

URSTADT BIDDLE PROPERTIES INC
Form 424B5
October 31, 2014

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PROSPECTUS SUPPLEMENT
(To prospectus dated September 24, 2014)

2,500,000 Shares

Class A Common Stock

This is a public offering of Class A common stock of Urstadt Biddle Properties Inc. 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 28, 2014, the last reported sale price of our Class A common stock on the New York Stock Exchange was \$22.08 per share.

Investing in our Class A common stock involves risks. See Risk Factors beginning on page S-5 of this prospectus supplement, page 2 of the accompanying prospectus and page 9 of our Annual Report on Form 10-K for the year ended October 31, 2013. 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 and the accompanying prospectus. Any representation to the contrary is a criminal offense.

	<u>Per Share</u>	<u>Total</u>
Public offering price	\$21.30	\$53,250,000
Underwriting discounts	\$ 0.48	\$ 1,200,000
Proceeds, before expenses, to us	\$20.82	\$52,050,000

We have granted the underwriter a 30-day option to purchase up to 375,000 additional shares of our Class A common stock from us at the public offering price less the underwriting discounts and commissions. If the underwriter exercises its option in full, the total underwriting discounts and commissions will be \$1,380,000 and the total proceeds, before expenses, to us will be \$59,857,500.

Deutsche Bank Securities

The date of this prospectus supplement is October 29, 2014.

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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 as described in Section 27A of the Securities Act of 1933, as amended, or the Securities Act, and Section 21E of the Securities Exchange Act of 1934, as amended, or the Exchange Act. We generally identify forward-looking statements by the use of such words as anticipate, believe, can, continue, could, estimate, expect, intend, may, plan, potential, seek, should, will, or various similar expressions and the negatives of such words.

All statements, other than statements of historical facts, included in this prospectus supplement, the accompanying prospectus and the documents they incorporate 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 acquisitions (including the timing, 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. Although we believe that the expectations reflected in the forward-looking statements are reasonable, we cannot guarantee our future results, levels of activity or performance. Any or all of our forward-looking statements in this prospectus supplement, the accompanying prospectus and the documents they incorporate may turn out to be inaccurate. 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

changes in laws or regulations.

In addition, we discuss certain factors in our Annual Report on Form 10-K for the fiscal year ended October 31, 2013 under Item 1A. Risk Factors and in the other reports we have filed with the Securities and Exchange Commission, or 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, the accompanying prospectus and the documents they incorporate by reference.

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.

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 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*. Unless otherwise indicated, this prospectus supplement does not reflect the exercise of the underwriter's option to purchase additional shares of our Class A common stock.*

Our Business

We are a self-administered 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 the metropolitan New York tri-state area outside of the City of New York. Our core properties consist principally of neighborhood and community shopping centers. 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 the northeastern region of the United States with a concentration in the metropolitan New York tri-state area outside of the City of New York.

At October 28, 2014, we owned or had an equity interest in sixty-nine properties comprised of neighborhood and community shopping centers, office buildings, and office/retail mixed use facilities located in four states in the northeastern region of the United States, containing a total of 4.9 million square feet of gross leasable area, or GLA.

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. Information contained on our website is not part of, and is not incorporated into, this prospectus supplement.

Recent Developments

Dividends

On September 4, 2014, we declared quarterly dividends in the amounts of \$0.2525 for each share of our Class A common stock and \$0.225 for each share of our common stock. The dividends were paid on October 17, 2014 to holders of record on October 3, 2014. We also declared the regular quarterly dividends on our 7.5% Series D Senior Cumulative Preferred Stock, or the Series D preferred stock, and 7.125% Series F Cumulative Redeemable Preferred Stock, or the Series F preferred stock. The dividends were declared in the amount of \$0.46875 for each share of Series D preferred stock and \$0.4453125 for each share of Series F preferred stock and are payable October 31, 2014 to holders of record on October 17, 2014.

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Public Offering of Series G Preferred Stock

On October 28, 2014, we issued and sold 2,800,000 shares of our 6.75% Series G Cumulative Redeemable Preferred Stock, liquidation preference of \$25.00 per share, or the Series G preferred stock, in an underwritten public offering. We have granted the underwriters for the

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offering a 30-day option to purchase up to an additional 200,000 shares of the Series G preferred stock. The net proceeds of the offering, after deducting underwriting discounts and commissions and estimated offering expenses payable by us, were approximately \$67.6 million, assuming the underwriters do not exercise their option to purchase up to an additional 200,000 shares.

Redemption of Series D Preferred Stock

On October 22, 2014, we called for redemption on November 21, 2014, all of the outstanding shares of our Series D preferred stock. The Series D preferred stock will be redeemed at a redemption price of \$25.00 per share, plus \$0.109375 per share, the amount equal to all dividends accrued and unpaid on a share of the Series D Preferred Stock from November 1, 2014 through the redemption date. We intend to fund the redemption of the Series D preferred stock with proceeds from the sale of the Series G preferred stock and available cash.

Acquisitions

On October 10, 2014, one of our wholly-owned subsidiaries completed the purchase of a 51% equity interest in a joint venture that owns the McLean Plaza Shopping Center in Yonkers, Westchester County, New York for an investment of \$7.8 million. The purchase price was subject to our subsidiary assuming its share of a \$2.78 million first mortgage payable that encumbers the shopping center. The loan bears interest at the rate of 4.0% per annum and matures in December 2014. Our subsidiary purchased its 51% interest from an affiliate of The Great Atlantic & Pacific Tea Company, or A&P, which is an existing tenant in the shopping center. In conjunction with the purchase, A&P modified its lease and extended the initial term until 2034. The remaining 49% of the joint venture continues to be owned by entities owned by the two real estate families that originally developed the shopping center with A&P. The shopping center was built in 1982 and contains 57,000 square feet of leasable space anchored by a 35,000 square foot A&P supermarket. We funded the acquisition with available cash and borrowings on our unsecured revolving credit facility.

We are party to a purchase agreement with an unrelated third party pursuant to which we have agreed to acquire four retail shopping centers located in our target market of the metropolitan New York tri-state area outside of the City of New York, or the Acquisition. On October 27, 2014 we confirmed that the due diligence related to the Acquisition had been substantially completed under the agreement. The aggregate purchase price for the Acquisition, excluding closing costs, is \$124.55 million in cash. In connection with the execution of the purchase agreement, we deposited \$2.5 million into an escrow account. The shopping centers under contract comprise a total of approximately 375,000 square feet and are supermarket or drugstore anchored. As of September 15, 2014, the shopping centers under contract were collectively approximately 94% leased. We anticipate that the Acquisition will close before December 31, 2014. If we do not complete the Acquisition, there are circumstances under which we may forfeit the \$2.5 million deposit we have funded.

We intend to use the net proceeds of this offering to fund a portion of the purchase price of the Acquisition. We intend to fund the remainder of the purchase price through a mortgage loan, net proceeds remaining from the offering of the Series G preferred stock after redemption of the Series D preferred stock and other available cash. We have negotiated a preliminary, non-binding term sheet with a lender and anticipate obtaining a mortgage loan of approximately \$62.7 million secured by the four retail centers. Based on the indicative terms

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set forth in the preliminary term sheet, we anticipate that the mortgage loan will bear interest at a fixed rate of 3.85% per annum, have a 12 year term to maturity and require us to pay principal and interest based on a 30 year amortization schedule. The closing of the mortgage loan is subject to the negotiation and execution of definitive loan documents and the satisfaction of customary closing conditions. Accordingly, we cannot assure you we will be able to obtain the mortgage loan on the anticipated terms described above or at all.

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The Offering

Class A common stock offered in this offering	2,500,000 shares (1)
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Class A common stock to be outstanding after this offering	26,111,715 shares (1)(2)
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Use of Proceeds	We intend to use the net proceeds of this offering to fund a portion of the purchase price of the Acquisition. 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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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 are subject to the discretion of our board of directors and will be dependent on our results of operations, financial position, cash flows and other factors.
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Restrictions on Ownership and Transfer	To maintain our qualification as a REIT under the Internal Revenue Code of 1986, as amended, or the Code, we must meet several requirements regarding the number of our stockholders and concentration of ownership of our shares. Our charter contains provisions that restrict the ownership and transfer of our shares to assist us in complying with these Code requirements. We refer to these restrictions as the ownership limit. The ownership limit provides that, in general, no person may own more than 7.5% of the aggregate value of all outstanding stock of our company. See Description of Capital Stock Restrictions on Ownership and Transfer.
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New York Stock Exchange Symbol	UBA
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Risk Factors	You should read the sections entitled Risk Factors beginning on page S-5 of this prospectus supplement and on page 2 of the accompanying prospectus, as well as the risk factors described in our Annual Report on Form 10-K for the fiscal year ended October 31, 2013, for certain considerations relevant to investing in our Class A common stock.
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(1) Excludes up to 375,000 shares of our Class A common stock issuable upon exercise of the underwriter's 30-day option.

(2) Based on 23,611,715 shares of our Class A common stock outstanding as of October 27, 2014.

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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, 2013 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 and in our Annual Report 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 Documents Incorporated 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.

Risks Related to This Offering and the Pending Acquisition

The price of our Class A common stock may fluctuate and you could lose all or a significant part of your investment.

Volatility in the market price of our Class A common stock may prevent you from being able to sell your shares at or above the price you paid. The market price of our Class A common stock may also be influenced by many factors, some of which are beyond our control, including:

announcements by us or our competitors of significant contracts, acquisitions, strategic partnerships, joint ventures or capital commitments;

variations in quarterly operating results;

general economic conditions;

war, terrorist acts and epidemic disease;

investor perceptions of us and the commercial real estate industry generally; and

the failure of securities analysts to cover our Class A common stock, or to the extent covered, changes in financial estimates by analysts or a downgrade of our securities or sector by analysts.

In addition, the stock market in general has experienced extreme price and volume fluctuations that may be unrelated or disproportionate to the operating performance of companies like us. These broad market and industry factors may materially reduce the market price of our Class A common stock, regardless of our operating performance.

Future issuances or sales of our Class A our common stock or common stock may depress the market price of our Class A common stock.

We cannot predict whether future sales of our Class A common stock or our common stock or securities convertible into or exchangeable or exercisable for our Class A common stock or our common stock or the availability of these securities for resale in the open market may depress the market price of our Class A common stock. The issuance and sale of a substantial number of these securities in the public market or otherwise, or the perception that these issuances or sales might occur, may cause the market price of our Class A common stock to decline and you could lose all or a portion of your investment. In addition, future

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issuances of shares of our Class A common stock or our common stock or securities convertible into or exchangeable or exercisable for shares of our Class A common stock or common stock may be dilutive to existing shareholders.

Future offerings of equity securities which would dilute the Class A common stock holdings of our existing stockholders and may be senior to our Class A common stock for purposes of dividend and liquidating distributions may adversely affect the market price of our Class A common stock.

In the future, we may attempt to increase our capital resources by making additional offerings of equity securities. Upon bankruptcy or liquidation, holders of shares of our preferred stock and lenders with respect to other borrowings will receive a distribution of our available assets prior to the holders of our Class A common stock. Our series of preferred stock could have preferences on liquidating distributions or

preferences on dividend payments or both that could limit our ability to pay a dividend or other distribution to the holders of our Class A common stock. Because our decision to issue securities in any future offering will depend on market conditions and other factors beyond our control, we cannot predict or estimate the amount, timing or nature of our future offerings. Thus, holders of our Class A common stock bear the risk of our future offerings reducing the market price of our Class A common stock and diluting their shareholdings in our company.

An increase in market interest rates may have an adverse effect on the market price of our Class A common stock and our ability to pay distributions to our stockholders.

One of the factors that investors may consider in deciding whether to buy or sell our Class A common stock is our dividend rate as a percentage of our stock price, relative to market interest rates. If market interest rates increase, prospective investors may demand a higher dividend rate on our Class A common stock or seek alternative investments paying higher dividends or interest. As a result, interest rate fluctuations and capital market conditions can affect the market price of our Class A common stock. For instance, if interest rates rise without an increase in our dividend rate, the market price of our Class A common stock could decrease because potential investors may require a higher dividend yield on our Class A common stock as market rates on interest-bearing instruments such as bonds rise.

There can be no assurance that we will be able to consummate the Acquisition described in this prospectus supplement on the schedule or on the terms described in this prospectus supplement or at all.

We anticipate that the closing of the Acquisition described in this prospectus supplement will occur prior to December 31, 2014, after the date of the expected closing of this offering. However, we can give no assurance that we will consummate the Acquisition on the terms described in this prospectus supplement or at all. Pending the closing of the Acquisition described in this prospectus supplement, we may use a portion of the proceeds from this offering to make investments in short-term income-producing securities that are consistent with our qualification as a REIT. If we are unable to complete the Acquisition described in this prospectus supplement, our future operating results may fall short of expectations and our Class A common stock price may be adversely affected. If we are unable to complete the Acquisition described in this prospectus supplement, we may forfeit the \$2.5 million deposit we have funded in escrow and you will be unable to evaluate in advance the economic merits of the investments we ultimately may make with the net proceeds of this offering.

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USE OF PROCEEDS

We estimate that the net proceeds from the offering of our Class A common stock, after deducting underwriting discounts and commissions and estimated offering expenses payable by us, will be approximately \$51.9 million, or approximately \$59.7 million if the underwriter exercises its option to purchase additional shares in full.

We intend to use the net proceeds of this offering to fund a portion of the purchase price for the Acquisition described above under *Recent Developments* *Acquisitions*. We intend to fund the remainder of the purchase price with a mortgage loan, net proceeds remaining from the offering of the Series G preferred stock after redemption of the Series D preferred stock and other available cash.

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, 2014, (2) our pro forma capitalization as of that date after giving effect to the designation of 3,000,000 shares of our authorized preferred stock as Series G preferred stock and the issuance and sale of 2,800,000 shares of our Series G preferred stock on October 28, 2014 and the intended redemption of all outstanding shares of our Series D

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preferred stock, and (3) our pro forma capitalization as of that date as adjusted to reflect the offer and sale of 2,500,000 shares of Class A common stock in this offering. This table does not reflect the exercise of the underwriter's option to purchase additional shares of the Class A common stock in this offering or the intended use of proceeds of this offering.

	As of July 31, 2014		
	Actual (unaudited)	Pro Forma (unaudited)	Pro Forma As Adjusted (unaudited)
	(amounts in thousands, except share data)		
Revolving credit facility	\$ 37,600	\$ 37,600	\$ 37,600
Mortgage notes payable and other loans	178,953	178,953	178,953
Redeemable non-controlling interests	12,188	12,188	12,188
Stockholders' equity			
7.5% Series D Senior Cumulative Preferred Stock (liquidation preference of \$25.00 per share); 2,450,000 shares authorized, issued and outstanding; 2,450,000 shares authorized, 0 issued and outstanding pro forma and pro forma as adjusted	61,250		
7.125% Series F Cumulative Preferred Stock (liquidation preference of \$25 per share); 5,175,000 shares issued and outstanding	129,375	129,375	129,375
6.75% Series G Cumulative Redeemable Preferred Stock (liquidation preference of \$25.00 per share); 0 shares authorized, issued and outstanding; 3,000,000 authorized and 2,800,000 issued and outstanding pro forma and pro forma as adjusted (1)		70,000	70,000
Excess stock, par value \$.01 per share; 20,000,000 shares authorized; none issued and outstanding			
Common stock, \$0.01 par value, 30,000,000 shares authorized; 9,192,003 shares issued and outstanding	92	92	92
Class A Common Stock, par value \$0.01 per share; 100,000,000 shares authorized; 23,610,083 shares issued and outstanding, actual and pro forma; 26,110,083 shares issued and outstanding pro forma as adjusted	236	236	261
Additional paid in capital	370,303	368,098	420,123
Cumulative distributions in excess of net income	(114,150)	(114,150)	(114,150)
Accumulated other comprehensive income (loss)	98	98	98
Total stockholders' equity	447,204	453,749	505,799
Total capitalization	\$ 675,945	\$ 682,490	\$ 734,540

- (1) Excludes 200,000 shares of Series G preferred stock issuable upon the exercise of the option we granted to the underwriters of the public offering of our Series G preferred stock.

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UNITED STATES FEDERAL INCOME TAX CONSIDERATIONS

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

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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);

non-U.S. individuals and foreign corporations (except to the extent discussed in Taxation of Non-U.S. Stockholders, below);

U.S. expatriates;

persons who mark-to-market our stock;

subchapter S corporations;

U.S. stockholders (as defined below) whose functional currency is not the U.S. dollar;

regulated investment companies and REITs;

trusts and estates;

persons who receive our stock through the exercise of employee options or otherwise as compensation;

persons holding our stock as part of a straddle, hedge, conversion transaction, synthetic security or other integrated investment;

persons subject to the alternative minimum tax provisions of the Internal Revenue Code of 1986, as amended (the Code); and

persons holding our stock through a partnership or similar pass-through entity.

This summary assumes that stockholders hold shares of our Class A common stock as capital assets for federal income tax purposes, which generally means property held for investment.

The statements in this section are not intended to be, and should not be, construed as tax advice. This summary is based upon 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. The reference to administrative pronouncements issued by the IRS includes pronouncements issued in private letter rulings, which are not binding on the IRS except with respect to the taxpayer that receives the ruling. Future legislation, regulations, administrative pronouncements and judicial decisions could change the current law or adversely affect existing interpretations of current law on which the information in this section is based and any such change could apply retroactively. 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 SHARES OF OUR CLASS A COMMON STOCK

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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, 2011 through October 31, 2013, 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, 2014 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 future conduct of our business operations. Baker & McKenzie LLP's opinion is not binding upon the IRS or any court and only speaks as of the date issued. In addition, Baker & McKenzie LLP's opinion is based on existing federal income tax law governing qualification as a REIT, which is subject to change either prospectively or retroactively. 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.

Moreover, 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. Baker & McKenzie LLP will not review our compliance with those tests on a continuing basis. Accordingly, no assurance can be given that our actual results of operations will satisfy these requirements. Baker & McKenzie LLP's opinion does not foreclose the possibility that we may have to use one or more REIT savings provisions described below, which could require us to pay an excise or penalty tax (which could be material) in order to maintain our qualification as a REIT. 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 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:

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- 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.

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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%).

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. stockholder 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 stockholder) 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.

We may be required to pay monetary penalties to the IRS in certain circumstances, including if we fail to meet record-keeping requirements intended to monitor our compliance with the rules relating to the composition of a REIT's stockholders, as described below in **Recordkeeping Requirements**.

Requirements for Qualification

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

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1. It is managed by trustees or directors.
2. Its beneficial ownership is evidenced by transferable stock, 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 stock or ownership certificates.
6. Not more than 50% of the value of its outstanding stock 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.
9. It complies with the recordkeeping requirements of the federal income tax laws.

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 outstanding shares of our stock 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 stock ownership under the closely held test, an individual 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 shares of our stock 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. These restrictions, however, may not ensure that we will, in all

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cases, be able to satisfy the stock ownership requirements. If we fail to satisfy these requirements, our qualification as a REIT may terminate.

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. Thus, in applying the requirements described herein, any qualified REIT subsidiary that we own will be ignored, and all assets, liabilities, and items of income, deduction and credit of such subsidiary will be treated as our assets, liabilities, and items of income, deduction and credit.

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 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 tests, our proportionate shares are based on our proportionate interest in the capital interests in the partnership.

We intend to control any subsidiary partnerships and limited liability companies, and we intend to operate them in a manner consistent with the requirements for our qualification as a REIT. We may from time to time be a limited partner or non-managing member in some of our partnerships and limited liability companies. If a partnership or limited liability company in which we own an interest 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.

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. Because we will not include the assets and income of TRSs in determining our compliance with the REIT requirements, we may use such entities to undertake activities indirectly, such as earning fee income, that the REIT rules might otherwise preclude us from doing directly or through pass-through subsidiaries. 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.

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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 five TRSs, 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 cancellation of indebtedness income and 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. In addition, income and gain from hedging transactions that we enter into to hedge indebtedness incurred or to be incurred to acquire or carry real estate assets that are clearly and timely identified as such will be excluded from both the numerator and the denominator for purposes of the 75% and 95% gross income tests. Certain foreign currency gains will also be excluded from gross income for purposes of one or both of the gross 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 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. A safe harbor to the characterization of the sale of property by a REIT as a prohibited transaction and the 100% prohibited tax is available if the following requirements are met:

the REIT has held the property for not less than two years;

the aggregate expenditures made by the REIT, or any partner of the REIT, during the two-year period preceding the date of the sale that are includible in the basis of the property do not exceed 30% of the selling price of the property;