tax advisor regarding the effect of state, local and non-U.S. tax laws with respect to our tax treatment as a REIT and on an investment in the Common Stock.

## **PLAN OF DISTRIBUTION**

Each Selling Stockholder may, from time to time, sell any or all of his or her respective shares of Common Stock on any stock exchange, market or trading facility on which the shares are traded or in private transactions. The Selling Stockholders may use any one or more of the following methods when selling shares:

- ordinary brokerage transactions and transactions in which the broker-dealer solicits purchasers;
- block trades in which the broker-dealer will attempt to sell the shares as agent but may position and resell a portion of the block as principal to facilitate the transaction;
- purchases by a broker-dealer as principal and resale by the broker-dealer for its account;
- an exchange or market distribution in accordance with the rules of the applicable exchange or market;
- privately negotiated transactions;
- settlement of short sales;
- broker-dealers may agree with a Selling Stockholder to sell a specified number of such shares at a stipulated price per share;
- through options, swaps or derivatives;
- a combination of any such methods of sale; and
- any other method permitted pursuant to applicable law.

A Selling Stockholder may also sell shares under Rule 144 under the Securities Act, if available, rather than under this prospectus.

Broker-dealers engaged by a Selling Stockholder may arrange for other brokers-dealers to participate in sales. Broker-dealers may receive commissions or discounts from the Selling Stockholder (or, if any broker-dealer acts as agent for the purchaser of shares, from the purchaser) in amounts to be negotiated. The Selling Stockholders do not expect these commissions and discounts to exceed what is customary in the types of transactions involved.

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Each Selling Stockholder may from time to time transfer, pledge, assign or grant a security interest in some or all the shares of Common Stock owned by it and, if it defaults in the performance of its secured obligations, the transferees, pledgees, assignees or secured parties may offer and sell the shares of Common Stock from time to time under this prospectus, or under a supplement to this prospectus under Rule 424(b) or other applicable provision of the Securities Act amending the list of Selling Stockholders to include the transferee, pledgee, assignee or other successors in interest as Selling Stockholders under this prospectus.

In addition, the Selling Stockholders may enter into hedging transactions with broker-dealers that may engage in short sales of shares in the course of hedging the positions they assume with the Selling Stockholders. The Selling Stockholders also may sell shares short and deliver the shares to close out such short position. The Selling Stockholders also may enter into option or other transactions with broker-dealers that require the delivery by such broker-dealers of the shares, which shares may be resold thereafter pursuant to this prospectus or any related prospectus supplement.

Broker-dealers engaged by the Selling Stockholders may arrange for other broker-dealers to participate in sales. If the Selling Stockholders effect such transactions through underwriters, broker-dealers or agents, such underwriters, broker-dealers or agents may receive compensation in the form of discounts, concessions or commissions from the Selling Stockholders or commissions from purchasers of the shares of our Common Stock for whom they may act as agent or to whom they may sell as principal, or both (which discounts, concessions or commissions as to particular underwriters, broker-dealers or agents may be less than or in excess of those customary in the types of transactions involved).

Each Selling Stockholder and any broker-dealers or agents that are involved in selling the shares may be deemed to be “underwriters” within the meaning of the Securities Act in connection with such sales. In such event, any commissions received by such broker-dealers or agents and any profit on the resale of the shares purchased by them may be deemed to be underwriting commissions or discounts under the Securities Act. Each Selling Stockholder has informed us that such Selling Stockholder does not have any agreement, arrangement or understanding, directly or indirectly, with any person to distribute the Common Stock.

We are required to pay certain fees and expenses incurred incident to the registration of the shares of Common Stock offered by this prospectus.

We have agreed to indemnify the Selling Stockholders against certain liabilities, including liabilities arising under the Securities Act. The Selling Stockholders may agree to indemnify any agent, dealer or broker-dealer that participates in transactions involving sales of shares of Common Stock against certain liabilities, including liabilities arising under the Securities Act.

Because each Selling Stockholder may be deemed an underwriter, any Selling Stockholder must deliver this prospectus and any supplements to this prospectus in the manner required by the Securities Act.

The Selling Stockholders will be subject to the Exchange Act, including Regulation M promulgated thereunder, which may limit the timing of purchases and sales of Common Stock by the Selling Stockholders and their affiliates.

Upon being notified by a Selling Stockholder that any material arrangement has been entered into with a broker-dealer or underwriter for the sale of shares of Common Stock through a block trade, special offering, exchange distribution or secondary distribution or a purchase by a broker or dealer, we will file a supplement to this prospectus, if required, pursuant to Rule 424(b) under the Securities Act, disclosing (i) the name of each such Selling Stockholder and of the participating broker-dealer(s) or underwriter(s), (ii) the number of shares of Common Stock involved, (iii) the price at which such shares were or will be sold, (iv) the commissions paid or to be paid or discounts or concessions allowed to such broker-dealer(s) or underwriter(s), where applicable, (v) that, as applicable, such broker-dealer(s) or underwriter(s) did not conduct any investigation to verify the information set out or incorporated by reference in this prospectus and (iv) other facts material to the transaction.

There can be no assurance that the Selling Stockholders will sell any or all of the shares of Common Stock registered pursuant to the registration statement, of which this prospectus or any related prospectus supplement forms a part.

## **LEGAL MATTERS**

Williams Mullen has issued an opinion about certain legal matters with respect to the Common Stock that is offered hereby and certain legal matters in connection with our status as a REIT for U.S. federal income tax purposes.



## **EXPERTS**

The consolidated balance sheets of Wheeler Real Estate Investment Trust, Inc. and subsidiaries as of December 31, 2014 and 2013, and the related consolidated statements of operations, equity and cash flows for each of the years in the two year period ended December 31, 2014 incorporated by reference into this prospectus and registration statement, have been audited by Cherry Bekaert LLP, an independent registered public accounting firm, as set forth in their reports thereon, and are included in reliance upon such reports given on the authority of such firm as experts in accounting and auditing.

## **WHERE YOU CAN FIND MORE INFORMATION ABOUT WHEELER REAL ESTATE INVESTMENT TRUST, INC.**

We file annual, quarterly and current reports, proxy statements and other information with the SEC under the Exchange Act.

You may request and obtain a copy of these filings, at no cost to you, by writing or telephoning us at the following address or telephone number:

Riversedge North  
2529 Virginia Beach Blvd., Suite 200  
Virginia Beach, Virginia 23452  
(757) 627-9088

This prospectus is part of the registration statement and does not contain all the information included in the registration statement and all its exhibits, certificates and schedules. Whenever a reference is made in this prospectus to any contract or other document of ours, the reference may not be complete and you should refer to the exhibits that are a part of the registration statement for a copy of the contract or document.

You may read and copy our registration statement and all its exhibits and schedules that we have filed with the SEC, at the Public Reference Room at 100 F Street, N.E., Washington, D.C. 20549. This material, as well as copies of all other documents filed with the SEC, may be obtained from the Public Reference Section of the SEC, 100 F. Street, N.E., Washington D.C. 20549 upon payment of the fee prescribed by the SEC. The public may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330 or e-mailing the SEC at [publicinfo@sec.gov](mailto:publicinfo@sec.gov). The SEC maintains a web site that contains reports, proxy statements, information statements and other information regarding registrants that file electronically with the SEC, including us. The address of this website is <http://www.sec.gov>.

## **INCORPORATION OF CERTAIN DOCUMENTS BY REFERENCE**

We are incorporating certain information about us that we have filed with the SEC by reference in this prospectus, which means that we are disclosing important information to you by referring you to those documents. We are also incorporating by reference in this prospectus information that we file with the SEC after the filing of this registration statement and prior to the effectiveness of this registration statement. Additionally, all documents that we subsequently file pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act, prior to termination of the offering, shall be deemed to be incorporated by reference into this prospectus. The information we incorporate by reference is an important part of this prospectus, and later information that we file with the SEC automatically will update and supersede the information we have included in or incorporated into this prospectus.

We incorporate by reference the following documents we have filed, or may file, with the SEC:

- Annual Report on Form 10-K for the fiscal year ended December 31, 2014, filed on March 25, 2015;
- Current Reports on Form 8-K and/or amended Current Reports on Form 8-K filed on January 9, 2015, January 13, 2015, January 16, 2015, January 20, 2015, February 13, 2015, February 17, 2015, March 6, 2015, March 13, 2015, March 18, 2015, March 19, 2015, both reports filed on March 24, 2015, March 27, 2015, March 30, 2015, April 2, 2015, April 14, 2015, April 15, 2015, April 16, 2015 and April 17, 2015; and
- The description of our Common Stock contained in our Form 8-A, filed on October 23, 2012, as amended on October 24, 2012.

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This prospectus is part of a registration statement we have filed with the SEC on Form S-3 relating to our Common Stock. As permitted by SEC rules, this prospectus does not contain all of the information included in the registration statement and the accompanying exhibits and schedules we file with the SEC. We have incorporated by reference certain legal documents that control the terms of our Common Stock offered by this prospectus as exhibits to the registration statement. You may refer to the registration statement and the exhibits for more information about us and the Common Stock. The registration statement and exhibits are also available at the SEC's Public Reference Room or through its web site.

The section entitled "Where You Can Find More Information About Wheeler Real Estate Investment Trust, Inc." above describes how you can obtain or access any documents or information that we have incorporated by reference herein. The information relating to us contained in this prospectus does not purport to be comprehensive and should be read together with the information contained in the documents incorporated or deemed to be incorporated by reference in this prospectus.

Upon written or oral request, we will provide, free of charge, to each person, including any beneficial owner, to whom a prospectus is delivered, a copy of any or all of the reports or documents that are incorporated by reference into this prospectus. Such written or oral requests should be made to:

Riversedge North  
2529 Virginia Beach Blvd., Suite 200  
Virginia Beach, Virginia 23452  
(757) 627-9088

In addition, such reports and documents may be found on our website at *www.WHLR.us*. Our website and the information included therein is not a part of this prospectus and not incorporated by reference.

46,500,000 Shares



Common Stock

PROSPECTUS

\_\_\_\_\_, 2015

Neither we nor any Selling Stockholder have authorized any dealer, salesperson or other person to give any information or to make any representation other than those 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. This prospectus does not constitute an offer to sell or the solicitation of an offer to buy any securities other than the registered securities to which it relates, nor does this prospectus constitute an offer to sell or the solicitation of an offer to buy securities in any jurisdiction to any person to whom it is unlawful to make such offer or solicitation in such jurisdiction. You should not assume that the information contained in this prospectus is accurate on any date subsequent to the date set forth on its front cover or that any information we have incorporated by reference is correct on any date subsequent to the date of the document incorporated by reference, even though this prospectus is delivered or securities are sold on a later date.



**PART II****INFORMATION NOT REQUIRED IN PROSPECTUS****Item 14. Other Expenses of Issuance and Distribution.**

Securities and Exchange Commission Registration Fee	\$12,914
Legal Fees and Expenses	70,000*
Accounting Fees and Expenses	8,000*
Miscellaneous Expenses	7,500*
<b>Total Expenses</b>	<b>\$98,414*</b>

\* Estimated

**Item 15. Indemnification of Directors and Officers.**

Maryland law permits a Maryland corporation to include in its charter a provision limiting the liability of its directors and officers to the corporation and its stockholders for money damages except for liability resulting from (a) actual receipt of an improper benefit or profit in money, property or services or (b) active and deliberate dishonesty that is established by a final judgment and is material to the cause of action. Our charter contains a provision which eliminates our directors' and officers' liability to the maximum extent permitted by Maryland law.

Maryland law requires a Maryland corporation (unless its charter provides otherwise, which our charter does not) to indemnify a director or officer who has been successful in the defense of any proceeding to which he or she is made or threatened to be made a party by reason of his or her service in that capacity. Maryland law permits a Maryland corporation to indemnify its present and former directors and officers, among others, against judgments, penalties, fines, settlements and reasonable expenses actually incurred by them in connection with any proceeding to which they may be made or threatened to be made a party by reason of their service in those or other capacities unless it is established that: (a) the act or omission of the director or officer was material to the matter giving rise to the proceeding and (i) was committed in bad faith or (ii) was the result of active and deliberate dishonesty; (b) the director or officer actually received an improper personal benefit in money, property or services; or (c) in the case of any criminal proceeding, the director or officer had reasonable cause to believe that the act or omission was unlawful. However, under Maryland law, a Maryland corporation may not indemnify for an adverse judgment in a suit by or in the right of the corporation or for a judgment of liability on the basis that personal benefit was improperly received, unless in either case a court orders indemnification and then only for expenses. In addition, Maryland law permits a Maryland corporation to advance reasonable expenses to a director or officer upon the corporation's receipt of (a) a written affirmation by the director or officer of his or her good faith belief that he or she has met the standard of conduct necessary for indemnification by the corporation and (b) a written undertaking by him or her or on his or her behalf to repay the amount paid or reimbursed by the corporation if it is ultimately determined that the standard of conduct was not met.

Our charter authorizes us, to the maximum extent permitted by Maryland law, to obligate ourselves and our bylaws obligate us, to indemnify any present or former director or officer or any individual who, while a director or officer of our company and at our request, serves or has served as a director, officer, partner, trustee, member or manager of another corporation, real estate investment trust, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise and who is made or threatened to be made a party to the proceeding by reason of his or her service in that capacity from and against any claim or liability to which that individual may become subject or which that individual may incur by reason of his or her service in any of the foregoing capacities and to pay or reimburse his or her reasonable expenses in advance of final disposition of a proceeding. Our charter and bylaws also permit us to indemnify and advance expenses to any individual who served a predecessor of our company in any of the capacities described above and any employees or agents of our company or a predecessor of our company. Furthermore, our officers and directors are indemnified against specified liabilities by the underwriters, and the underwriters are indemnified against certain liabilities by us, under the placement agreement relating to this offering. See "Plan of Distribution."

We intend to enter into indemnification agreements with each of our executive officers and directors whereby we indemnify such executive officers and directors to the fullest extent permitted by Maryland law against all expenses and liabilities, subject to limited exceptions. These indemnification agreements also provide that upon an application for indemnity by an executive officer or director to a court of appropriate jurisdiction, such court may order us to indemnify such executive officer or director.

In addition, our directors and officers are indemnified for specified liabilities and expenses pursuant to the Partnership Agreement of Wheeler REIT, L.P., the partnership of which we serve as sole general partner.

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### **Item 16. Exhibits.**

The following exhibits are filed as part of this Registration Statement or incorporated in it by reference.

<u>Exhibit No.</u>	<u>Description of Exhibit</u>
3.1	Articles of Amendment and Restatement of Registrant, as corrected by the Certificate of Correction of Articles of Amendment and Restatement for Wheeler Real Estate Investment Trust, Inc., dated April 25, 2014, and Certificate of Correction of Articles of Amendment and Restatement for Wheeler Real Estate Investment Trust, Inc., dated August 18, 2014, as amended by the Wheeler Real Estate Investment Trust, Inc. Articles of Amendment, dated August 15, 2014 (previously filed as Exhibit 3.1 to the Registrant's Registration Statement on Form S-11 (File No. 333-198245), filed on August 20, 2014, and incorporated herein by reference (1)
3.2	Articles Supplementary (2)
3.3	Amended and Restated Bylaws of Registrant (3)
4.1	Form of Certificate of Common Stock of Registrant (3)
5.1	Opinion of Williams Mullen (4)
8.1	Opinion of Williams Mullen with respect to tax matters (4)
23.1	Consent of Cherry Bekaert LLP (4)
23.2	Consent of Williams Mullen (included in Exhibit 5.1) (4)
24.1	Power of Attorney (included on the signature page hereto)
(1)	Filed as an exhibit to Wheeler Real Estate Investment Trust, Inc.'s Form 8-K, File No. 001-35713 filed on April 29, 2014.
(2)	Filed as an exhibit to Wheeler Real Estate Investment Trust, Inc.'s Form 8-K, File No. 001-35713 filed on March 19, 2015.
(3)	Filed as an exhibit to the Wheeler Real Estate Investment Trust, Inc.'s Registration Statement in Form S-11 (Registration No. 333-177262) previously filed on April 18, 2012 and hereby incorporated by reference.
(4)	Filed herewith.

### **Item 17. Undertakings.**

(a) The undersigned registrant hereby undertakes: (1) to file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement: (i) to include any prospectus required by Section 10(a)(3) of the Securities Act of 1933; (ii) to reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement; and (iii) to include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement; provided, however, that paragraphs (a)(1)(i), (ii) and (iii) above do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in this registration statement, or is contained in a form of prospectus filed pursuant to Rule 424(b) that is part of the registration statement; (2) that, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof; and (3) to remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of this offering.

(b) The undersigned registrant hereby undertakes that, for the purpose of determining liability under the Securities Act of 1933 to any purchaser: (i) each prospectus filed by the registrant pursuant to Rule 424(b)(3) shall be deemed to be part of the registration statement as of the date the filed prospectus was deemed part of and included in the registration statement, and (ii) each prospectus required to be filed pursuant to Rule 424(b)(2), (b)(5), or (b)(7) as part of a registration statement in reliance on Rule 430B relating to

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an offering made pursuant to Rule 415(a)(1)(i), (vii) or (x), for the purpose of providing the information required by Section 10(a) of the Securities Act of 1933 shall be deemed to be part of and included in the registration statement as of the earlier of the date such form of prospectus is first used after effectiveness or the date of the first contract of sale of securities in the offering described in the prospectus. As provided in Rule 430B, for liability purposes of the issuer and any person that is at that date an underwriter, such date shall be deemed to be a new effective date of the registration statement relating to the securities in the registration statement to which that prospectus relates, and this offering of such securities at that time shall be deemed to be the initial bona fide offering thereof. Provided, however, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such effective date, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such effective date.

(c) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(d) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Securities Act of 1933 and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act of 1933 and will be governed by the final adjudication of such issue.

(e) The undersigned registrant hereby undertakes that:

(1) For purposes of determining any liability under the Securities Act of 1933, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective.

(2) For the purpose of determining any liability under the Securities Act of 1933, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

## SIGNATURES

Pursuant to the requirements of the Securities Act, the registrant certifies that it has reasonable grounds to believe it meets all of the requirements for filing on Form S-3 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Virginia Beach, Commonwealth of Virginia, on the 22nd day of April 2015.

WHEELER REAL ESTATE INVESTMENT  
TRUST, INC.

By: /s/ JON S. WHEELER

Jon S. Wheeler  
Chairman and Chief Executive Officer

## POWER OF ATTORNEY

We, the undersigned directors and officers of Wheeler REIT, L.P., do hereby constitute and appoint Jon S. Wheeler and Steven M. Belote, and each of them, our true and lawful attorneys-in-fact and agents, to do any and all acts and things in our names and on our behalf in our capacities as directors and officers and to execute any and all instruments for us and in our name in the capacities indicated below, which said attorneys and agents, or any of them, may deem necessary or advisable to enable said Company to comply with the Securities Act of 1933 and any rules, regulations and requirements of the Securities and Exchange Commission, in connection with this registration statement, or any registration statement for this offering that is to be effective upon filing pursuant to Rule 462(b) under the Securities Act of 1933, including specifically, but without limitation, any and all amendments (including post-effective amendments) hereto, and we hereby ratify and confirm all that said attorneys and agents, or any of them, shall do or cause to be done by virtue thereof.

Pursuant to the requirements of the Securities Act, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/S/ JON S. WHEELER</u> Jon. S. Wheeler	Chairman of the Board of Directors and Chief Executive Officer (Principal Executive Officer)	April 22, 2015
<u>/S/ STEVEN M. BELOTE</u> Steven M. Belote	Chief Financial Officer (Principal Financial and Accounting Officer)	April 22, 2015
<u>/S/ CHRISTOPHER J. ETTTEL</u> Christopher J. Ettel	Director	April 22, 2015
<u>/S/ DAVID KELLY</u> David Kelly	Director	April 22, 2015
<u>/S/ WILLIAM W. KING</u> William W. King	Director	April 22, 2015
<u>/S/ WARREN D. HARRIS</u> Warren D. Harris	Director	April 22, 2015
<u>/S/ CARL B. MCGOWAN, JR.</u> Carl B. McGowan, Jr.	Director	April 22, 2015
<u>/S/ ANN L. MCKINNEY</u> Ann L. McKinney	Director	April 22, 2015
<u>/S/ JEFFREY ZWERDLING</u> Jeffrey Zwerdling	Director	April 22, 2015

**EXHIBIT INDEX**

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(4)	Filed herewith.

## WILLIAMS MULLEN

April 22, 2015

Wheeler Real Estate Investment Trust, Inc.  
Riversedge North  
2529 Virginia Beach Blvd., Suite 200  
Virginia Beach, Virginia 23452

Re: Registration Statement on Form S-3

Ladies and Gentlemen:

We have acted as special counsel to Wheeler Real Estate Investment Trust, Inc., a Maryland corporation (the “Company”), in connection with certain matters of Maryland law arising out of the registration of 46,500,000 shares of common stock, par value \$0.01 per share (the “Shares”) under the Securities Act of 1933, as amended (the “Securities Act”), pursuant to the Registration Statement on Form S-3 (the “Registration Statement”) filed by the Company with the Securities and Exchange Commission (the “Commission”). The Registration Statement relates to the proposed offer and sale of the Shares by the selling shareholders identified in the Registration Statement. This opinion is being furnished in accordance with the requirements of Item 601(b)(5) of Regulation S-K under the Securities Act.

In our capacity as the Company’s counsel and as a basis for the opinions hereinafter expressed, we have examined (i) the Registration Statement, (ii) certificates of public officials and of representatives of the Company and (iii) such corporate proceedings, records and documents as we have considered necessary for the purposes of this opinion. We have assumed that (i) the signatures on all documents examined by us are genuine, (ii) all documents submitted to us as originals are authentic, (iii) all documents submitted to us as copies conform to the originals thereof, (iv) the Registration Statement and any amendments thereto will have become effective (and will remain effective at the time of the offer, issuance and sale of the securities thereunder) and (v) any applicable prospectus or prospectus supplement describing such securities will be filed with the Commission to the extent required by applicable law and relevant rules and regulations of the Commission.

On the basis of the foregoing, and subject to the qualifications and limitations set forth herein, we are of the opinion that:

1. The Company is validly existing and in good standing under the laws of the State of Maryland; and
2. the Shares have been duly authorized and, when issued and delivered in the manner described in the Registration Statement against payment therefor, will be validly issued, fully paid and non-assessable.

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The opinions set forth above are limited in all respects to the application of the law of the State of Maryland and applicable federal law, in each case as in effect on the date hereof. Our opinion is expressed as of the date hereof, and we do not assume any obligation to update or supplement our opinion to reflect any fact or circumstance subsequently arising or any change in law subsequently occurring after such date. We hereby consent to the filing of this opinion as an exhibit to the Registration Statement and to the reference to our firm under the caption "Legal Matters" in the prospectus that forms a part of the Registration Statement. In giving such consent, we do not hereby admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the Commission.

/s/ WILLIAMS MULLEN

## WILLIAMS MULLEN

April 22, 2015

Wheeler Real Estate Investment Trust, Inc.  
Riversedge North  
2529 Virginia Beach Boulevard  
Suite 200  
Virginia Beach, Virginia 23452

**Re: Wheeler Real Estate Investment Trust, Inc.**

Ladies and Gentlemen:

We have acted as United States federal income tax counsel to Wheeler Real Estate Investment Trust, Inc., a Maryland corporation (the “Company”), in connection with the filing of a registration statement on Form S-3, dated April 22, 2015 (such registration statement, as amended through the date hereof, the “Registration Statement”), filed by the Company with the Securities and Exchange Commission under the Securities Act of 1933, as amended (the “Securities Act”), in connection with the registration of up to 46,500,000 shares of common stock of the Company, \$0.01 par value per share (the “Common Stock”). In that capacity, you have requested our opinion regarding the ability of the Company to elect to be treated, and to qualify, for United States federal income tax purposes as a real estate investment trust (a “REIT”) within the meaning of Section 856(a) of the Internal Revenue Code of 1986, as amended (the “Code”).

In rendering this opinion letter, we have relied as to certain factual matters upon the statements and representations contained in the certificate provided to us by the Company (the “Officer’s Certificate”), dated April 22, 2015. We have assumed that the statements made in the Officer’s Certificate are true and correct as of the date hereof, and that the Officer’s Certificate has been executed by appropriate and authorized officers of the Company. Although we have made such inquiries and performed such investigations as we have deemed necessary to fulfill our professional responsibilities as counsel, we have not undertaken an independent investigation of the facts referred to in this letter or in the Officer’s Certificate. No facts have come to our attention that would cause us to question the accuracy or completeness of the factual representations in the Officer’s Certificate. Furthermore, where the factual representations in the Officer’s Certificate involve terms defined in the Code, the regulations promulgated thereunder, published rulings of the Internal Revenue Service (the “IRS”) (or other relevant authority), we have reviewed with the individual making such representations the relevant provisions of the Code, the applicable regulations thereunder, the published rulings of the IRS (or other relevant authority), as the case may be. We also have assumed that the board of directors of the Company will not exercise its discretion under the charter of the Company and applicable law to authorize the Company to revoke or otherwise terminate its REIT election pursuant to Code Section 856(g).

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In our capacity as United States federal income tax counsel, we have reviewed copies of the Registration Statement, and have reviewed or relied upon originals or copies of such other agreements and documents as we have deemed necessary or appropriate for the purpose of rendering the opinions contained herein (collectively, the "Transaction Documents"). In performing such review, we have assumed the genuineness of all signatures on all Transaction Documents reviewed by us, the legal capacity of all natural persons, the authenticity of all Transaction Documents submitted to us as originals, the conformity to the original documents of all documents submitted to us as copies and the authenticity of the originals of such latter documents. In making our examination of the Transaction Documents executed, or to be executed, by the parties indicated therein, we have also assumed, without independent verification or inquiry, (a) that each party has, or will have, all necessary power and authority to enter into, execute and deliver such Transaction Documents and to perform all of its obligations thereunder, (b) the due authorization by all requisite corporate and other action, and execution and delivery by each such party, of such Transaction Documents, (c) that such Transaction Documents constitute, or will constitute, valid and binding obligations of each party thereto, enforceable in accordance with their respective terms, (d) that the transactions contemplated by such Transaction Documents will be consummated in accordance with the terms thereof, and (e) that any Transaction Documents that have not yet been executed will be finalized in substantially the same form as the versions that we have reviewed. We also have assumed that the issuance of the Common Stock (and any other transactions in connection therewith) as set forth in the Transaction Documents will be consummated in accordance with the terms of the Transaction Documents.

Based on the foregoing and in reliance thereon, and on an analysis of the Code, the regulations promulgated thereunder, judicial authority and current administrative rulings and such other laws as we have deemed relevant and necessary, and subject to the qualifications, exceptions and limitations contained therein, we are of the opinion that, for United States federal income tax purposes:

1. commencing with its taxable year ended December 31, 2012, the Company has qualified to be taxed as a REIT under the Code, and its organization and current and proposed method of operation will enable it to continue to meet the requirements for qualification and taxation as a REIT under the Code for its taxable year ending December 31, 2015 and thereafter; and
2. the statements in the Registration Statement under the heading "Material U.S. Federal Income Tax Considerations," to the extent they constitute matters of law or legal conclusions with respect thereto, are correct in all material respects.

As described in the Registration Statement, qualification of the Company as a REIT will depend upon the satisfaction of the Company, through actual operating results, distribution levels, diversity of stock ownership and otherwise, of the applicable asset composition, source of income, shareholder distribution, record keeping and other requirements of the Code necessary for a corporation to qualify as a REIT. Accordingly, no assurance can be given that

the actual results of the Company's operations for any taxable year will satisfy all such requirements. We do not undertake to monitor whether the Company actually will satisfy the various qualification tests.

The opinions set forth herein are limited to those matters expressly covered and are expressed as of the date hereof. No opinion is implied or may be inferred with respect to any other matter. We expressly disclaim any responsibility to advise you of any development or circumstance of any kind, including any change in law or fact that may occur after the date of this opinion letter that might affect the opinions expressed herein. Further, the opinions contained herein are based on information available as of the date hereof. To the extent that a matter or thing occurs or does not occur after such date that adversely affects the Company's qualification as a REIT, the opinions contained herein shall not be applicable and shall not be effective.

No guarantee can be given that our conclusions as to United States federal income tax law will not be challenged successfully by the IRS or significantly altered by new legislation, changes in IRS positions or judicial decisions, any of which challenges or alterations may be applied retroactively with respect to completed transactions. Our opinions are not binding on the IRS or the courts, and no assurances can be given that the IRS will not take a contrary position upon examination, or that a court will not reach a contrary conclusion in litigation.

We hereby consent to the filing of this opinion letter as an exhibit to the Registration Statement and to the references to our firm in the Registration Statement under the captions "Legal Matters" and "Material U.S. Federal Income Tax Considerations." In giving this consent, we do not thereby admit that we are within the category of persons whose content is required under Section 7 of the Securities Act, or the rules and regulations of the Securities and Exchange Commission promulgated thereunder.

/s/ Williams Mullen

**Consent of Independent Registered Public Accounting Firm**

Wheeler Real Estate Investment Trust, Inc. and Subsidiaries  
Virginia Beach, Virginia

We hereby consent to the reference to our firm under the caption “Experts” in this Registration Statement of Wheeler Real Estate Investment Trust, Inc. and Subsidiaries (the “Company”) and to the incorporation by reference of our report dated March 25, 2015, relating to the consolidated financial statements and financial statement schedules as of and for the two years ended December 31, 2014, which appears in the Company’s annual report on Form 10-K and is incorporated herein by reference.

/s/ Cherry Bekaert LLP  
Virginia Beach, Virginia  
April 22, 2015

**Consent of Independent Auditor**

We hereby consent to the incorporation by reference in this Registration Statement of Wheeler Real Estate Investment Trust, Inc. and Subsidiaries, of our report dated January 9, 2015, with respect to the Combined Balance Sheet, Combined Statement of Revenues and Certain Operating Expenses, Combined Statements of Equity and Combined Statements of Cash Flows of Wheeler Interests, LLC, Wheeler Real Estate LLC and WHLR Management, LLC for the year ended December 31, 2013, and of each of our reports dated March 24, 2015, with respect to the Statements of Revenues and Certain Operating Expenses of Alex City Marketplace and Pierpont Centre for the year ended December 31, 2013.

/s/ Cherry Bekaert LLP  
Virginia Beach, Virginia  
April 22, 2015