

URSTADT BIDDLE PROPERTIES INC  
Form 424B2  
October 04, 2012

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Filed Pursuant to Rule 424(b)(2)  
Registration No. 333-177049

**PROSPECTUS SUPPLEMENT**  
**(To prospectus dated October 17, 2011)**

## **2,500,000 Shares**

### **Class A Common Stock**

We are offering 2,500,000 shares of our Class A common stock. Our Class A common stock is listed on the New York Stock Exchange under the symbol UBA. On October 2, 2012, the last reported sale price of our Class A common stock on the New York Stock Exchange was \$19.53 per share.

**Investing in our Class A common stock involves risks. See Risk Factors on page S-3 of this prospectus supplement and on page 9 of our Annual Report on Form 10-K for the year ended October 31, 2011. You should read this prospectus supplement, the documents incorporated by reference into this prospectus supplement, and the accompanying prospectus carefully before you make your investment decision.**

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

The underwriter has agreed to purchase the shares of Class A common stock from us at a price of \$19.16 per share, which will result in net proceeds to us, after deducting expenses related to this offering payable by us, of approximately \$47,750,000.

The underwriter may offer the shares of Class A common stock from time to time for sale in one or more transactions on the NYSE, in the over-the-counter market, through negotiated transactions or otherwise, at market prices prevailing at the time of sale, at prices related to such prevailing market prices or otherwise.

We have granted the underwriter a 30-day option to purchase up to an additional 375,000 shares of Class A common stock from us at a price of \$19.16 per share, less an amount per share equal to any dividends declared by us and payable on the 2,500,000 shares of Class A common stock but not payable on the 375,000 option shares.

The Class A common stock will be ready for delivery through the facilities of The Depository Trust Company on or about October 5, 2012.

## **Deutsche Bank Securities**

The date of this prospectus supplement is October 2, 2012.

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## SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus supplement, the accompanying prospectus and the documents they incorporate by reference may contain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. Such statements can generally be identified by such words as anticipate, believe, can, continue, could, estimate, expect, intend, may, plan, seek, should, will, or variations of such words or other similar expressions and the negatives of such words.

All statements, other than statements of historical facts, included in this prospectus supplement that address activities, events or developments that we expect, believe or anticipate will or may occur in the future, including such matters as future capital expenditures, dividends and

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acquisitions (including the amount and nature thereof), business strategies, expansion and growth of our operations and other such matters, are forward-looking statements. These statements are based on certain assumptions and analyses made by us in light of our experience and our perception of historical trends, current conditions, expected future developments and other factors we believe are appropriate. Such statements are inherently subject to risks, uncertainties and other factors, many of which cannot be predicted with accuracy and some of which might not even be anticipated. Future events and actual results, performance or achievements, financial and otherwise, may differ materially from the results, performance or achievements expressed or implied by the forward-looking statements. Risks, uncertainties and other factors that might cause such differences, some of which could be material, include, but are not limited to:

economic and other market conditions;

financing risks, such as the inability to obtain debt or equity financing on favorable terms;

the level and volatility of interest rates;

financial stability of tenants;

the inability of our properties to generate revenue increases to offset expense increases;

governmental approvals, actions and initiatives;

environmental/safety requirements;

risks of real estate acquisitions (including the failure of acquisitions to close); and

risks of disposition strategies.

In addition, we discuss certain factors in our Annual Report on Form 10-K under Item 1A. Risk Factors and in the other reports we filed with the Securities and Exchange Commission (the "SEC") that could cause future events and actual results, performance or achievements to differ materially from the results, performance or achievements expressed in or implied by the forward-looking statements in this prospectus supplement and accompanying prospectus.

Any forward-looking statement speaks only as of the date on which it is made. We undertake no obligation to update any forward-looking statements to reflect events or circumstances after the date on which they are made, except as may be required to fulfill our obligations under United States securities laws.

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### **PROSPECTUS SUPPLEMENT SUMMARY**

*This summary highlights selected information in this prospectus supplement and the accompanying prospectus. This summary is not complete and does not contain all of the information that you should consider before investing in our Class A common stock. Therefore, before making a decision to invest in our Class A common stock, you should also read the this entire prospectus supplement and the accompanying prospectus, including the risks set forth under the caption "Risk Factors" in this prospectus supplement and in the documents incorporated by reference herein, and the information set forth under the caption "Where You Can Find More Information".*

### **Our Business**

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We are a self-administered real estate investment trust, or REIT, which owns and manages income-producing commercial real estate investments. Our sole business is the ownership of real estate investments, which consist principally of investments in income-producing properties, with primary emphasis on properties in the northeastern part of the United States with a concentration in Fairfield County, Connecticut, Westchester and Putnam Counties, New York and Bergen County, New Jersey (our Target Area). Our core properties consist principally of neighborhood and community shopping centers and five office buildings. The remaining properties consist of two industrial properties. We seek to identify desirable properties for acquisition, which we acquire in the normal course of business. In addition, we regularly review our portfolio and from time to time may sell certain of our properties.

We intend to continue to invest substantially all of our assets in income-producing real estate, with an emphasis on neighborhood and community shopping centers, although we will retain the flexibility to invest in other types of real property. While we are not limited to any geographic location, our current strategy is to invest primarily in properties located in our Target Area.

At July 31, 2012, we owned or had equity interests in 54 properties, comprised of neighborhood and community shopping centers, office buildings and industrial facilities throughout the United States, containing a total of 4.9 million square feet of gross leasable area.

### Company Information

Our principal executive office is located at 321 Railroad Avenue, Greenwich, Connecticut 06830. Our telephone number is (203) 863-8200. Our website is located at [www.ubproperties.com](http://www.ubproperties.com). Information contained on our website is not part of, and is not incorporated into, this prospectus.

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### The Offering

Class A common stock offered in this offering	2,500,000 shares (1)
Class A common stock to be outstanding after this offering	23,459,081 shares (1)
Use of Proceeds	We intend to use the net proceeds from this offering for general corporate purposes, which may include the repayment of outstanding indebtedness, the funding of capital improvements to our existing properties and the acquisition of additional properties. Pending the use of the net proceeds as described above, we may use the net proceeds to make investments in short-term income-producing securities that are consistent with our qualification as a REIT.
Dividend Policy	We expect to pay dividends on our Class A common stock in amounts determined from time to time by our board of directors. Future dividend levels will be dependent on our results of operations, financial position, cash flows and other factors.
New York Stock Exchange Symbol	UBA

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- (1) Based on 20,959,081 shares of Class A common stock outstanding as of October 2, 2012. Excludes up to 375,000 shares of Class A common stock issuable upon exercise of the underwriter's 30-day option.

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**RISK FACTORS**

Investing in our Class A common stock involves risks. You should carefully consider the risks described in our Annual Report on Form 10-K for the fiscal year ended October 31, 2011 and any subsequent Quarterly Reports on Form 10-Q (which reports are incorporated by reference herein), as well as the other information contained or incorporated by reference in this prospectus supplement, the accompanying prospectus, any other prospectus supplement hereto and post-effective amendments thereto before purchasing our Class A common stock. The risks and uncertainties described below and in the accompanying prospectus are not the only ones facing us. Additional risks and uncertainties of which we are unaware, or that we currently deem immaterial, also may become important factors that affect us. Please see the sections titled "Where You Can Find More Information" and "Incorporation of Certain Documents by Reference".

If any of the risks described in or incorporated into this prospectus supplement or in the accompanying prospectus occur, our business, financial condition or results of operations could be materially and adversely affected. In that case, the trading price of our Class A common stock could decline, and you may lose some or all of your investment.

**USE OF PROCEEDS**

We intend to use the net proceeds from this offering for general corporate purposes, which may include the repayment of outstanding indebtedness, the funding of capital improvements to our existing properties and the acquisition of additional properties. Pending the use of the net proceeds as described above, we may use the net proceeds to make investments in short-term income-producing securities that are consistent with our qualification as a REIT.

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**CAPITALIZATION**

The following table sets forth (1) our actual, unaudited capitalization as of July 31, 2012, and (2) our capitalization as adjusted to reflect the sale of 2,500,000 shares of Class A common stock in this offering. This table does not reflect the exercise by the underwriter of its 30-day option to purchase up to 375,000 additional shares of Class A common stock.

	As of July 31, 2012	
	Actual	As Adjusted
	(unaudited)	
	(amounts in thousands, except share data)	
Revolving credit lines	\$ 21,900	\$ 21,900
Mortgage notes payable and other loans	151,228	151,228
Redeemable Noncontrolling Interests	11,778	11,778
Redeemable preferred stock, par value \$.01 per share; 2,800,000 issued and outstanding shares	96,203	96,203
Stockholders' equity		
7.5% Series D Senior Cumulative Preferred Stock (liquidation preference of \$25 per share); 2,450,000 shares issued and outstanding	61,250	61,250
Excess stock, par value \$.01 per share; 10,000,000 shares authorized; none issued and outstanding		

As of July 31, 2012

Common stock, \$0.01 par value, 30,000,000 shares authorized; 8,852,987 and 8,852,987 shares issued and outstanding	89	89
Class A Common Stock, par value \$.01 per share; 40,000,000 shares authorized; 20,959,081 shares issued and outstanding; and 23,459,081 shares issued and outstanding as adjusted	210	235
Additional paid in capital	318,329	366,054
Cumulative distributions in excess of net income	(84,840)	(84,840)
Accumulated other comprehensive income (loss)	(26)	(26)
Total stockholders' equity	295,012	342,762
Total capitalization	\$ 576,121	\$ 623,871

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**Table of Contents****UNITED STATES FEDERAL INCOME TAX CONSIDERATIONS**

This section summarizes certain material federal income tax consequences to us and to holders of our Class A common stock generally relating to our treatment as a REIT.

The laws governing the federal income tax treatment of a REIT and its stockholders are highly technical and complex. This summary is for general information only, and does not purport to address all of the tax issues that may be important to you. In addition, this section does not address the tax issues that may be important to certain types of stockholders that are subject to special treatment under the federal income tax laws, such as insurance companies, tax-exempt organizations (except to the extent discussed in "Taxation of Tax Exempt Stockholders," below), partnerships, financial institutions or broker-dealers, and non-U.S. stockholders (except to the extent discussed in "Taxation of Non-U.S. Stockholders," below).

This summary is based upon the Internal Revenue Code of 1986, as amended (the "Code"), the regulations promulgated by the U.S. Treasury Department, rulings and other administrative pronouncements issued by the Internal Revenue Service (the "IRS"), and judicial decisions, all as currently in effect, and all of which are subject to differing interpretations or to change, possibly with retroactive effect. No assurance can be given that the IRS would not assert, or that a court would not sustain, a position contrary to any of the tax consequences described below. We have not sought and will not seek an advance ruling from the IRS regarding any matter discussed herein.

WE URGE YOU TO CONSULT YOUR OWN TAX ADVISOR REGARDING THE SPECIFIC TAX CONSEQUENCES TO YOU OF INVESTING IN OUR CLASS A COMMON STOCK AND OF OUR ELECTION TO BE TAXED AS A REIT. SPECIFICALLY, YOU SHOULD CONSULT YOUR OWN TAX ADVISOR REGARDING THE FEDERAL, STATE, LOCAL, FOREIGN, AND OTHER TAX CONSEQUENCES OF SUCH INVESTMENT AND ELECTION, AND REGARDING POTENTIAL CHANGES IN APPLICABLE TAX LAWS.

**Taxation of the Company**

We elected to be taxed as a REIT under the federal income tax laws beginning with our taxable year ended October 31, 1970. We believe that we have operated in a manner qualifying us as a REIT since our election and intend to continue to so operate.

In connection with this prospectus supplement, Baker & McKenzie LLP has rendered an opinion that we qualified to be taxed as a REIT under the federal income tax laws for our taxable years ended October 31, 2009 through October 31, 2011, and our organization and current method of operation will enable us to continue to qualify as a REIT for our taxable year ending October 31, 2012 and in the future. You should be aware that the opinion is based on current law and is not binding on the IRS or any court. In addition, the opinion is based on customary assumptions and on our representations as to factual matters.

It must be emphasized that the opinion of tax counsel is based on various assumptions relating to our organization and operation, and is conditioned upon representations and covenants made by our management regarding our organization, assets, income, and the past, present and

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future conduct of our business operations. While we intend to operate so that we will continue to qualify as a REIT, given the highly complex nature of the rules governing REITs, the ongoing importance of factual determinations, and the possibility of future changes in our circumstances, no assurance can be given by tax counsel or by us that we will qualify as a REIT for any particular year.

Our qualification as a REIT depends on our ability to meet, on a continuing basis, qualification tests mandated by the federal tax laws. Those qualification tests involve the percentage of income that we earn from specified sources, the percentages of our assets that fall within specified categories, the diversity of our stock ownership, and the percentage of our earnings that we distribute. We describe the REIT qualification tests in more detail below. For a discussion of the tax treatment of us and our stockholders if we fail to qualify as a REIT, see **Failure to Qualify**, below.

As a REIT, we generally are not subject to federal income tax on the taxable income that we distribute to our stockholders. The benefit of that tax treatment is that it avoids the double taxation, or taxation at both

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the corporate and stockholder levels, that generally results from owning stock in a corporation. However, we generally will be subject to federal tax in the following circumstances:

We will pay federal income tax on taxable income, including net capital gain, that we do not distribute to stockholders during, or within a specified time period after, the calendar year in which the income is earned.

We may be subject to the alternative minimum tax on any items of tax preference that we do not distribute or allocate to stockholders.

We will pay income tax at the highest corporate rate on:

- o net income from the sale or other disposition of property acquired through foreclosure ( foreclosure property ) that we hold primarily for sale to customers in the ordinary course of business, and
- o other non-qualifying income from foreclosure property.

We will pay a 100% tax on net income from sales or other dispositions of property, other than foreclosure property, that we hold primarily for sale to customers in the ordinary course of business.

If we fail to satisfy the 75% gross income test or the 95% gross income test, as described below under **Income Tests**, and nonetheless continue to qualify as a REIT because we meet other requirements, we generally will pay a 100% tax on:

- o the greater of the amount by which we fail the 75% gross income test or the 95% gross income test, multiplied, in either case, by
- o a fraction intended to reflect our profitability.

If during a calendar year we fail to distribute at least the sum of: (1) 85% of our REIT ordinary income for the year, (2) 95% of our REIT capital gain net income for the year, and (3) any undistributed taxable income from earlier periods, we will be subject to a 4% nondeductible excise tax on the excess of the required distribution over the amount we actually distributed.

In the event of a failure to satisfy any of the asset tests (other than a de minimis failure of the 5% asset test, the 10% vote test or the 10% value test as described below under **Asset Tests** ), as long as the failure was due to reasonable cause and not to willful neglect, we dispose of the assets or otherwise comply with the asset tests within six months after the last day of the quarter in which we identify such failure and we file a schedule with the IRS describing the assets causing such failure, we will pay a tax equal to the greater of \$50,000 or the amount determined by multiplying the net income from the nonqualifying assets during the period in which we failed to satisfy the asset tests by the highest corporate tax rate (currently 35%).

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In the event we fail to satisfy one or more requirements for REIT qualification, other than the gross income tests and the asset tests, and such failure is due to reasonable cause and not to willful neglect, we will be required to pay a penalty of \$50,000 for each such failure.

We may elect to retain and pay income tax on our net long-term capital gain. In that case, a U.S. shareholder would be taxed on its proportionate share of our undistributed long-term capital gain (to the extent that we make a timely designation of such gain to the shareholder) and would receive a credit or refund for its proportionate share of the tax we paid.

We will be subject to a 100% excise tax on transactions with a taxable REIT subsidiary that are not conducted on an arm's-length basis.

If we acquire any asset from a C corporation, or a corporation that generally is subject to full corporate-level tax, in a merger or other transaction in which we acquire a basis in the asset that is determined by reference either to the C corporation's basis in the asset or to another asset, we will pay tax at the highest regular corporate rate applicable if we recognize gain on the sale or disposition of the asset during the 10-year period after we acquire the asset. The amount of gain on which we will pay tax is the lesser of:

- o the amount of gain that we recognize at the time of the sale or disposition, and

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- o the amount of gain that we would have recognized if we had sold the asset at the time we acquired it.

### **Requirements for Qualification**

A REIT is an entity that meets each of the following requirements:

1. It is managed by trustees or directors.
2. Its beneficial ownership is evidenced by transferable shares, or by transferable certificates of beneficial interest.
3. It would be taxable as a domestic corporation, but for the REIT provisions of the federal income tax laws.
4. It is neither a financial institution nor an insurance company subject to special provisions of the federal income tax laws.
5. At least 100 persons are beneficial owners of its shares or ownership certificates.
6. Not more than 50% of the value of its outstanding shares or ownership certificates is owned, directly or indirectly, by five or fewer individuals, which the federal income tax laws define to include certain entities, during the last half of any taxable year (the "closely held test").
7. It elects to be a REIT, or has made such election for a previous taxable year, and satisfies all relevant filing and other administrative requirements established by the IRS that must be met in order to elect and maintain REIT status.
8. It meets certain other qualification tests, described below, regarding the nature of its income and assets and the amount of its distributions to stockholders.

We must meet requirements 1 through 4 during our entire taxable year and must meet requirement 5 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. If we comply with all the requirements for ascertaining the ownership of our outstanding shares in a taxable year and have no reason to know that we violated the closely held test, we will be deemed to have satisfied requirement 6 for that taxable year. For purposes of determining share ownership under the closely held test, an individual



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generally includes a supplemental unemployment compensation benefits plan, a private foundation, or a portion of a trust permanently set aside or used exclusively for charitable purposes. An individual, however, generally does not include a trust that is a qualified employee pension or profit sharing trust under the federal income tax laws, and beneficiaries of such a trust will be treated as holding our shares in proportion to their actuarial interests in the trust for purposes of the closely held test.

We have issued sufficient shares of our stock with sufficient diversity of ownership to satisfy requirements 5 and 6. In addition, our charter restricts the ownership and transfer of the shares of our stock so that we should continue to satisfy these requirements. The provisions of our charter restricting the ownership and transfer of shares of our stock are described under **Description of Capital Stock** **Restrictions on Ownership and Transfer** in the accompanying prospectus.

We have several corporate subsidiaries, including qualified REIT subsidiaries, and interests in unincorporated domestic entities. For federal income tax purposes, a corporation that is a qualified REIT subsidiary is not treated as a corporation separate from its parent REIT. All assets, liabilities and items of income, deduction and credit of a qualified REIT subsidiary are treated as assets, liabilities and items of income, deduction and credit of the REIT. A qualified REIT subsidiary is a corporation all of the capital stock of which is owned by the REIT and for which no election has been made to treat such corporation as a taxable REIT subsidiary.

An unincorporated domestic entity, such as a partnership or limited liability company, that has a single owner generally is not treated as an entity separate from its parent for federal income tax purposes. An unincorporated domestic entity with two or more owners is generally treated as a partnership for federal income tax purposes. In the case of a REIT that is a partner in a partnership that has other partners, the REIT

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is treated as owning its proportionate share of the assets of the partnership and as earning its allocable share of the gross income of the partnership for purposes of the applicable REIT qualification tests. Our proportionate share for purposes of the 10% value test (see **Asset Tests**) is based on our proportionate interest in the equity interests and certain debt securities issued by the partnership. For all of the other asset and income tests, our proportionate shares are based on our proportionate interest in the capital interests in the partnership.

A REIT may own up to 100% of the stock of a taxable REIT subsidiary, or TRS. A TRS is a fully taxable corporation that may earn income that would not be qualifying income if earned directly by the parent REIT. Both the subsidiary and the REIT must jointly elect to treat the subsidiary as a TRS. A corporation, of which a TRS directly or indirectly owns more than 35% of the voting power or value of the securities, will automatically be treated as a TRS. We will not be treated as holding the assets of a TRS or as receiving any income that the TRS earns. Rather, the stock issued by a TRS to us will be an asset in our hands, and we will treat the distributions paid to us from such TRS, if any, as income. This treatment may affect our compliance with the gross income and asset tests. Overall, no more than 25% of the value of a REIT's assets may consist of stock or securities of one or more TRSs. A TRS will pay income tax at regular corporate rates on any income that it earns. In addition, the TRS rules limit the deductibility of interest paid or accrued by a TRS to its parent REIT to assure that the TRS is subject to an appropriate level of corporate taxation. Further, the rules impose a 100% excise tax on transactions between a TRS and its parent REIT or the REIT's tenants that are not conducted on an arm's-length basis. A TRS may not directly or indirectly operate or manage any health care facilities or lodging facilities or provide rights to any brand name under which any health care facility or lodging facility is operated. We currently own stock of a TRS, and may form one or more TRSs in the future.

### **Income Tests**

We must satisfy two gross income tests annually to maintain our qualification as a REIT. First, at least 75% of our gross income for each taxable year must consist of defined types of income that we derive, directly or indirectly, from investments relating to real property or mortgages on real property or qualified temporary investment income. Qualifying income for purposes of that 75% gross income test generally includes:

rents from real property;

interest on debt secured by mortgages on real property or on interests in real property;

dividends or other distributions on, and gain from the sale of, shares in other REITs;

gain from the sale of real estate assets, other than property held primarily for sale to customers in the ordinary course of business;

income from the operation, and gain from the sale of, certain property acquired at or in lieu of foreclosure on a lease of, or indebtedness secured by, such property ( foreclosure property ); and

income derived from the temporary investment of new capital that is attributable to the issuance of our shares of beneficial interest or a public offering of our debt with a maturity date of at least five years and that we receive during the one-year period beginning on the date on which we receive such new capital.

Second, in general, at least 95% of our gross income for each taxable year must consist of income that is qualifying income for purposes of the 75% gross income test, other types of interest and dividends, or gain from the sale or disposition of stock or securities. Certain types of gross income, including gross income from our sale of property that we hold primarily for sale to customers in the ordinary course of business, is excluded from both the numerator and the denominator for purposes of the income tests.

A REIT will incur a 100% tax on the net income derived from any sale or other disposition of property, other than foreclosure property, that the REIT holds primarily for sale to customers in the ordinary course of a trade or business. We believe that none of our assets are held primarily for sale to customers and that a sale of any of our assets would not be in the ordinary course of our business. Whether a REIT holds an asset

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primarily for sale to customers in the ordinary course of a trade or business depends, however, on the facts and circumstances in effect from time to time, including those related to a particular asset. Nevertheless, we will attempt to comply with the terms of safe-harbor provisions in the federal income tax laws prescribing when an asset sale will not be characterized as a prohibited transaction. We cannot assure you, however, that we can comply with the safe-harbor provisions or that we will avoid owning property that may be characterized as property that we hold primarily for sale to customers in the ordinary course of a trade or business.

We will generally be subject to tax at the maximum corporate rate on any net income from foreclosure property, other than income that otherwise would be qualifying income for purposes of the 75% gross income test. However, gross income from foreclosure property will qualify under the 75% and 95% gross income tests. Foreclosure property is any real property, including interests in real property, and any personal property incident to such real property:

that is acquired by a REIT as the result of the REIT having bid on such property at foreclosure, or having otherwise reduced such property to ownership or possession by agreement or process of law, after there was a default, or when default was imminent on a lease of such property or on indebtedness that such property secured;

for which the related loan was acquired by the REIT at a time when the default was not imminent or anticipated; and

for which the REIT makes a proper election to treat the property as foreclosure property.

A REIT will not be considered to have foreclosed on a property where the REIT takes control of the property as a mortgagee-in-possession and cannot receive any profit or sustain any loss except as a creditor of the mortgagor. Property generally ceases to be foreclosure property at the end of the third taxable year following the taxable year in which the REIT acquired the property, although foreclosure property status may be terminated earlier upon the occurrence of certain events or may be extended if an extension is granted by the IRS.

We have no foreclosure property as of the date of this prospectus.

Rent that we receive from real property that we own and lease to tenants will qualify as rents from real property, which is qualifying income for purposes of the 75% and 95% gross income tests, only if each of the following conditions is met:

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The rent must not be based, in whole or in part, on the income or profits of any person, but may be based on a fixed percentage or percentages of receipts or sales.

Neither we nor a direct or indirect owner of 10% or more of our shares may own, actually or constructively, 10% or more of a tenant from whom we receive rent (other than a TRS). Rent we receive from a TRS will qualify as rents from real property if at least 90% of the leased space of the property is rented to persons other than TRSs and 10%-owned tenants, the amount of rent paid by the TRS is substantially comparable to the rent paid by the other tenants of the property for comparable space and the rent is not attributable to a modification of a lease with a controlled TRS (i.e., a TRS in which we own, directly or indirectly, 50% of the voting power or value of the stock).

We generally must not operate or manage our real property or furnish or render services to our tenants, other than through an independent contractor who is adequately compensated and from whom we do not derive revenue. However, we need not provide services through an independent contractor, but instead may provide services directly, if the services are usually or customarily rendered in connection with the rental of space for occupancy only and are not considered to be provided for the tenants' convenience. In addition, we may provide a minimal amount of noncustomary services to the tenants of a property, other than through an independent contractor, as long as our income from the services does not exceed 1% of our income from the related property. Further, we may own up to 100% of the stock of a TRS which may provide customary and noncustomary services to our tenants without tainting our rental income.

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In addition, the amount of rent that is attributable to personal property leased in connection with a lease of real property will qualify as rents from real property but only if such amount is no more than 15% of the total rent received under the lease. The allocation of rent between real and personal property is based on the relative fair market values of the real and personal property.

We believe that the rents we receive, other than rent received from our TRS, meet all of these conditions.

Income and gain from certain hedging transactions that we enter into to hedge indebtedness incurred or to be incurred to acquire or carry real estate assets and that are clearly and timely identified as such is excluded from gross income for purposes of the 95% gross income test and, for transactions entered into after July 30, 2008, also for purposes of the 75% gross income test. We are required to clearly identify any such hedging transaction before the close of the day on which it was acquired or entered into and to satisfy other identification requirements. We intend to structure our hedging transactions so as not to jeopardize our status as a REIT.

If we fail to satisfy one or both of the gross income tests for any taxable year, we nevertheless may qualify as a REIT for that year if we qualify for relief under certain provisions of the federal income tax laws. Those relief provisions generally will be available if:

our failure to meet such tests is due to reasonable cause and not due to willful neglect; and

following such failure for any taxable year, a schedule of the sources of our income is filed in accordance with regulations prescribed by the Secretary of the Treasury.

We cannot predict, however, whether in all circumstances we would qualify for the relief provisions. In addition, as discussed above in Taxation of the Company, even if the relief provisions apply, we generally would incur a 100% tax on the gross income attributable to the greater of the amounts by which we fail the 75% or the 95% gross income test, multiplied by a fraction intended to reflect our profitability.

For purposes of the 75% and 95% gross income tests, the term interest generally does not include any amount received or accrued, directly or indirectly, if the determination of such amount depends in whole or in part on the income or profits of any person. However, interest generally includes the following:

an amount that is based on a fixed percentage or percentages of receipts or sales; and

an amount that is based on the income or profits of a debtor, as long as the debtor derives substantially all of its income from leasing substantially all of its interest in the real property securing the debt, and only to the extent that the amounts received by the debtor would be

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qualifying rents from real property if received directly by a REIT.

If a loan contains a provision that entitles a REIT to a percentage of the borrower's gain upon the sale of the real property securing the loan or a percentage of the appreciation in the property's value as of a specific date, income attributable to that loan provision will be treated as gain from the sale of the property securing the loan, which generally is qualifying income for purposes of both gross income tests.

Interest on debt secured by a mortgage on real property or on interests in real property generally is qualifying income for purposes of the 75% gross income test. However, if a loan is secured by real property and other property and the highest principal amount of a loan outstanding during a taxable year exceeds the fair market value of the real property securing the loan as of the date the REIT agreed to originate or acquire the loan (or, if the loan has experienced a significant modification that was not related to default or anticipated default since its origination or acquisition by the REIT, then as of the date of that significant modification), a portion of the interest income from such loan will not be qualifying income for purposes of the 75% gross income test, but will be qualifying income for purposes of the 95% gross income test. The portion of the interest income that will not be qualifying income for purposes of the 75% gross income test will be equal to the interest income attributable to the portion of the principal amount of the loan that is not secured by real property—that is, the amount by which the loan exceeds the value of the real estate that is security for the loan.

Our share of any dividends received from any corporation (including any TRS, but excluding any REIT) in which we own an equity interest will qualify for purposes of the 95% gross income test but not for

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purposes of the 75% gross income test. Our share of any dividends received from any other REIT in which we own an equity interest, if any, will be qualifying income for purposes of both gross income tests.

### **Asset Tests**

To maintain our qualification as a REIT, we also must satisfy the following asset tests at the end of each quarter of each taxable year. First, at least 75% of the value of our total assets must consist of:

cash or cash items, including certain receivables and certain money market funds;

government securities;

interests in real property, including leaseholds and options to acquire real property and leaseholds;

interests in mortgages on real property;

stock in other REITs; and

investments in stock or debt instruments during the one-year period following our receipt of new capital that we raise through equity offerings or offerings of debt with at least a five-year term.

Under a second set of asset tests, except for securities in the 75% asset class, securities in a TRS or qualified REIT subsidiary, and equity interests in partnerships:

not more than 5% of the value of our total assets may be represented by securities of any one issuer (the 5% value test);

we may not own securities that possess more than 10% of the total voting power of the outstanding securities of any one issuer (the 10% vote test); and

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subject to certain exceptions, we may not own securities that have a value of more than 10% of the total value of the outstanding securities of any one issuer (the 10% value test ).

In addition, no more than 25% of the value of our total assets may consist of securities (other than those that are qualifying assets for purposes of the 75% asset test), and not more than 25% of the value of our total assets may be represented by securities of one or more TRSs.

For purposes of the 10% value test, debt instruments issued by a partnership are not classified as securities to the extent of our interest as a partner in such partnership (based on our proportionate share of the partnership's equity interests and certain debt securities) or if at least 75% of the partnership's gross income, excluding income from prohibited transactions, is qualifying income for purposes of the 75% gross income test. For purposes of the 10% value test, the term securities also does not include debt securities issued by another REIT, certain straight debt securities (for example, qualifying debt securities of a corporation of which we own no more than a de minimis amount of equity interest), loans to individuals or estates, and accrued obligations to pay rent.

We believe that our existing assets are qualifying assets for purposes of the 75% asset test. We also believe that any additional real property that we acquire, loans that we extend and temporary investments that we make generally will be qualifying assets for purposes of the 75% asset test, except to the extent that the value of the loan exceeds the value of the associated real property securing the loan (determined as of the date we agreed to originate or acquire the loan) or to the extent the asset is a loan that is not deemed to be an interest in real property. We intend to monitor the status of our acquired assets for purposes of the various asset tests and manage our portfolio in order to comply at all times with such tests. If we fail to satisfy the asset tests at the end of a calendar quarter, we will not lose our REIT status if:

we satisfied the asset tests at the end of the preceding calendar quarter; and

the discrepancy between the value of our assets and the asset test requirements arose from changes in the market values of our assets and was not wholly or partly caused by the acquisition of one or more non-qualifying assets.

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If we did not satisfy the condition described in the second item above, we still could avoid disqualification by eliminating any discrepancy within 30 days after the close of the calendar quarter in which it arose.

In the event that we violate the 5% value test, 10% vote test, or 10% value test described above at the end of any quarter of each taxable year, we will not lose our REIT qualification if (i) the failure is de minimis (up to the lesser of 1% of the value of our assets or \$10 million) and (ii) we dispose of the assets that caused the failure or otherwise comply with the asset tests within six months after the last day of the quarter in which we identified such failure. In the event of a more than de minimis failure of any of the asset tests, as long as the failure was due to reasonable cause and not to willful neglect, we will not lose our REIT qualification if we (i) dispose of the assets that caused the failure or otherwise comply with the asset tests within six months after the last day of the quarter in which we identified such failure, (ii) file a schedule with the IRS describing the assets that caused such failure and (iii) pay a tax equal to the greater of \$50,000 or 35% of the net income from the nonqualifying assets during the period in which we failed to satisfy the asset tests.

### **Distribution Requirements**

Each taxable year, we must distribute dividends, other than capital gain dividends and deemed distributions of retained capital gain, to our stockholders in an aggregate amount at least equal to:

the sum of

- o 90% of our REIT taxable income, computed without regard to the dividends paid deduction and our net capital gain or loss, and
- o 90% of our after-tax income, if any, from foreclosure property, minus

the sum of certain items of non-cash income.

We must pay such distributions in the taxable year to which they relate, or