

Wheeler Real Estate Investment Trust, Inc.

Form S-3

January 24, 2014

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**As filed with the Securities and Exchange Commission on January 24, 2014**

**Registration No. 333-**

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

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

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

**(Exact Name of Registrant as Specified in its Charter)**

**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)**

**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)**

*With copies to:*

**Bradley A. Haneberg, Esq.**

**Kaufman & Canoles, P.C.**

**Two James Center**

**1021 East Cary Street, Suite 1400**

**Richmond, Virginia 23219**

**(804) 771-5700 telephone**

**(804) 771-5777 facsimile**

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

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

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, 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

**CALCULATION OF REGISTRATION FEE**

<b>Title of Each Class of</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>
<b>Securities to be Registered</b>				
Common Stock, par value \$.01 per share	1,826,330	4.53	8,273,275	\$1,065.60

(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 January 23, 2014.
- (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 JANUARY 24, 2014**

**PROSPECTUS**

**1,826,330 Shares**

**Common Stock**

This Prospectus relates to the offer and sale from time to time (the Offering ) by the persons listed herein (the Selling Stockholders ), of up to 1,826,330 of our shares of common stock, \$0.01 par value per share the ( Offered Stock ). Our operating partnership, Wheeler REIT, L.P., issued 2,072,352 units of limited partnership interests (the Total Units ), in five private transactions in partial or full consideration for the acquisition of eleven retail properties on November 16, 2012, December 18, 2012, December 21, 2012, October 21, 2103 and December 17, 2013. Each Total Unit is exchangeable for cash or one share of our common stock at our option. We may issue the 1,826,330 shares of Offered Stock to the Selling Stockholders, which hold 1,826,330 units (the Units ) of the Total Units, if and to the extent that such Selling Stockholders exchange their Units for shares of our common stock. The registration of the resale of the Offered Stock does not necessarily mean that any of the shares of Offered Stock will be offered or sold by the Selling Stockholders. We will receive no proceeds of any sales of the Offered Stock, but we will incur expenses in connection with the offering.

Our common stock trades on the Nasdaq Capital Market under the symbol WHLR. On January 23, 2014, the last reported sale price of our common stock on the Nasdaq Capital Market was \$4.66 per share.

**Investing in our common stock involves significant risks. See Risk Factors on page 3 of this prospectus.**

**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 \_\_\_\_\_, 2014**

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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.

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**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 shareholders 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 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 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. Factors that could cause actual results to differ materially from any forward-looking statements made in this prospectus include:

the imposition of federal taxes if we fail to qualify as a real estate investment trust ( REIT ) in any taxable year or forego an opportunity to ensure REIT status;

uncertainties related to the national economy, the real estate industry in general and in our specific markets;

legislative or regulatory changes, including changes to laws governing REITs;

adverse economic or real estate developments in Virginia, Florida, Georgia, South Carolina, New Jersey, North Carolina, Oklahoma or Tennessee;

increases in interest rates and operating costs;

inability to obtain necessary outside financing;

litigation risks;

lease-up risks;



inability to obtain new tenants upon the expiration of existing leases;

inability to generate sufficient cash flows due to market conditions, competition, uninsured losses, changes in tax or other applicable laws; and

the need to fund tenant improvements or other capital expenditures out of operating cash flow.

These forward-looking statements should be read in light of these factors.

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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 (the Operating Partnership ).*

We are a Maryland corporation formed with the principal objective of acquiring, financing, developing, leasing, owning and managing income producing assets such as strip centers, neighborhood centers, grocery-anchored centers, community centers and free-standing retail properties. 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. 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 currently own a portfolio consisting of twenty-three properties including sixteen retail shopping centers, six free-standing retail properties, and one office property, totaling 1,294,572 net rentable square feet of which approximately 94% were leased as of December 31, 2013.

We believe the current market environment creates a substantial number of favorable investment opportunities with attractive yields on investment and significant upside potential. We believe the markets we plan to pursue in the Mid-Atlantic, Southeast and Southwest have strong demographics and dynamic, diversified economies that will continue to generate jobs and future demand for commercial real estate. We anticipate that the depth and breadth of our real estate experience allows us to capitalize on revenue-enhancing opportunities in our portfolio and source and execute new acquisition and development opportunities in our markets, while maintaining stable cash flows throughout various business and economic cycles.

Jon S. Wheeler, our Chairman and Chief Executive Officer, has 31 years of experience in the real estate sector with particular experience in strategic financial and market analyses and assessments of new or existing properties to maximize returns. We have an integrated team of professionals with experience across all stages of the real estate investment cycle.

We were organized as a Maryland corporation on June 23, 2011 and elected to be taxed as a REIT beginning with our taxable year ending December 31, 2012. We conduct substantially all of our business through our Operating Partnership. We are structured as an umbrella partnership real estate investment trust ( UPREIT ), which means that we will own most 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.

WHLR Management, LLC (our Administrative Service Company ), which is wholly owned by Mr. Wheeler, provides administrative services to our company. Pursuant to the terms of an administrative services agreement between our Administrative Service Company and us, our Administrative Service Company is responsible for identifying targeted real estate investments; handling the disposition of the real estate investments our board of directors has chosen to sell; and administering our day-to-day business operations, including but not limited to, leasing duties, property management, payroll and accounting functions. We also benefit from Mr. Wheeler s partially or wholly owned related

business and platform that specializes in retail real estate investment and management. Mr. Wheeler's organization includes (i) Wheeler Interests, LLC, an acquisition and asset management firm, (ii) Wheeler Real Estate, LLC, a real estate leasing management and administration firm, (iii) Wheeler Capital, LLC, a capital investment firm specializing in venture capital, financing, and small business loans, (iv) Site Applications, LLC, a full service facility company equipped to handle all levels of building maintenance and (v) TESR, LLC, a tenant coordination company specializing in tenant relations and community events. 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 Internet website and the information contained therein or connected thereto do not constitute a part of this prospectus or any amendment or supplement hereto.

Our combined and consolidated financial statements include the accounts of the company and the Operating Partnership. We control the Operating Partnership through our sole general partnership interest and conduct substantially all our business through the Operating Partnership.

**Table of Contents****RISK FACTORS**

Investing in our common stock involves significant risks. Before you decide whether to purchase any of 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 set forth under the caption "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. The Selling Stockholders will pay any 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 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, and any blue sky fees and expenses.

**SELLING STOCKHOLDERS**

We may issue up to 1,826,330 shares of Offered Stock to the Selling Stockholders, if and to the extent that the Selling Stockholders exchange their Units and we issue the Selling Stockholders shares of common stock in connection therewith. The following table provides the names of the Selling Stockholders, the number of shares of common stock to be owned upon exchange of all Units held by the Selling Stockholders before the offering to which this prospectus relates, and the number of shares of Offered Stock offered by the Selling Stockholders. Since the Selling Stockholders may sell all, some or none of the Offered Stock, no estimate can be made of the number of shares of Offered Stock that will be sold by the Selling Stockholders or that will be owned by the Selling Stockholders upon completion of the offering. There is no assurance that the Selling Stockholders will sell any of the Offered Stock. The Offered Stock represents approximately 20% of the total shares of common stock outstanding as of January 17, 2014 and assuming the exchange of all outstanding Units held by the Selling Stockholders for shares of common stock. Ann McKinney is a director of the company and Robin Hanisch is the corporate secretary of the company. Jon Wheeler, the company's Chief Executive Officer and Chairman is the managing member of the selling shareholders listed in the below footnotes. None of the other Selling Stockholders held any position, office or had any other material relationship with the Registrant within the past three years.

Name	Shares Owned	Shares Being Offered for Resale Under this Prospectus	Immediately Following the Offering (1)	
	Immediately Prior to the Offering (2)		Shares Owned	Percentage (4)
Alan R. Cornell Revocable Living Trust (3)	3,814	3,814	0	*
Alan Wise	4,912	4,912	0	*
Albert Eugene Drake, Jr.	7,977	7,977	0	*
Amy Sue Nochumowitz	9,764	9,764	0	*

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Ann L. McKinney	2,557	1,271	1,286	*
Anne B. Shumadine	1,589	1,589	0	*
Argosy Real Estate VI, LP (5)	95,238	95,238	0	*
Avgeros Brothers, LLC (6)	13,018	13,018	0	*
Barry D. Crawford Living Trust (7)	6,356	6,356	0	*
Beazley Foundation, Inc. (8)	46,868	46,868	0	*
C. S. Thomas	13,018	13,018	0	*
Carolee C. Lewandowski	1,773	1,773	0	*
Carter Butler	636	636	0	*
Carytown Partners, LC (9)	8,136	8,136	0	*
Catamaran Capital, LLC (10)	22,095	22,095	0	*
Cecil C. Taylor, II	1,124	1,124	0	*
Charles E. Land	6,454	6,454	0	*
Clarence R. McCotter, III	13,209	13,209	0	*

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Name	Shares Owned		Immediately Following the Offering (1)	
	Immediately Prior to the Offering (2)	Shares Being Offered for Resale Under this Prospectus	Shares Owned	Percentage (4)
Club Forrest Surrey Plaza, LLC (11)	1,271	1,271	0	*
Commercial Construction Service, Inc. (12)	22,887	22,887	0	*
Corbin P. Miller	3,605	3,605	0	*
Craig Capital, LLC (13)	7,203	7,203	0	*
David Loewenstein, III	9,825	9,825	0	*
Debra Jo November Irrevocable Trust (14)	3,178	3,178	0	*
Denley H. Brown	5,622	5,622	0	*
Dennis T. Lewandowski	2,050	2,050	0	*
Donald Faulkner	12,412	12,412	0	*
Doumar-Pretty Lake, LLC (15)	31,312	31,312	0	*
Eden Capital, LLC (16)	3,972	3,972	0	*
Ellen Yanuck Rosenblum	5,622	5,622	0	*
Erik S. Cooper	9,647	9,647	0	*
G. Conoly Phillips	42,370	42,370	0	*
Georgina M. Klekota	589	589	0	*
Gooseneck Land & Timber, LLP (17)	636	636	0	*
Grand C. Corporation (18)	27,206	27,206	0	*
Gregory H. Law	10,815	10,815	0	*
Hanna J. Investments, LLC (19)	636	636	0	*
Harold Cooper	5,887	5,887	0	*
Hidden Valley Capital, LLC (20)	6,248	6,248	0	*
Howard Kaye	9,534	9,534	0	*
Howard Kaye Family Fund (21)	38,696	24,409	14,287	*
Hunters Trail Associates, LLC (22)	8,415	8,415	0	*
Jack H. Ragland	11,838	11,838	0	*
James P. Carreras	11,391	11,391	0	*
Jane E. Cornell Revocable Trust (23)	16,273	16,273	0	*
Jefferson S. Cooper	4,326	4,326	0	*
Jeffrey K. Francis	8,415	8,415	0	*
Jeffrey T. Talbert	1,081	1,081	0	*
Jerry Reed	2,355	2,355	0	*
John H. Fain	57,217	57,217	0	*
JPA Management, LLC (24)	3,464	3,464	0	*
Kathryn Y. Wenger	5,622	5,622	0	*
Kelly L. Law	101,618	87,174	14,444	*
Kimberly Paige Wheeler Irrevocable Trust (25)	15,617	15,617	0	*
Kimberly R. Wheeler	3,123	3,123	0	*
Leif William Christiansson Berner	5,622	5,622	0	*

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Lester Veltman	4,709	4,709	0	*
Linda M. Long	5,622	5,622	0	*
LPA Management, LLC (26)	13,922	13,922	0	*
Lumber River Management, LLC (27)	2,701	2,701	0	*
Marjorie H. Stephenson	5,622	5,622	0	*
Mark R. Warden	5,657	5,657	0	*
McPhail Capital, LLC (28)	22,388	22,388	0	*
Michael Lewis	18,065	6,509	11,556	*
Milton G. & Ann L. McKinney	2,050	2,050	0	*
Morgan A. Carmichael	9,565	9,565	0	*
Multiple Holdings, LLC (29)	18,288	18,288	0	*
Neil S. Kessler	8,136	8,136	0	*
Owen Sidney Miller	3,605	3,605	0	*
P. Bradley Nott, Jr	8,136	8,136	0	*
Peggy Sue Hill	450	450	0	*
Perimeter Management, LLC (30)	5,502	5,502	0	*
Philip W. Evans	8,136	8,136	0	*
R. Slater Watkins	636	636	0	*
RB Capital, LLC (31)	636	636	0	*
Rebecca A. Schiefer	337	337	0	*

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RES Family Limited Partnership (32)	9,051	9,051	0	*
Richard D. Kaufmann	4,912	4,912	0	*
Richard Frippe Frost	12,204	12,204	0	*
Richard O. Wheeler	16,087	16,087	0	*
Richard S. Bray	10,534	10,534	0	*
ROA Management, LLC (33)	12,745	12,745	0	*
Robert J. Gounaud	22,388	22,388	0	*
Robert Wenger	68,614	68,614	0	*
Robin A. Hanisch	27,050	2,050	25,000	*
Roger Frost	12,204	12,204	0	*
Roger L. Frost	147,245	122,957	24,288	*
Ronald L. Cooper	84,314	27,165	57,149	*
Roselawn Capital, LLC (34)	15,617	15,617	0	*
S. Grey Folkes, Jr.	66,430	66,430	0	*
S. Shaleen Wheeler	12,714	12,714	0	*
Sander Genser	149,542	106,681	42,861	*
Shelley Beth November Irrevocable Trust (35)	3,178	3,178	0	*
Sherrill Bodie	12,714	12,714	0	*
Sherry Kalish Revocable Trust (36)	38,901	38,901	0	*
Shirley B. Price	5,622	5,622	0	*
Sidney A. & Judith I. Wood	40,994	40,994	0	*
Simon Alexander Miller	3,605	3,605	0	*
Southwest Acquisition Partners, LLC (37)	10,970	10,970	0	*
Stanton Price Wheeler Irrevocable Trust (38)	15,617	15,617	0	*
Stephen E. Story	4,099	4,099	0	*
Steven I. Fox	3,178	3,178	0	*
Surrey Management, LLC (39)	12,562	12,562	0	*
Susan K. Pleasants	1,766	337	1,429	*
T. Ray Hassell, III Testamentary Trust (40)	5,622	5,622	0	*
Thomas Alan Stafford	16,643	16,643	0	*
Thomas J. Rich Revocable Trust (41)	14,286	14,286	0	*
Trudy A. Cox	8,136	8,136	0	*
Tuckernuck Management, LLC (42)	99,645	99,645	0	*
Victoria Paul	1,124	1,124	0	*
Walnut Hill Management, LLC (43)	50,104	50,104	0	*
William B. Brock	50,395	50,395	0	*
William H. Overton	11,244	11,244	0	*
William L. Bush	16,273	16,273	0	*
<b>Total</b>	<b>2,018,630</b>	<b>1,826,330</b>	<b>192,300</b>	<b>2.1</b>

\* Less than one percent common stock outstanding, as applicable.

- (1) Assumes the Selling Stockholders sell all of the common stock being offered by this prospectus.
- (2) The number shown includes shares of common stock issuable upon the redemption by the selling shareholder of units of the Operating Partnership.
- (3) The person or persons that control the voting and/or dispositive power over the shares held by this trust is Alan R. Cornell and Jane E. Cornell, as trustee of the trust.



- (4) Percentage calculated based upon the assumption of the exchange of all outstanding Units held by the Selling Stockholders for shares of common stock.
- (5) The person or persons that control the voting and/or dispositive power over the shares held by this limited partnership is John Paul Kirwin, III as manager of the limited partnership.
- (6) The person or persons that control the voting and/or dispositive power over the shares held by this limited liability company is George Avgeros, as the managing member of the limited liability company.
- (7) The person or persons that control the voting and/or dispositive power over the shares held by this trust is Barry D. Crawford, as trustee of the trust.
- (8) The person or persons that control the voting and/or dispositive power over the shares held by this corporation is Richard S. Bray, as the President of the corporation.
- (9) The person or persons that control the voting and/or dispositive power over the shares held by this limited liability company is James P. Carreras, Jr., as the managing member of the limited liability company.
- (10) The person or persons that control the voting and/or dispositive power over the shares held by this limited liability company is Kristopher L. Knepper, as the managing member of the limited liability company.
- (11) The person or persons that control the voting and/or dispositive power over the shares held by this limited liability company is Lawrence Steingold, as the managing member of the limited liability company.
- (12) The person or persons that control the voting and/or dispositive power over the shares held by this corporation is Alan J. Parnigoni, as the President of the corporation.
- (13) The person or persons that control the voting and/or dispositive power over the shares held by this limited liability company is David C. Turner, as the managing member of the limited liability company.
- (14) The person or persons that control the voting and/or dispositive power over the shares held by this trust is Richard J. November, as trustee of the trust.
- (15) The person or persons that control the voting and/or dispositive power over the shares held by this limited liability company is Robert G. Doumar, as the managing member of the limited liability company.
- (16) The person or persons that control the voting and/or dispositive power over the shares held by this limited liability company is Paul O. Hirschbiel, Jr. as the managing member of the limited liability company.

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- (17) The person or persons that control the voting and/or dispositive power over the shares held by this limited partnership is Ramsey T. Way, Jr., as general partner of the limited partnership.
- (18) The person or persons that control the voting and/or dispositive power over the shares held by this corporation is Erik Cooper as the President of the corporation.
- (19) The person or persons that control the voting and/or dispositive power over the shares held by this limited liability company is Price M. Shapiro as the managing member of the limited liability company.
- (20) The person or persons that control the voting and/or dispositive power over the shares held by this limited liability company is Angelica Beltran, as the managing member of the limited liability company.
- (21) The person or persons that control the voting and/or dispositive power over the shares held by this fund is Howard Kaye as lead portfolio manager of the fund.
- (22) The person or persons that control the voting and/or dispositive power over the shares held by this limited liability company is Price M. Shapiro as the managing member of the limited liability company.
- (23) The person or persons that control the voting and/or dispositive power over the shares held by this trust is Alan R. Cornell and Jane E. Cornell, as trustee of the trust.
- (24) The person or persons that control the voting and/or dispositive power over the shares held by this limited liability company is Jon S. Wheeler, as the managing member of the limited liability company.
- (25) The person or persons that control the voting and/or dispositive power over the shares held by this trust is George Fox, as trustee of the trust.
- (26) The person or persons that control the voting and/or dispositive power over the shares held by this limited liability company is Jon S. Wheeler, as the managing member of the limited liability company.
- (27) The person or persons that control the voting and/or dispositive power over the shares held by this limited liability company is Jon S. Wheeler, as the managing member of the limited liability company.
- (28) The person or persons that control the voting and/or dispositive power over the shares held by this limited liability company is Read M. Butler, as the managing member of the limited liability company.
- (29) The person or persons that control the voting and/or dispositive power over the shares held by this limited liability company is Jon S. Wheeler, as the managing member of the limited liability company.
- (30) The person or persons that control the voting and/or dispositive power over the shares held by this limited liability company is Jon S. Wheeler, as the managing member of the limited liability company.
- (31) The person or persons that control the voting and/or dispositive power over the shares held by this limited liability company is Read M. Butler, as the managing member of the limited liability company.
- (32) The person or persons that control the voting and/or dispositive power over the shares held by this limited partnership is Jared P. Shapiro, as Manager of the limited partnership.
- (33) The person or persons that control the voting and/or dispositive power over the shares held by this limited liability company is Jon S. Wheeler, as the managing member of the limited liability company.
- (34) The person or persons that control the voting and/or dispositive power over the shares held by this limited liability company is George Fox, as the managing member of the limited liability company.
- (35) The person or persons that control the voting and/or dispositive power over the shares held by this trust is Richard J. November, as trustee of the trust.
- (36) The person or persons that control the voting and/or dispositive power over the shares held by this trust is Sherry Kalish, as trustee of the trust.
- (37) The person or persons that control the voting and/or dispositive power over the shares held by this limited liability company is Charles R. Wheeler, as the managing member of the limited liability company.
- (38) The person or persons that control the voting and/or dispositive power over the shares held by this trust is George Fox, as trustee of the trust.
- (39) The person or persons that control the voting and/or dispositive power over the shares held by this limited liability company is Jon S. Wheeler, as the managing member of the limited liability company.
- (40) The person or persons that control the voting and/or dispositive power over the shares held by this trust is Robert G. MacDonald, as trustee of the trust.

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- (41) The person or persons that control the voting and/or dispositive power over the shares held by this trust is Thomas J. Rich or Loretta C. Rich, as trustees of the trust.
- (42) The person or persons that control the voting and/or dispositive power over the shares held by this limited liability company is Jon S. Wheeler, as the managing member of the limited liability company.
- (43) The person or persons that control the voting and/or dispositive power over the shares held by this limited liability company is Jon S. Wheeler, as the managing member of the limited liability company.

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**PLAN OF DISTRIBUTION**

Each Selling Stockholder may, from time to time, sell any or all their 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.

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)(3) 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 which 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.

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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.

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**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 the registration statement of which this prospectus is a part and are available from us upon request.*

**General**

Our charter provides that we may issue up to 75,000,000 shares of common stock, \$0.01 par value per share, or common stock, and 500,000 shares of preferred stock, without par value per share, or preferred stock. 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. As of January 17, 2014, 7,121,000 shares of our common stock and 1,809 shares of our Series A Preferred Stock were 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.

**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.

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

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.



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### **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 Internal Revenue Code of 1986, as amended (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 certain 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).

Our charter contains 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 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 actual, 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, actually 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, actually 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 own, actually or constructively, 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 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 actually, 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 (i) us owning (actually or constructively) an interest in a tenant that is described in Section 856(d)(2)(B) of the Code, or (ii) any manager of a qualified lodging facility, within the meaning of Section 856(d)(9)(D) of the Code, leased by us to one of our taxable REIT subsidiaries failing to qualify as an eligible independent contractor within the meaning of Section 856(d)(9)(A) of the Code, in each case if the income we derive from such tenant or such taxable REIT subsidiary, 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 until the closing of this offering and 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 Capital Market on the day of the transfer or other event that resulted in the transfer of such shares to the trust) and (2) the last reported sale price on the Nasdaq Capital 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 Capital 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.

**Transfer Agent and Registrar**

The transfer agent and registrar for our shares of common stock is Computershare Trust Company, N.A. 250 Royall Street, Canton, Massachusetts 02021.

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**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 and this offering of our common stock. 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. This summary is qualified in its entirety by the applicable Code provisions, Treasury Regulations promulgated under the Code, and administrative and judicial interpretations thereof. 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 our common stock or our election to be taxed as a REIT.

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

the purchase, ownership or disposition of our 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 ending December 31, 2012. We believe that we are organized and operate in a manner that allows us to qualify for taxation as a REIT under the Code commencing with our taxable year ending December 31, 2012, and we intend to continue to be organized and operate in this manner. 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 remain qualified as a REIT. See Failure to Qualify.

Kaufman & Canoles, P.C. has acted as our tax counsel in connection with this offering of our common stock and our intended election to be taxed as a REIT. Kaufman & Canoles, P.C. will render an opinion to us to the effect that, commencing with our taxable year ending December 31, 2012, we have been organized in conformity with the requirements for qualification and taxation as a REIT under the Code, and our proposed method of operation will enable us to meet the requirements for qualification and taxation as a REIT under the Code. It must be emphasized that this opinion will be based on various assumptions and representations as to factual matters, including representations made by us in a factual certificate provided by one of our officers. In addition, this opinion will be based upon our factual representations set forth in this prospectus. Moreover, our qualification and taxation as a REIT depend upon our ability to meet the various qualification tests imposed

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under the Code, which are discussed below, including through actual annual operating results, asset composition, distribution levels and diversity of stock ownership, the results of which have not been and will not be reviewed by Kaufman & Canoles, P.C. Accordingly, no assurance can be given that our actual results of operation for any particular taxable year will satisfy those requirements. Further, the anticipated federal income tax treatment described in this discussion may be changed, perhaps retroactively, by legislative, administrative or judicial action at any time. Kaufman & Canoles, P.C. has no obligation to update its opinion subsequent to the date of such opinion.

Provided we 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:

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.

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% gross income test or the 95% gross income test, 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 (A) the amount by which we fail to satisfy the 75% gross income test and (B) the amount by which we fail to satisfy the 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% or 10% asset 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 the 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

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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 any taxable REIT subsidiaries, 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 taxable REIT subsidiary of ours. Redetermined deductions and excess interest generally represent amounts that are deducted by a taxable REIT subsidiary 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.

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 our 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, actually or constructively, by five or fewer individuals, including certain specified entities, during the last half of each taxable year; and
- (7)

that meets other tests, described below, regarding the nature of its income and assets and the amount of its distributions.

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.

We believe that we have been organized, will operate and will issue sufficient shares of our common stock with sufficient diversity of ownership pursuant to this offering of our common stock 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 which 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."

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In addition, we may not maintain our status as a REIT unless our taxable year is the calendar year. We will have 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 10% asset 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 expect to control our Operating Partnership and any subsidiary partnerships and the subsidiary limited liability companies and intend 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 taxable REIT subsidiary, 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 Taxable REIT Subsidiaries.* We may own an interest in one or more taxable REIT subsidiaries in the future. A taxable REIT subsidiary 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 taxable REIT subsidiary. If a taxable REIT subsidiary 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 taxable REIT subsidiary. Other than some activities relating to lodging and health care facilities as more fully described below under Income Tests, a taxable REIT subsidiary may generally engage in any business, including the provision of customary or non-customary services to tenants of its parent REIT. A taxable REIT subsidiary is subject to federal income tax as a regular C corporation. In addition, a taxable REIT subsidiary may be prevented from deducting interest on debt funded directly

or indirectly by its parent REIT if certain tests regarding the taxable REIT subsidiary's debt to equity ratio and interest expense are not satisfied. A REIT's ownership of securities of a taxable REIT subsidiary is not subject to the 5% or 10% asset test described below. See Asset Tests.

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***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 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 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.

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;

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 taxable REIT subsidiary 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 and such property is operated on behalf of the taxable REIT subsidiary by a person who is an eligible independent contractor and certain other requirements are met, as described below. Whether rents paid by a taxable REIT subsidiary are substantially comparable to rents paid by other tenants is determined at the time the lease with the taxable REIT subsidiary 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 taxable REIT subsidiary, any such increase will not qualify as rents from real property. For purposes of this rule, a controlled taxable REIT subsidiary is a taxable REIT subsidiary 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 taxable REIT subsidiary;

Rent attributable to personal property, leased in connection with a lease of real property, is not greater than 15% of the total rent r